

The Trial of Susan B. Anthony

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Editor's Introduction

Through newspapers and published accounts, a national audience learned of the federal trial of Susan B. Anthony on the criminal charge of voting without a right to the franchise. The trial and conviction of the well-known leader of the woman suffrage movement dramatically revealed the denial of women's voting rights at the time that the nation was debating the expansion of political rights and constitutional protections of those rights in the aftermath of the Civil War. Anthony's vote, and that of other women, was part of an organized strategy to win in the federal courts a recognition of what the women argued was their constitutional right to vote, guaranteed by the recently ratified Fourteenth Amendment. The trial of Anthony and the legal setbacks faced by other women who attempted to vote in 1872 led to a new strategy for the woman suffrage movement and a determination to secure a separate constitutional amendment to protect women's right to vote, a struggle that continued until the ratification of the Nineteenth Amendment in 1920.

The widely distributed accounts of the Anthony trial and the apparent efforts of the presiding judge to prevent a review by the Supreme Court focused attention on criminal proceedings in the federal courts and the lack of provision for appeal of criminal convictions in the circuit courts, which then served as important trial courts. The seemingly arbitrary actions of the presiding judge, who refused to let the jury decide Anthony's guilt or innocence and enforced a traditional rule denying a criminal defendant the opportunity to testify, prompted wider debates on the protection of defendants' rights in a jury trial.

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The Trial of Susan B. Anthony: A Short Narrative

Introduction

United States v. Susan B. Anthony was a criminal trial in the federal courts. In the federal election in November 1872, Anthony, the best-known advocate of woman suffrage, registered to vote and then voted. The government charged her with the crime of voting without “the legal right to vote in said election district”—she, in the words of the indictment, “being then and there a person of the female sex.” Her trial revealed the complexity of federalism in the post-Civil War years. She was convicted in federal court under federal law for violating state law about who was eligible to vote. New York state law prohibited women from voting, and a recent federal law provided for the criminal prosecution of anyone who voted in congressional elections “without having a lawful right to vote.”

Primarily a case about woman suffrage and sexual discrimination, *United States v. Susan B. Anthony* is also a case about Reconstruction and the balance of federal and state authority. Prior to the Civil War, the demand for woman suffrage was directed to state governments, each of which set the qualifications of voters in the respective states. Reconstruction redirected the demand. The federal government assumed some authority over the voting qualifications enacted by the states, and woman suffragists saw in that change an opportunity to extend voting rights not only to black men but also to black and white women. They called for universal suffrage.

Anthony and the members of the National Woman Suffrage Association, after failing to gain explicit reference to the voting rights of women in the Fourteenth and Fifteenth Amendments, set about testing the meaning of what those amendments did say and how the amendments might have changed the rights of women. Anthony was among a group of women in the country trying to establish, through test cases in the federal courts, that the amendments had so redefined citizenship and rights that women were protected by the federal government in their right to vote.

The crime

On November 5, 1872, in the first district of the Eighth Ward of Rochester, New York, Susan B. Anthony and fourteen other women voted in the United States election, which included the election for members of Congress. The women had successfully registered to vote several days earlier. A poll watcher challenged Anthony’s qualification as a voter. The inspectors of election took the steps required by state law when a challenge occurred: they asked Anthony under oath if she was a citizen, if she lived

in the district, and if she had accepted bribes for her vote. Following her satisfactory answers to these questions, the inspectors placed her ballots in the boxes.

The individuals at the polling place revealed the state and federal aspects of Anthony's crime. Three inspectors of election, local men who also served as a board of registration for voters, enforced the election laws of New York, which allowed all white males and some black males to vote. Since ratification of the Fifteenth Amendment in 1870, Congress had provided for new federal oversight of elections through several Enforcement Acts, primarily to ensure that all black men be allowed to vote despite state laws, but also to stop fraud and corruption in federal elections. Two federal supervisors of election oversaw the inspectors.

The strategy

Susan B. Anthony did not expect to vote. Pursuing a strategy adopted by the National Woman Suffrage Association in 1871, she expected to be denied registration as a voter and subsequently to sue for her right to vote in federal court. Women elsewhere in the country were stopped in their attempts to vote at the point of registration. Anthony's success at registering as a voter raised the possibility of voting, and again, when she returned on election day, the officials at the polls decided that she was an eligible voter. Anthony and members of the Association believed that the Fourteenth Amendment, which defined U.S. citizenship, protected a woman's right to vote. The women reasoned that the rights of U.S. citizenship, or, in constitutional language, "the privileges and immunities of citizens of the United States," included the right to vote. If the Fourteenth Amendment's definition of U.S. citizenship included women, and the states were barred from depriving U.S. citizens of the privileges and immunities of citizenship, it followed that states could not exclude women from the electorate. The Fifteenth Amendment's reference to the "right of citizens of the United States to vote" implicitly acknowledged women's right as citizens to vote. Woman suffragists sought to validate their interpretation either through a declaratory act of Congress that would enforce their interpretation of the Reconstruction Amendments or through a favorable decision in federal courts.

Arrest

Nine days after the election, U.S. Commissioner William Storrs, an officer of the federal courts, issued warrants for the arrest of Anthony and the fourteen other women who voted in Rochester. Based on the complaint of Sylvester Lewis, a poll watcher who challenged Anthony's vote, the women were charged with voting for members of the U.S. House of Representatives "without having a lawful right to vote," in violation of section 19 of the Enforcement Act of 1870.

Three days later, on November 18, 1872, a deputy federal marshal called on

Anthony. He asked her to accompany him downtown to see the commissioner. She later told audiences, “‘What for?’ I asked. ‘To arrest you,’ he said. ‘Is that the way you arrest men?’ ‘No.’ Then I demanded that I should be arrested properly.” Anthony was taken at government expense on the streetcar to the commissioner’s office, where she met her attorney, Henry Selden, and an assistant U.S. attorney, John Pound. When Pound asked for Anthony’s plea, Selden refused to enter one before an indictment. This obliged the commissioner to conduct an examination, which would determine if there were sufficient grounds to detain Anthony.

Examination

In what became a pattern of singling out Anthony, all the women voters were arrested, but only Anthony’s actions were examined for evidence of a crime. An examination on November 29, 1872, reviewed the evidence against Anthony to determine if all the women should be held in federal custody and referred to a grand jury for possible indictment. John Pound presented the government’s witnesses to establish the facts in the case. Was Anthony a woman? Did she cast ballots? How many ballots did she cast? Was she challenged? Did she take the oaths? The two Republican inspectors of election, already under arrest themselves for allowing the women to vote, were the principal witnesses, followed by Sylvester Lewis and a clerk who kept the register of voters. Although the defense conceded that Anthony was a woman, Pound insisted on examining witnesses on this point: “Was Miss Anthony dressed in the apparel of a woman and had she the appearance of a woman?” he asked the inspectors, over the objections of Anthony’s attorney.

The defense emphasized the lack of any evidence that Anthony knowingly violated the law as they claimed was required for conviction under the Enforcement Act, but Commissioner Storrs refused to drop the charges. Storrs did, however, overrule the objections of the prosecutor and agree that evidence about Anthony’s intent should be heard. The examination was adjourned until late December to allow the attorneys to prepare.

The arguments

When the hearing resumed on December 23, 1872, the commissioner moved it from his office to the city council chambers to accommodate a large audience. Henry Selden spoke first. He argued that Anthony had the right to vote, since voting was an essential ingredient of citizenship. States retained their right to regulate voting, but the Reconstruction amendments took away states’ right to exclude a class of citizens from voting. Even if Anthony did not have that right, yet believed she did, her action lacked “the indispensable ingredient of all crime, a corrupt intention.” Assistant U.S. Attorney John Pound countered by turning to the report on the amendments written

by Representative John Bingham of the House of Representatives Committee on the Judiciary. This report, prepared in response to a petition from woman suffragists, asserted that the amendments left untouched the women's exclusion from suffrage because they in no way altered the authority of states to determine qualifications for voters. To Pound, the very existence of Bingham's report, and a similar one written by Senator Matthew Carpenter in 1872, proved that Anthony must have known she lacked the right.

Commissioner Storrs on December 26 announced his decision that Anthony "must give bail to appear and answer to indictments, if bills be found by the Grand Jury," and he signed a record of commitment sending her to Albany County jail. On December 30, the fourteen other defendants posted bail, leaving Anthony alone in the custody of the federal marshal. He did not jail her.

A writ of habeas corpus

Anthony's attorneys combed the law through November and December in search of a way to appeal her arrest and detention to the Supreme Court of the United States. As Selden put it, the "contingencies" of doing so through criminal proceedings were great. At the time, a conviction could not be appealed to the Supreme Court unless the case was heard by two judges who disagreed on a matter of law and certified their disagreement to the Court. Anthony's attorneys decided that the surest route to the Supreme Court began with a petition to the district court for a writ of habeas corpus, even though Congress in 1868 had repealed the provision for appeals on writs of habeas corpus from the lower federal courts to the Supreme Court.

Attorney John Van Voorhis, arguing that Anthony had a right to vote and that there was no evidence that she knowingly violated the Enforcement Act, petitioned the district court on January 2, 1873, for a writ of habeas corpus that would bring Anthony before the court so that the judge could decide if she were rightly held in custody. Judge Nathan Hall of the U.S. District Court for the Northern District of New York granted the petition and ordered the federal marshal to file by January 10 in Buffalo a return on the writ, explaining Anthony's examination and the order to commit her to the marshal's custody. With all parties in the courtroom on that day, the U.S. attorney announced that he was unprepared for argument, and the judge rescheduled the hearing for January 21 in Albany.

At the district court session in Albany, Henry Selden expanded the argument he had made previously; it was "vastly improved," Anthony observed. Selden insisted Anthony had a right to vote, but acknowledged that the question of women's right to vote was as yet unsettled and awaited definitive adjudication. In the meantime, the government had no basis for holding her as a criminal defendant. Judge Hall stopped U.S. Attorney Richard Crowley from making the government's case and denied the application for Anthony's release from custody.

Anthony mentioned in several letters that Henry Selden appealed the district court ruling to U.S. Circuit Court Judge Lewis B. Woodruff, but there is otherwise no record of the appeal or Woodruff's action. It must be assumed, since Anthony remained in custody, that Woodruff either refused to hear the appeal or decided not to release her.

Indictment

Commissioner Storrs sent the cases of the women voters to the U.S. district court sitting in Albany, and U.S. Attorney Richard Crowley presented the grand jury with the proposed indictments. The jury indicted the voters on January 24, 1873. Anthony entered a plea of not guilty, and she was again held to bail, this time for \$1,000. Selden gave her bail.

Preparing for trial

Prior to 1878, the federal courts followed the common law rule that prohibited criminal defendants from testifying or addressing the jury in their own trials. Anthony could, however, as one reporter wrote, "educate the people from whom this jury is to be selected." During March and April 1873, Anthony spoke in twenty-nine villages and towns of Monroe County, asking "Is It a Crime for a U.S. Citizen to Vote?" When she delivered her lecture in Rochester, the county's principal city, a daily newspaper printed her speech in full, circulating it further.

From the district to the circuit court

After several delays, the prosecutors, on May 22, 1873, summoned Anthony's co-defendants for arraignment. All pleaded not guilty and were released on their own recognizance, pending Anthony's trial.

On the same day, U.S. Attorney Richard Crowley asked that the case be transferred from the district court to the circuit court, sitting in June in Ontario County. Because the district and circuit courts had concurrent jurisdiction over the offense, federal law allowed a U.S. attorney to request transfer as a matter of course and without stating reasons. Nonetheless, observers were quick to attribute motives to Crowley's request. By taking the case to the June term of the circuit court, Crowley would try it before Ward Hunt, the associate justice of the U.S. Supreme Court assigned to the circuit. This would give the verdict greater weight, and it followed a practice in federal courts of holding important cases until the arrival of the Supreme Court justice.

In addition, the Supreme Court's rulings in mid-April on the Fourteenth Amendment in the *Slaughter-House* cases and *Bradwell v. Illinois* narrowly defined the rights of U.S. citizenship and changed the legal landscape for *United States v. Susan B.*

Anthony. Crowley could anticipate that Justice Hunt would bring the Court's deliberations to bear on this case, and he gained time himself to reframe his argument in light of the Court's opinions.

Moving the trial out of Monroe County also removed the trial from the potential jurors to whom Anthony had presented her argument in the case, but any advantage for Crowley soon slipped away. As one local newspaper noted, Crowley had met his match in Anthony. She laid out a schedule to speak in every village in Ontario County.

Trial

Anthony's trial began in Canandaigua, New York, on June 17, 1873. Before a jury of twelve men, Richard Crowley stated the government's case and called an inspector of election as a witness to establish that Anthony cast a ballot for congressional candidates. Henry Selden had himself sworn in as a witness and testified that he advised Anthony that the Constitution authorized her to vote. The government called Assistant U.S. Attorney John Pound to testify that in the preliminary examination Anthony indicated that she would have voted with or without Selden's advice.

The rest of the afternoon was taken up by Selden's principal argument in the case. Selden devoted most of his time to his argument in favor of a constitutional right of women to vote. Selden then addressed the other question of law: Could voting constitute a crime under the Enforcement Act if a defendant voted in good faith in the belief that he or she was entitled to vote? At the direction of Justice Hunt, who suggested that Selden limit himself to questions of law until the court ruled on them, Selden did not offer his planned discussion of the question of fact regarding whether Anthony voted in the good faith that she had a right to vote.

On the second day of the trial, U.S. Attorney Crowley presented the government's case, noting that the recent decisions of the Supreme Court only strengthened the argument that states still controlled the right to vote except in the categories protected by the Fifteenth Amendment. After saying that the case presented no question of fact, Crowley offered his view of the facts: that the term "knowingly" in the Enforcement Act meant only that a person knew she was engaged in the act of voting.

At the close of Crowley's presentation, Justice Hunt read his opinion in the case. Citing the recent Supreme Court decisions narrowly defining the rights of U.S. citizenship, Hunt declared that the right to vote was not among the "privileges and immunities" protected by the Fourteenth Amendment. States retained their full rights to bar citizens from voting, he said, with the exception of barriers based on "race, color, or previous condition of servitude," as set forth in the Fifteenth Amendment. Because Susan B. Anthony knew that New York enfranchised only males, she knew she lacked the right to vote. She acted knowingly to violate the law. Hunt concluded that there was no question for the jury to decide and that it should be directed to return a verdict of guilty.

Reaching a verdict

Selden insisted the jury had a right to decide the guilt or innocence of Anthony, and he again submitted his argument that she was innocent because she believed she had a legal right to vote and that the jury needed to determine this question of her intent. Hunt then directed the jury to deliver a guilty verdict, and the clerk refused Selden's request to poll the jury.

A motion for a new trial

Henry Selden returned to court on June 19, 1873, after working through the night on a motion for a new trial. In the circuit courts, such a motion was heard by the same judge whose actions gave rise to the motion. Justice Hunt would decide whether he had himself violated the Constitution, as Selden claimed, by denying Anthony a trial by jury. In a lengthy argument, Selden insisted that no sound precedent existed for directing a verdict of guilty in a criminal trial. Nowhere was a jury trial more important, he continued, than in a criminal case not subject to review. Hunt was unmoved. He denied the motion, claiming that the right to a trial by jury "exists only in respect of a disputed fact," and no facts were in dispute.

Before pronouncing the sentence for her crime, Justice Hunt asked Anthony if she had anything to say. She did. In the most famous speech in the history of the agitation for woman suffrage, she condemned a proceeding that had "trampled under foot every vital principle of our government." She had not received justice under "forms of law all made by men," "failing, even, to get a trial by a jury *not* of my peers." Sentenced to pay a fine of \$100 and the costs of the prosecution, she swore to "never pay a dollar of your unjust penalty." Justice Hunt said Anthony would not be held in custody awaiting payment of her fine.

Trial of the inspectors

At the close of Anthony's trial, the court opened the trial of the three inspectors of election, who were indicted for allowing the women to register as voters and to vote in the congressional elections. The jury convicted all three, and Justice Hunt imposed a fine of \$25 on each of the inspectors, who also refused to pay.

Fines

In July 1873, the clerk of the circuit court dispatched the deputy federal marshal to collect the fine and court costs still owed by Anthony. The marshal reported back, "I have made diligent search and can find no goods or chattles [sic] land or tenements" to seize, and the government took no further action.

The inspectors of election met a different fate. On February 3, 1874, Richard Crowley signed a writ for their arrest for their refusal to pay their fines, and on February 25, the marshal jailed them. While their champions in Rochester brought food, coffee, and a stream of visitors to the jail, Anthony telegraphed Representative Benjamin Butler and Senator Aaron Sargent for help. On March 3, at their request, President Grant pardoned the men. On the same day, voters in the Eighth Ward reelected the inspectors to their posts.

In January 1874, Anthony petitioned Congress for a remission of her fine because of the unjust character of her trial. Her congressional allies introduced her petition in the House and the Senate, and the judiciary committees of both houses debated the matter. Benjamin Butler, who thought Congress should defend the right to a trial by jury, brought to the floor of the House a bill to remit Anthony's fine, but it failed to pass. In the Senate, Matthew Carpenter thought Congress lacked the authority to reverse a federal court, but he submitted a report condemning Justice Hunt's action. It was "altogether a departure from, and a most dangerous innovation upon, the well-settled method of jury-trial in criminal cases. Such a doctrine renders the trial by jury a farce. [Anthony] had no jury-trial, within the meaning of the Constitution, and her conviction was, therefore, erroneous."

A change in strategy

The hope of gaining woman suffrage through the federal courts lingered for another year, until in the spring of 1875 the Supreme Court ruled, in the case of Virginia Minor of St. Louis, Missouri, that woman suffrage was not guaranteed by the Fourteenth Amendment or any other part of the Constitution. In 1876, during the celebrations of the centennial of the Declaration of Independence, the National Woman Suffrage Association announced its new strategy to seek a constitutional amendment that would guarantee voting rights to all U.S. citizens and bar states from qualifying voters on the basis of sex. The Nineteenth Amendment, which prohibits states from restricting, on the basis of sex, the right of citizens to vote, was ratified in 1920.

The Federal Courts and Their Jurisdiction

U.S. Circuit Court for the Northern District of New York

The U.S. Circuit Court for the Northern District of New York was the forum for three distinct phases of the judicial proceedings related to Susan B. Anthony: her arrest and examination; the appeal of the district court's denial of a request for her release on a writ of habeas corpus; and her trial.

The circuit courts of the United States operated from 1789 until they were abolished as of January 1, 1912. They were primarily trial courts and exercised jurisdiction over most federal crimes, over suits between citizens from different states, and over cases in which the government was a party. By the time of Anthony's trial, much of the circuit courts' jurisdiction overlapped with that of the district courts. The circuit courts also exercised jurisdiction over appeals from the district courts, although Congress ended the appellate jurisdiction of the circuit courts when it established the current system of U.S. courts of appeal in 1891. Cases in circuit court could be heard by any of three different judges, alone or in a combination of any two. The three judges were the justice of the Supreme Court assigned to the circuit, the district court judge, and the circuit judge, a post created by Congress in 1869.

The warrant for the arrest of Susan B. Anthony was signed by William C. Storrs, a commissioner appointed by the circuit court. Storrs also heard the evidence against Anthony in a series of hearings, or examinations. The commissioner's examination determined whether the evidence against the accused was sufficient to hold her in federal custody awaiting the consideration of an indictment by a federal grand jury.

Federal law authorized circuit court judges to appoint commissioners, who were authorized to issue warrants for arrest, take affidavits, hold preliminary examinations, and admit the accused to bail. Section 9 of the Enforcement Act of 1870, under which Anthony was arrested, directed circuit courts "to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act." In 1872, three commissioners were employed in Rochester, New York.

After the district court refused to release Anthony from custody on a petition for a writ of habeas corpus, she said her attorneys appealed that decision to the circuit court of the Northern District of New York. No appeal beyond the circuit court was available at that time.

In May 1873, U.S. Attorney Richard Crowley moved in district court that the trial of Anthony be transferred to the U.S. Circuit Court for the Northern District of New

York. The circuit court convened in three cities designated by Congress: Canandaigua, Albany, and Utica. Anthony would be tried in Canandaigua in June. At the June term, Supreme Court Justice Ward Hunt would preside. In criminal trials, it was customary to have two judges on the bench, because only by a split of opinion between two judges could a criminal conviction be certified for a decision by the Supreme Court. Despite this more common practice, and despite the fact that District Court Judge Nathan Hall was in the courtroom and heard cases earlier in the day, Supreme Court Justice Ward Hunt presided alone at the Anthony trial.

U.S. District Court for the Northern District of New York

When the U.S. commissioner determined that Anthony and the other voters had probably violated the law, he referred their cases to the U.S. District Court for the Northern District of New York. Anthony's case had first gone to the district court on a petition for a writ of habeas corpus to free her from the commissioner's order that she be held in federal custody. Following the commissioner's referral of the case, a federal grand jury in the district court, meeting in Albany, indicted all the female voters, and the district judge set a trial date of May 1873. When the day for trial arrived, the U.S. attorney asked that the case be transferred to the U.S. Circuit Court for the Northern District of New York at its term in June.

Since 1842, district and circuit courts had concurrent jurisdiction in non-capital criminal cases, and section 8 of the Enforcement Act of 1870 assigned to the district courts "cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts." To accommodate cases over a large geographical area, Congress mandated annual court sessions for the Northern District of New York in Albany, Utica, Rochester, Buffalo, Auburn, and at least one other city by designation of the judge.

The Judicial Process: A Chronology

November 18, 1872

U.S. Commissioner's Office, Rochester, New York

A deputy federal marshal arrested Susan B. Anthony and brought her before U.S. Commissioner William Storrs on the complaint of Sylvester Lewis, a Democratic poll watcher, who alleged that Anthony violated section 19 of the Enforcement Act of 1870 by voting in the congressional election on November 5. Anthony's lawyers refused to enter a plea, and the commissioner scheduled an examination.

November 29, 1872

U.S. Commissioner's Office, Rochester, New York

At the examination before Commissioner Storrs, Assistant U.S. Attorney John Pound presented the government's witnesses to prove that Anthony was a woman, that she cast ballots under oath, and that she voted for members of Congress. Defense attorneys John Van Voorhis and Henry Selden pointed out that the government did not establish that Anthony "knowingly" voted in violation of the law, as they argued was required for prosecution under the Enforcement Act. When Commissioner Storrs refused to dismiss the case, the defense attorneys asked for time to prepare an argument. The examination was adjourned until December 20 (and later postponed until December 23).

December 23, 1872

Common Council Chamber, Rochester, New York

When examination of Anthony resumed before Commissioner Storrs, Selden, aided by Van Voorhis, argued that women had a constitutional right to a voice in selecting their representatives and reiterated that for criminal conviction the government must establish that Anthony knew she did not have the right to vote. Assistant U.S. Attorney Pound disputed Selden's constitutional argument and cited congressional reports denying women's right to vote as reason to believe Anthony knew she lacked the right. Storrs adjourned the examination until December 26.

December 26, 1872

U.S. Commissioner's Office, Rochester, New York

Commissioner Storrs concluded that Anthony and all the women who voted at the same polling place had probably violated the law and should be held pending the

action of the federal grand jury at the January 1873 term of the U.S. District Court in Albany. He held them to \$500 bail. Anthony refused bail.

December 30, 1872

U.S. Commissioner's Office, Rochester, New York

The commissioner held an additional bail hearing for all the defendants. Fourteen women posted bail, while Anthony was placed in the custody of Deputy Federal Marshal Elisha Keeney. Nominally, Anthony was committed to the jail of Albany County, but in fact she was never held there.

January 2, 1873

U.S. District Court for the Northern District of New York at Buffalo

Anthony's attorneys petitioned U.S. District Judge Nathan K. Hall for a writ of habeas corpus, and Hall scheduled a hearing in Buffalo on January 10.

January 10, 1873

U.S. District Court for the Northern District of New York at Buffalo

The federal marshal delivered his return on the writ to Judge Hall, explaining why Anthony should remain in custody. U.S. Attorney Richard Crowley informed Judge Hall that he was not yet prepared for a hearing on the petition. Hall rescheduled the hearing for January 21 in Albany.

January 21, 1873

U.S. District Court for the Northern District of New York at Albany

Before Judge Hall, Henry Selden argued again that Anthony should not be held in custody because she had a right to vote and because the government had not established criminal intent on her part. Hall did not release Anthony but returned her to the marshal's custody.

January 22 or 23, 1873

U.S. Circuit Court for the Northern District of New York at Albany

Anthony's attorneys appealed the district court's decision not to release her; the appeal went to Judge Lewis B. Woodruff of the U.S. Circuit Court.

January 24, 1873

U.S. District Court for the Northern District of New York at Albany

A federal grand jury sitting in Albany indicted Anthony and the other women voters, and the district judge held them to answer at the district court in May at Rochester. Anthony was arraigned, and Henry Selden posted Anthony's new bail of \$1,000.

May 22, 1873

U.S. District Court for the Northern District of New York at Rochester

U.S. Attorney Richard Crowley submitted a request that the district court remit *United States v. Susan B. Anthony* to the circuit court sitting at Canandaigua in June. Crowley announced that Anthony's would be made the test case.

On the same day, the other voters were arraigned in the court. Arguing that they should be treated like any criminal, Richard Crowley sought bail for each of them. If the Congress had not prescribed rules of procedure, the federal courts in 1873 followed the rules of the state in which they met, and Henry Selden reminded the court that under New York state law, when the prosecution delayed a trial against the wishes of the defense, defendants were released on their own recognizance. Judge Hall agreed.

June 17, 1873

U.S. Circuit Court for the Northern District of New York at Canandaigua

The trial of Susan B. Anthony opened with Supreme Court Justice Ward Hunt presiding. After the jury was impaneled, U.S. Attorney Crowley made a brief statement of the case and called the government's witnesses. Henry Selden opened the defense and had himself sworn in as a witness, testifying that he had advised Anthony of her right to vote. The judge denied Anthony's motion to testify on her own behalf. Selden then made his principal argument in the case.

June 18, 1873

U.S. Circuit Court for the Northern District of New York at Canandaigua

Richard Crowley argued the government's case. Justice Hunt then read his opinion and announced his decision to direct the jury to return a guilty verdict. At the conclusion, Henry Selden asked the judge to submit the case to the jury on the question of intent. Justice Hunt declined and directed the jury to enter a verdict of guilty.

In the afternoon of the same day, the trial of the inspectors began, and the jury determined they were guilty of violating the Enforcement Act of 1870 when they registered the women and allowed them to vote.

June 19, 1873

U.S. Circuit Court for the Northern District of New York at Canandaigua

Henry Selden moved for a new trial on the grounds that Anthony had been denied a trial by jury. Richard Crowley responded to Selden's argument, and Justice Hunt ruled that no errors had occurred and no new trial was necessary. Before sentencing, Justice Hunt famously asked if Anthony had anything to say, and thus occasioned her well-known attack on the justice system that arrested and convicted her. Hunt sentenced Anthony to a fine of \$100 and the cost of prosecution. He stated, however, that he would not hold her in jail pending payment of the fine.

John Van Voorhis moved for a new trial for the inspectors of election, and Hunt denied the motion. The inspectors were each fined \$25 and the cost of prosecution.

June 21, 1873

U.S. Circuit Court for the Northern District of New York at Canandaigua

U.S. Attorney Crowley entered motions of *nolle prosequi* in the cases of the fourteen women who voted with Anthony, thus formally announcing that he would not prosecute any of them.

July 24, 1873

U.S. Circuit Court for the Northern District of New York

Deputy Federal Marshal Elisha Keeney reported to the court that he could not find any goods to seize to pay Anthony's fine.

Legal Questions Before the Federal Courts

On what authority did citizens acquire a right to vote?

Justice Ward Hunt ruled that voting rights arose from state citizenship, not U.S. citizenship.

Hunt doubted that a right to vote, as opposed to a privilege of voting, existed. He was certain, however, that individuals acquired this right or privilege from the laws of the states, “and not because of citizenship of the United States.” The Fourteenth Amendment, he said, had not changed the right of states to set their own qualifications for voting.

Anthony’s defense attorneys argued that the right to vote was an essential and inalienable right of citizenship, and that the Fourteenth Amendment’s protection of the rights, or “privileges and immunities,” of U.S. citizens extended to the right to vote. Hunt relied on recent Supreme Court decisions as authority for a much narrower definition of the rights of U.S. citizenship.

Did the Fourteenth and Fifteenth Amendments to the Constitution of the United States provide federal protection for voting rights?

No, answered Justice Hunt, except in those cases specifically designated by the Fifteenth Amendment.

On this point, Hunt turned to the recent decisions of the Supreme Court in the *Slaughter-House* cases and *Bradwell v. Illinois*, in which the Court defined distinct forms of citizenship—state and federal—and limited the protection provided by the Fourteenth Amendment to privileges and immunities arising from federal, or U.S., citizenship. The rights of state citizenship were unchanged by the amendment. Having decided that voting rights arose from state citizenship, it followed for Hunt that the amendment had no bearing on the case.

Hunt found further support for his position in the Fourteenth Amendment’s second section, which spelled out the sanctions states would suffer if they denied voting rights to any of their male citizens. The section, Hunt wrote, “assumes and admits the right of a state, . . . to deny to classes or portions of the male inhabitants the right to vote which is allowed to other male inhabitants.” In other words, the amendment affirmed the right of states to set the qualifications for voting.

The Fifteenth Amendment raised different questions. There the Constitution directly interfered with the right of states to set the rules. Justice Hunt read the amendment as a narrow and precise limit on the states, barring them from the use of only the enumerated standards—race, color, or previous condition of servitude—in

determining qualifications for voting. Nothing more general about a federal authority over political rights could be found in the amendment.

Did women have voting rights under the Constitution as amended?

No, said Justice Hunt, the Reconstruction Amendments did not extend voting rights to women.

Justice Hunt's answers to the previous questions led directly to his answer to this one. The state of New York had sole authority to define the voting rights of its citizens, even if the definition assigned different and unequal rights to men and women. Indeed, New York could exclude from voting almost any person it chose: young, old, a "person having gray hair, or who had not the use of all his limbs." None of these categories would violate the Constitution. Moreover, returning to the second section of the Fourteenth Amendment, Hunt found positive evidence that Congress intended only to protect the rights of males to vote. Finally, he noted, the absence of the word "sex" from the list of prohibitions in the Fifteenth Amendment sealed the argument.

Could a belief in a right to vote be used as a defense against the criminal charge of voting without having that right?

No, answered Justice Hunt.

From the first examination before the U.S. commissioner, the defense in *United States v. Susan B. Anthony* had insisted that the prosecution must show that Anthony voted knowing that she had no right to do so. Referring to the language of the Enforcement Act of 1870, Defense Attorney Selden stated then, as he would at every step of the case, that "knowingly" voting without the right to do so was the essence of the offence in the statute. Whether or not Anthony voted in the belief that she had that right was the question of fact that Selden posed for the jury to decide. At trial, Selden testified about advising Anthony that she had a right to vote. He also pointed to the decision of the inspectors who accepted her ballot because they concluded she had a right to vote. Selden reminded the jury that Anthony did not dress as a man, that she used her own female name, and that she in no way deceived election officials.

Justice Hunt adopted the argument of the prosecution that the statute spoke of knowing one had voted, not of knowing about the illegality of one's vote. By this reasoning, Hunt concluded that there was no fact for the jury to decide. According to Hunt, Susan B. Anthony had no right to vote, yet she knowingly voted; she must pay the penalty of the crime. "Ignorance of the law excuses no one," Hunt wrote.

Could a federal judge direct a jury to return a verdict of guilty in a criminal trial?

Yes, answered Justice Ward Hunt. The Supreme Court later ruled that a judge did not have this authority.

Justice Hunt ruled on this question himself when he responded to Henry Selden's motion for a new trial. In justifying his directed verdict and denying the motion for a new trial, Hunt relied on a classic distinction between issues of fact and issues of law in a trial: juries decided the former, and judges decided the latter. The right to a trial by jury, he asserted, "exists only in respect of a disputed fact." Thus, because the facts in this case, as he understood them, were conceded, there was nothing for the jury to decide. Hunt cited numerous examples of judges directing juries to find defendants *not* guilty, and he equated their actions with his: "if the power may be exercised in favor of the defendant, it may be exercised against him." This ruling became the most controversial one in the case, eliciting sharp criticism in the press, among lawyers, and in Congress. In an unrelated case in 1895, the Supreme Court forbid the federal courts from directing a verdict of guilty.

What had the federal courts decided in earlier cases involving woman suffrage?

In November 1871, the Supreme Court of the District of Columbia (at the time, a court with the jurisdiction of a federal circuit and district court) ruled on two voting rights cases, *Sara J. Spencer v. Board of Registration* and *Sarah E. Webster v. Judges of Election*.^{*} Sara Spencer and Sarah Webster were among seventy women who tried to register and vote in Washington, D.C., in the spring of 1871. Their attorneys sued D.C. officials, citing sections two and three of the Enforcement Act of 1870, wherein officials were required to register qualified voters and, if registration was denied, to accept ballots without prior registration. The women were qualified, they argued, because the word "male" in D.C.'s qualifications for voters was without effect since ratification of the Fourteenth Amendment. "No authority exists, ancient or modern," the women asserted, "for defining 'citizen' so as to exclude any political right or privilege."

The court's chief justice, David K. Cartter, wrote a single opinion for the court covering the issues in both cases. The right to vote was not a natural right, he stated,

^{*} Citations to this case date the decision to the September term of 1873. Legal journals published the opinion in December 1871. By September 1873, the case was on the docket of the Supreme Court of the United States on appeal and scheduled for argument in December.

but one that arose from specific legislation. By the Fourteenth Amendment, women were recognized as citizens and made “capable of becoming voters.” That capability, however, was at the moment an “inchoate right”; it “lies dormant . . . until made effective by legislative action.”

The defense attorneys in *United States v. Susan B. Anthony* referred to this opinion on two occasions. During the preliminary examination, John Van Voorhis suggested that by successfully voting, Anthony and the other women in Rochester had overcome the obstacle that Justice Cartter observed; their right to vote was no longer dormant but real. Henry Selden also referred to Cartter’s decision, but to dispute its assertion that the amendment did not execute itself. With their U.S. citizenship, Selden said, women had immediately gained their right to vote. At trial, Richard Crowley cited Cartter’s ruling in support of his view that the Fourteenth Amendment did not encompass voting rights.

What was the impact of the case?

Woman suffrage

Anthony could not appeal her conviction because appeals were not permitted at that time in federal criminal cases. She had reached the end of the line in her strategy to raise the question of woman suffrage in the federal courts. Had Justice Hunt jailed her for non-payment of her fine, she might have petitioned the Supreme Court for a writ of habeas corpus and thereby gained an opportunity for more discussion of the issues she sought to raise, but Hunt adhered to his decision not to jail her.

Woman suffragists’ hopes of reaching the Supreme Court of the United States survived Anthony’s conviction, however. The Court agreed to hear the two cases from Washington, D.C., and arguments were scheduled for December 1873, although following a postponement the Court sent the cases back to the District of Columbia court. In August 1873, the Court also agreed to hear an appeal from the Missouri Supreme Court in the case of Virginia Minor, another member of the National Woman Suffrage Association, who claimed a right to vote under the Fourteenth Amendment.

In their 1875 opinion in *Minor v. Happersett*, the U.S. Supreme Court justices put an end to the hope of gaining woman suffrage through the Reconstruction Amendments. Virginia Minor’s case was the one Susan B. Anthony had expected for herself. Denied registration as a voter in St. Louis by the registrar, Minor petitioned a state circuit court and then the Supreme Court of Missouri for relief on the grounds that the state constitutional provision limiting voting rights to males was in conflict with the U.S. Constitution. Her lawyers argued her appeal before the Supreme Court of the United States in February 1875. With no complicating questions about criminal

behavior, the case turned on the Court's interpretation of the Fourteenth Amendment.

In a unanimous opinion, the Court addressed two questions: did the amendment make women voters in states limiting votes to men? and was a right to vote among the privileges and immunities of U.S. citizenship? The Court answered that women's status was not changed by the Fourteenth Amendment. Women had always been citizens and had always been excluded from voting rights. Moreover, the Court said, the amendment granted no new privileges and immunities to citizens. Citizens of the United States were not necessarily voters. In conclusion, the Court was of the opinion "that the Constitution of the United States does not confer the right of suffrage upon anyone, and that the Constitutions and laws of the several States which commit that important trust to men alone are not necessarily void."

Directed verdict

Justice Hunt's directed verdict stood, but debate about it in the legal community carried on for some time. It provided the basis for Susan B. Anthony to petition Congress for a remission of her fine. It prompted members of Congress to pass legislation (vetoed by the President) to permit the appeal of federal criminal convictions to the Supreme Court of the United States. One month after Ward Hunt retired from the Supreme Court in 1882, U.S. Circuit Judge George W. McCrary in Kansas ruled that the decision in *United States v. Susan B. Anthony* was a clear violation of the constitutional guarantee to a trial by jury. "There can, within the meaning of the constitution, be no trial of a cause by a jury," he wrote, "unless the jury deliberates upon it and determines it." In 1895, the Supreme Court in *Sparf et al. v. United States* held that federal courts did not have the authority to direct a jury to return a guilty verdict in a criminal trial.

Voting rights and the Constitution

The Nineteenth Amendment to the U.S. Constitution, ratified in 1920, prohibits the states or the U.S. government from denying or abridging the right to vote on the basis of sex. Several other provisions of the Constitution impose similar restrictions on laws regulating access to the vote. The Fifteenth Amendment guarantees that no one can be denied the vote on the basis of race, color, or previous condition of servitude. The Twenty-fourth Amendment guarantees that no one can be denied the vote because of failure to pay a poll tax or other tax. The Twenty-sixth Amendment guarantees that no one eighteen years of age or older can be denied the right to vote on the basis of age. And Article I, section 2, of the Constitution requires that the voting qualifications each state establishes for elections to the U.S. House of Representatives shall be the same as those for elections to the more numerous branch of the state legislature.

None of these provisions guarantees a citizen's right to vote. Only in the mid-twentieth century did the Court recognize the right to vote as one entitled to the strictest constitutional protection. In the 1960s, the Court considered a series of cases involving the reapportionment of state legislative and congressional districts on the basis of geography rather than population. Culminating in the landmark 1964 holding, in *Reynolds v. Sims*, 377 U.S. 533 (1964), that legislatures must be apportioned according to the "one-person-one-vote" formula, the reapportionment cases established that the federal courts could hear cases involving the alleged infringement of voting rights—the issue in such cases was whether a particular voting system or scheme denied a person or a group of persons the equal protection of the laws.

The Court declared in *Wesberry v. Sanders*, 376 U.S. 1 (1964), that "no right is more precious in a free country than that of having a voice in the election of those who make the laws under which we, as good citizens, must live," and in *Reynolds* the Court said that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized" because "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights . . ." While not creating any substantive voting rights, these pronouncements helped to establish the modern conception of voting as an essential aspect of citizenship.

Legal Arguments in Court

Arguments of Susan B. Anthony's lawyers

1. Susan B. Anthony was entitled to vote

Henry Selden argued that the Fourteenth and Fifteenth Amendments guaranteed Anthony a “constitutional and lawful right” to vote. The amendments defined U.S. citizenship, prohibited states from abridging the privileges and immunities of citizens, and recognized that a right to vote was among those privileges and immunities. Selden mustered considerable precedent for his argument that citizenship entailed the right to the vote, but he also insisted that the Fourteenth Amendment imposed new restrictions on the states with regard to political rights. States could no longer bar U.S. citizens from voting.

Under the terms of the Fourteenth Amendment, Selden argued, Anthony was a citizen of the United States, and states were barred from abridging her rights. Among those rights was her right to vote. Historically, the term “citizen” was defined as someone with the right to vote for public officials. The Fifteenth Amendment acknowledged this definition in its opening phrase: “The right of citizens of the United States to vote.”

2. Susan B. Anthony was charged with a crime because she was a woman

The allegation of criminality was based solely on the fact of her sex. The alleged crime was not the act of voting, as that in itself was not a crime. Voting became a crime only because a woman voted. Such sexual discrimination over a voice in government was an absurdity. At the trial Selden said, “I believe this is the first instance in which a woman has been arraigned in a criminal court, merely on account of her sex.” Neither the prosecutor nor the judge addressed his point.

3. Susan B. Anthony did not violate the Enforcement Act of 1870 and committed no crime when she cast her ballots

To counter the criminal charges in the case, the defense advanced several readings of the law to support this claim. First, Henry Selden interpreted section 19 of the Enforcement Act of 1870 to require that the defendant must know the illegality of her vote and act fraudulently. The essence of the offense was “knowingly” to act illegally. Second, Selden cited authorities who defined criminal intent as a necessary component of a crime. Since the government could demonstrate neither criminal intent nor knowledge of the illegality of Anthony’s vote, there were no grounds for

a criminal conviction. Finally, if Anthony acted in error, misapprehending the sense of the constitutional amendments, she committed a mistake, not a crime.

4. Anthony deserved a new trial because the court deprived her of her constitutional right to a trial by jury

In support of his motion for a new trial in the case, Selden argued that the constitutional requirement for a trial by jury could not be met when a judge directed a verdict of guilty. A verdict must come from the jury, yet the jurors had been silent spectators at the trial. Reminding the judge that the circuit court was the court of last resort in a federal criminal trial, Selden urged the judge to correct the error by granting a new trial.

Arguments of the government attorney

1. The defendant did not have a right to vote on the basis of the Fourteenth Amendment, as she claimed

Federal Attorney Richard Crowley began this part of his argument, as his assistant John Pound had done at an earlier point in the trial, with a review of federal court and state supreme court decisions that declared that the privileges and immunities of citizens had never been understood to include a right to vote. Thus, Crowley argued section one of the Fourteenth Amendment had no bearing on this case. The amendment's second section not only recognized the right of states to abridge voting rights but also approved restrictions based on sex and age. The Fifteenth Amendment protected voting rights only with respect to race, color, or previous condition of servitude.

Crowley quoted at length from recent judicial opinions in cases involving woman suffrage. The Supreme Court of Missouri had ruled against Virginia Minor's suit to be registered as a voter; the Supreme Court of Pennsylvania had ruled against Carrie Burnham in her suit to vote after she successfully registered; and the Supreme Court of the District of Columbia had ruled against Sara Spencer and Sarah Webster in their suits to register and vote. In each of these cases, the presiding judge wrote that the Fourteenth Amendment did not prohibit states from limiting the vote to males.

2. Susan B. Anthony committed a crime by voting when New York law barred her as a female from doing so

By Crowley's reading of the Enforcement Act, it was a crime to vote without a legal right to do so. The Act's use of the word "knowingly," according to Crowley, meant only that the person knew she was engaged in the act of voting. Nonetheless, he argued that Anthony had numerous ways to know that she lacked the right to vote.

For example, the report by Congressman John Bingham for the House Committee on the Judiciary in 1871, rejecting Anthony's interpretation of the constitutional amendments, was written in response to a petition from woman suffragists.

3. The right to vote is only conventional (or statutory), not natural, and states may prescribe what qualifications they want with regard to it

New York's power to limit voting rights to males was well established and untouched by the amendments to the federal Constitution. If the defendant's view of voting rights as a natural right of all citizens was sustained, states would no longer be able to bar children or lunatics from exercising the right. Residence in a state would cease to be a legal qualification for voting there. The absurdity of these consequences demonstrated the error of the defense's claim.

4. Susan B. Anthony had no basis for claiming that she acted in good faith

Although the judge stopped Henry Selden from arguing this question of fact, Richard Crowley covered the ground at the conclusion of his argument. He turned again to the transcript of her examination and to the same testimony already introduced at trial through the witness John Pound. Because Anthony indicated then that she had intended to vote regardless of the advice given her by Henry Selden, she could not claim that she acted on the advice of counsel. In Crowley's view, she did not in good faith seek Selden's advice on the constitutionality of her vote.

Biographies

Judges and court officers

William C. Storrs (?–1873)

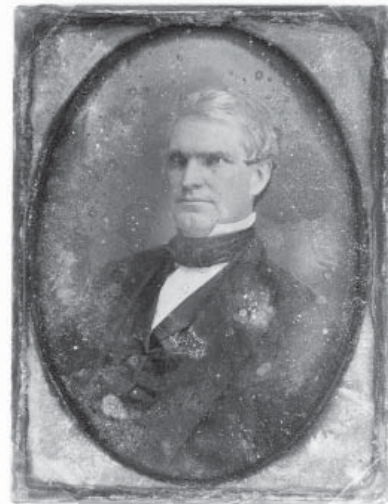
Storrs, one of three commissioners serving the U.S. circuit court in Rochester, New York, took charge of the arrest and examinations of Susan B. Anthony and the other women who voted. He decided, after hearing the arguments of the prosecutor and defense attorneys, to refer the women's case to a federal grand jury.

The commissioners were appointed to their posts by the judges of the circuit court, and it was assumed, though no longer stipulated in federal statutes, that they were knowledgeable about the law. They were empowered to issue warrants for arrest when federal laws were violated, to take affidavits, to hold preliminary hearings or examinations, and to admit the accused to bail. Although many commissioners were relatively new to their jobs, appointed since 1866 at the direction of Congress to increase their numbers and facilitate federal prosecutions, Storrs had held his position for fifteen years.

Nathan Kelsey Hall (1810–1874)

Hall, from Buffalo, served as judge of the U.S. District Court for the Northern District of New York from 1852 until his death. He issued a writ of habeas corpus in the case of *United States v. Susan B. Anthony* in January 1873, but after hearing the defense attorney's argument as to why the defendant should be released from federal custody, Hall returned Anthony to the federal marshal. Hall was expected to preside at Anthony's trial in the district court in May, but government prosecutors moved to transfer the trial to the circuit court.

Hall grew up in northern New York without formal education. At age sixteen he entered the law office of Millard Fillmore as a clerk and student of law, and the student became a law partner and lifelong friend of the future President. Hall held numerous political offices, including member of the U.S. House of Representatives. President Fillmore appointed Hall as his postmaster general in 1850



Nathan K. Hall

Daguerreotype, produced by Mathew Brady's studio. Library of Congress, Prints and Photographs Division [reproduction number LC-USZ62-110143].

and, as Fillmore's presidential term drew to a close, he nominated Hall to succeed Alfred Conkling as judge of the U.S. District Court for the Northern District of New York. Their friendship endured: Millard Fillmore, Jr., was clerk of the district court, and Fillmore, Sr., sat in the courtroom to hear the trial of Anthony.

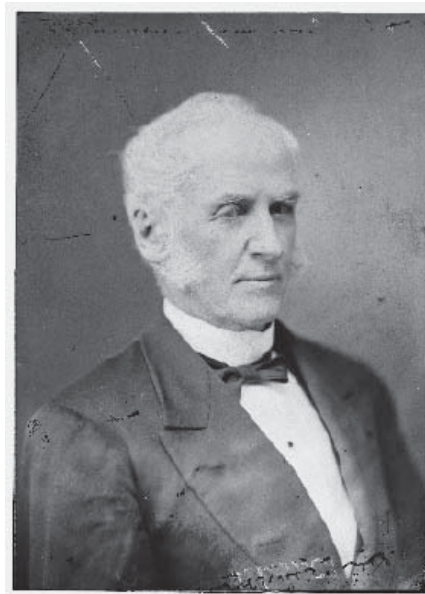
When the government attorney asked to move the case to the circuit court, Hall had no grounds for denying the request and was not heard by the press to voice any objections, but he did rein in the U.S. attorney just a bit. Richard Crowley asked that the fourteen codefendants in the case be treated "just like any criminal" and held to bail until after Anthony's trial. "I have some discretion here," Hall told the prosecutor, and he released the women on their own recognizance.

When the case came to trial in the circuit court in June 1873, Hall could have been on the bench hearing the case alongside Associate Justice Hunt of the Supreme Court. It was established practice in federal criminal trials (though not required) that two judges hear the case because only by a disagreement between two judges on a matter of law could the decision be referred to the Supreme Court. Crowley had anticipated that Hunt and Hall would sit together. On June 17, when the court's session began in the morning, both judges were on the bench; two observers remarked that Hall was still there when Anthony's case was called at three o'clock in the afternoon. But Hall did not sit with Justice Hunt. Anthony's colleague Matilda Joslyn Gage asserted that Hall declared himself incompetent to hear the case.

Ward Hunt (1810–1886)

Hunt, Associate justice of the Supreme Court of the United States, presided at the trials of Susan B. Anthony and the inspectors of elections in the U.S. Circuit Court of the Northern District of New York in June 1873. President Ulysses S. Grant appointed Hunt to the Supreme Court of the United States in December 1872, and he joined his colleagues on January 9, 1873. Like all Supreme Court justices, Hunt was assigned to a judicial circuit in which he would preside over sessions of the U.S. circuit courts. The Anthony trial took place during his first session on the circuit court for the northern district of New York.

Hunt was born in Utica, New York, and practiced law there after graduating from Union College in 1828 and attending law school in Connecticut. He entered politics and won election



Ward Hunt

Brady-Handy Photograph Collection, Library of Congress, Prints and Photographs Division [reproduction number LC-DIG-cwpbh-03892].

to the state legislature, to the office of mayor, and, after several failures, to the New York Court of Appeals. Utica was home to one of the U.S. Senate's most powerful members, Republican Roscoe Conkling, and Conkling promoted Hunt's appointment to the Supreme Court. Hunt took part in the Court's deliberations of the *Slaughter-House* cases and *Bradwell v. Illinois*, decided in April 1873. Although neither case raised questions about voting rights, the Court's narrow reading of the Fourteenth Amendment in both cases strengthened the government's case against Anthony and informed Hunt's ruling in her case.

Hunt's decision to direct the jury to find Anthony guilty, without allowing the jurors to deliberate and without polling them, overshadowed his decision regarding woman suffrage. Some newspapers denounced him immediately, and a few called for his impeachment. Many lawyers and at least half of the members of the Committee on the Judiciary in the House of Representatives spoke out against what they deemed a violation of the constitutional guarantee of a trial by jury. Not until the month after Hunt's retirement from the Supreme Court in 1882, however, did a circuit federal judge rule unequivocally that a directed verdict of guilty was in error. The Supreme Court in 1895 ruled that a federal judge could not direct a guilty verdict in a criminal trial.

Defendants

Susan B. Anthony (1820–1906)

At the time of her arrest for illegal voting in 1872, Anthony was one of the best-known women in the United States. A former teacher, she had worked for twenty years as a reformer—to limit access to alcohol, to end slavery, and to gain equal civil and political rights for women. Her weekly newspaper, the *Revolution*, published from 1868 to 1870, was read from France to San Francisco. Just a year before her arrest, she had traveled on the new transcontinental railroad to California, lecturing at the major towns along the way. She was also the president of the National Woman Suffrage Association.

Noted for her skills as an organizer, lobbyist, and publicist, as well as for her indomitable energy, Anthony brought the talents of an agitator to bear on her status as a criminal defendant. She complicated the government's case but also hardened the



Susan B. Anthony

Photo by Dr. Smith, 1871, Library of Congress, Prints and Photographs Division [reproduction number, LC-USZ62-111871]. Permission courtesy of the Nebraska State Historical Society Photography Collections.

prosecution's determination to convict her. Most notably, she prepared for her trial by lecturing in every village and town of Monroe County from which jurors would be chosen, asking and answering the question, "Is It a Crime for a U.S. Citizen to Vote?" When the government moved her trial to another county, she repeated the effort. After her conviction, she turned to Congress for help. At her request, her friends in Congress in 1874 persuaded the President to pardon the inspectors of election who were convicted of allowing Anthony to register as a voter and accepting her vote. She did not succeed in her other request of Congress, that her fine be remitted because she was denied a trial by jury. However, her plea influenced proposals in the House and the Senate to permit appeals of criminal convictions.

Other indicted voters

Although only Susan B. Anthony was brought to trial for illegal voting, the government arrested and indicted fourteen other women who cast ballots with her in the same district and ward. These women were held on bail until the conclusion of both Anthony's trial and the trial of the inspectors of election. The fourteen other voters were Charlotte Bowles Anthony, Mary S. Anthony, Ellen S. Baker, Nancy M. Chapman, Hannah M. Chatfield, Jane M. Cogswell, Rhoda DeGarmo, Mary S. Hebard, Susan M. Hough, Margaret Garrigues Leyden, Guelma Anthony McLean, Hannah Anthony Mosher, Mary E. Pulver, and Sarah Cole Truesdale.

These women were neighbors in the Eighth Ward and in many ways a cross-section of its residents. They ranged in age from the most senior, Rhoda DeGarmo, seventy-four years old, to the thirty-one-year-olds Charlotte Anthony and Margaret Leyden. The group consisted of homeowners and boarders in the houses of others. Several of them were widows, one of whom supported herself and her children as a seamstress. Among the married women, there were mothers of very young children, and their husbands included a dentist, a carriage maker, a baker, and a drayman. The single women taught school, and when they were late to their arraignment in the district court, their attorney quipped that the criminals would arrive at the end of the school day when they were done teaching the men of the future.

Word traveled through the district that three women registered to vote on November 1, 1872, and others walked to the polling place the next day to follow their example. Three of the voters were Anthony's sisters, and a fourth one—Charlotte Anthony—was married to their distant cousin. But the most important network among them was that of reform and social activism. Rhoda DeGarmo was not only the oldest voter but also an emblem of Rochester's long tradition of reform, dating back to the 1830s. She had worked alongside the parents of other women in the group to oppose slavery and agitate for women's rights. Although several of the voters enjoyed local prominence, they were not known nationally, and their identification with the movement for woman suffrage was individual rather than organizational. That

changed over the course of the trial: The indicted voters and their friends founded the Women Taxpayers' Association of Monroe County in May 1873 to protest their taxation without representation.

The decision to separate Anthony's case from that of the other women came in stages. Fourteen women posted bail in December 1872, leaving Anthony alone in the custody of a federal marshal. The grand jury indicted all fifteen women in January 1873, but arraignment of all save Anthony was delayed until May. At that time, the district court released the fourteen women on their own recognizance, and the prosecutor informed them they need not show up for trial at the circuit court in June. Only after the convictions of Anthony and the inspectors did the prosecutor, on June 21, 1873, enter motions of *nolle prosequi* in the circuit court, thereby declaring the government's intention to abandon any further prosecution.

Inspectors of election

The government also arrested and won the indictment and conviction of the three inspectors of election who accepted the women's ballots. These men resided, like the voters, in the first district of Rochester's Eighth Ward. Employed by the city only at election times, the inspectors served both as a board of registration to prepare the lists of eligible voters and as inspectors of election to confirm eligibility and receive ballots. Their chairman was Beverly Waugh Jones (1848–1879), a Republican and a roofer. Voters in the ward elected Jones to his post, and 1872 was his fourth year in office. Edwin T. Marsh (c. 1840–?) was also a Republican. A veteran of the Civil War, he spent ten months in Confederate prisons before returning to a government job as a letter carrier. Marsh was, the government's witness explained, the "chap who brings our letters and papers to us, a little sort of a fellow." Marsh had been selected by the city council just before the election to fill a vacancy on the board of registry. The lone Democrat was William B. Hall, described in the press as a young man. He worked as a clerk.

The inspectors were arrested, tried following the conclusion of Susan B. Anthony's trial, and found guilty of violating the Enforcement Act of 1870, which made it a crime to receive "the vote of any person not entitled to vote" and an 1871 amendment of the Act that made it a crime to register any person "not entitled to be registered." Like Anthony, the inspectors refused to pay their fines, but unlike her, they were jailed for that decision in February 1874 and held until President Grant pardoned them and remitted their fines. The inspectors were caught on the horns of not one but several dilemmas. Under state law governing their job, they lacked authority to refuse the ballot of anyone who took the oaths required of a challenged voter. Thus to refuse Anthony's ballot, once she had sworn it in, put them at risk of violating state law. Moreover, under federal law, the punishments for receiving the ballot of an ineligible voter were the same as those for refusing the ballot of an eligible voter.

Witness

Sylvester Lewis (c. 1820–1887)

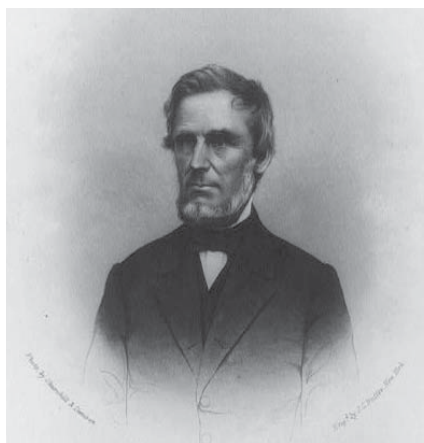
Lewis was the sworn witness against Susan B. Anthony and her codefendants. A resident of the Eighth Ward, Lewis described himself as a salt manufacturer, and he was employed by the Democratic Party at the time of the election to turn out the vote and to challenge illegal voters at the polls. He challenged Anthony's vote and thus triggered the requirement that she swear an oath that she was qualified to vote and had not accepted a bribe. When the warrants of arrest were issued, Lewis's name was omitted, and he claimed in the press not to know if he was the accuser, but the government did not hide his role for long. He was required to testify at the first examination before Commissioner Storrs on November 29, 1872, and again at the trial of the inspectors in 1873.

In two letters to the editor of the *Rochester Democrat and Chronicle* at the time of the arrests, Lewis justified his challenge, boasted of upholding state and federal constitutions, and made clear his opposition to advocates of woman suffrage. "Let them choose for themselves a legal representative," he wrote, "whose duty it shall be to assist in making the laws and grappling with the more stern realities of life, while she contents herself to attend to the domestic affairs of her household." Lewis was not the best of witnesses, enjoying too much the sport of partisan wrangling. When he learned that women were registering to vote, for example, he urged at least one woman from a Democratic household to go and do likewise, and his jest about registering Irish women and paying them to vote Democratic was widely reported. During the preliminary examination and at trial, efforts by the defense attorneys to discredit Lewis as a witness were ruled immaterial to the case.

Lawyers

Henry Rogers Selden (1805–1885)

Selden, from Rochester, was Susan B. Anthony's attorney. He was regarded as one of the finest lawyers in the state of New York. According to a Rochester newspaper, he was "an authority to whom Judges respectfully defer, in making up their opinion." After studying law in the office of his older brother, Samuel L. Selden, he was admitted to the bar in 1830, and in 1851 he was named reporter of the New York Court of Ap-



Henry Rogers Selden

Photo by Churchill and Denison; engrd. by J.C. Buttre, New York. Library of Congress, Prints and Photographs Division [reproduction number LC-USZ62-99812].

peals. An early supporter of the Republican Party, Selden won election on the party's first state ticket as lieutenant governor in 1857. In 1862, he was appointed to replace his brother as a judge on the New York Court of Appeals, and he served until 1865. Selden had settled in Rochester in 1859, and from there won election to the state assembly in 1866.

Anthony consulted Selden as soon as she succeeded in registering to vote, and he agreed to study the question of her right to vote. He concluded that she did indeed have a constitutional right to vote. His advice became an issue in the trial: if an attorney advised her that she had the right to vote, could the government argue that she had, in the words of the statute, "knowingly . . . voted without the right to vote"? Having committed himself to the position that the Fourteenth and Fifteenth Amendments guaranteed women's right to vote, Selden mastered the legal literature on that question and insisted that the government respond to that issue in the case. After reading Selden's able argument for Anthony's release before the district court in January 1873, the *New York Commercial Advertiser* indicated that with Selden supporting Anthony's position on woman suffrage, "the whole subject assumes new importance," and "other men, both lay and legal, should put themselves in an attitude at least of willingness to change their convictions upon this topic." Anthony published 3,000 copies of that argument for distribution.

John Van Voorhis (1826–1905)

Voorhis was the lead defense attorney for the inspectors of election, and he collaborated with Henry Selden on the defense of the women who voted. Born and raised in northern New York, Voorhis taught school for a brief time before studying law. After his admission to the bar in 1851, he practiced law in Elmira, New York, and moved to Rochester in 1854, where he served as city attorney. How much John Van Voorhis contributed to the defense of Susan B. Anthony is hard to judge. However, it is evident from Anthony's diary that she conferred with him more often than she did with Henry Selden as the case developed (though she never learned to spell "Van Voorhis"). Anthony also noted that Van Voorhis researched procedural issues for the case, such as the tricky issue of using the writ of habeas corpus to carry a case to the Supreme Court. Van Voorhis later served three terms in the U.S. House of Representatives as a Republican from 1879–1883 and 1893–1895. In the first of his terms, he and Richard Crowley, the U.S. attorney in the cases, sat together as members of the House Committee on Territories.

Richard Crowley (1836–1908)

Crowley, U.S. attorney for the Northern District of New York, led the prosecution in Anthony's case from start to finish. He grew up in Niagara County, New York, and, after local schooling and legal training, he began the practice of law in Lockport in 1860. He soon entered politics, serving two years as city attorney and four years as a state senator, but more importantly, winning favor with Roscoe Conkling, New York's Republican party boss and a U.S. senator. Crowley remained in Conkling's inner circle until the senator's death in 1888. Conkling's fellow Republican, President Ulysses S. Grant, appointed Conkling's young protégé to be the U.S. attorney for the Northern District of New York in March 1871. Reappointed by Grant in 1875, Crowley held the post until 1879, when he entered the U.S. House of Representatives for the first of two terms.

Crowley oversaw Anthony's arrest and examination, procured her indictment, called for transfer of the trial from the district court to circuit court, and made the government's argument at trial. When his law office in Lockport burned to the ground in January 1881, it was said that records of *United States v. Susan B. Anthony* were destroyed.

John E. Pound (1843–1904)

An assistant U.S. attorney for the Northern District of New York, Pound was dispatched from Lockport to Rochester by Richard Crowley to handle the government's case against Susan B. Anthony at the time of her arrest and her preliminary examination before Commissioner Storrs. A graduate of Brown University, Pound had returned to his native town to study law. After admission to the bar in 1867, he entered city and county politics, and in 1871 he won election to the state assembly as a Republican. He was assistant U.S. attorney for eight years. At the hearing before Storrs on November 29, 1872, Pound set forth the government's case as it would stand from that day until Anthony's conviction six months later. Once the voters were indicted in January 1873, Richard Crowley took direct charge of the case, though Pound was in the courtroom at the May 1873 term of the district court for the arraignment of Anthony's codefendants.

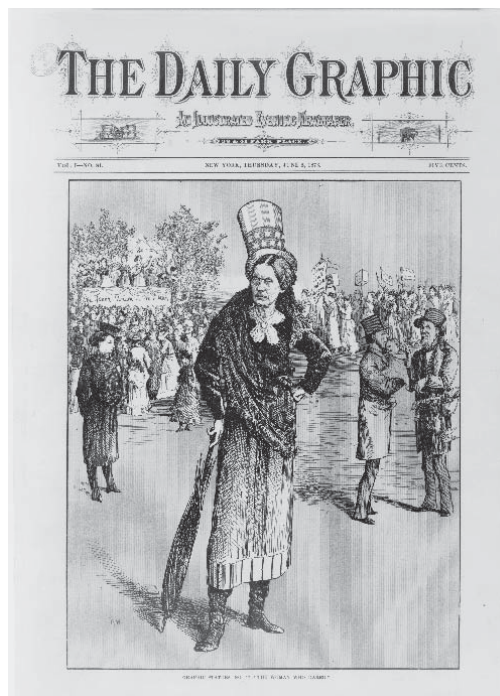
Media and Press Coverage

Susan B. Anthony's fame, combined with great public interest in woman suffrage in 1872, made *United States v. Susan B. Anthony* a case to watch from Election Day until long after the conclusion of her trial in June 1873. Anthony was a skilled publicist, and she used her talents to achieve the maximum educational value from her own arrest. The government benefited from the publicity as well. Without attention to the case, the deterrent effect of prosecuting Anthony would be null.

With the press, Anthony had the advantage. Reporters and editors liked her, and the spunk she displayed caught the public's imagination. As soon as she registered to vote, she went straight to a newspaper office to give reporters a quick interview. Following every step of the legal proceedings, reporters overheard things that they enjoyed telling. For example, while attorneys checked their calendars to schedule the commissioner's examination, a reporter heard Anthony interject that she would be in Ohio on the day chosen. The assistant U.S. attorney snapped, "You are supposed to be in custody all this time." "Oh, is that so?" Anthony asked. "I wasn't aware of it."

"The Woman Who Dared"

The public character of Anthony was evident in one enduring cartoon drawn just before her trial. "The Woman Who Dared" appeared on the cover of the *New York Daily Graphic*, June 5, 1873. It is an image about role reversals: a woman wearing a police uniform stands at attention, while men tote babies and groceries; in the background, female orators and demonstrators mimic men's political rallies; and, center front, Anthony leans on an umbrella with one arm akimbo, in a shortened skirt that reveals men's boots. A stovepipe hat decorated with the stars and stripes sits at a sporty angle on her head. Anthony's grim expression is a near perfect copy of a well-known photograph. On an inside page, the editors wrote that if Anthony were exonerated at trial, the world would resemble their cartoon, and women would "acknowledge in the person of Miss Anthony the pioneer who first pursued the way they sought."



"The Woman Who Dared"

From the *Daily Graphic*, v. 1, no. 81 (5 June 1873). Library of Congress, Prints and Photographs Division [reproduction number LC-USZ62-114833].

Public opinion

When Anthony sought to educate the public, she had the long-term objective of expanding debate about woman suffrage, but she also had the short-term goal of influencing the outcome of her own trial. She remarked to Congressman Benjamin Butler in May 1873, “I find *Judges & Courts* are influenced by *popular opinion*—not a little.” Both objectives were served by the first of her efforts to circulate documents produced in the course of her prosecution. Since her early days in the antislavery movement, Anthony had seen to the publication of inexpensive pamphlets that preserved—and found new audiences for—outstanding speeches and accounts of important events. These were essential components in the propaganda of reform. Henry Selden’s argument before Judge Nathan Hall in January 1873 impressed Anthony as a significant and useful document. She arranged for 3,000 copies of the argument to be published as a pamphlet. While awaiting the printer, she carried page proofs to the offices of New York City’s principal newspapers and mailed them to editors as far away as St. Louis, asking one and all to publish Selden’s text.

Speaking tours

Anthony’s most aggressive effort to educate the public about her indictment occurred in Monroe County, New York, in the weeks before her original trial date. She spoke in twenty-nine towns and villages, delivering a lengthy lecture titled “Is It a Crime for a U.S. Citizen to Vote?” that paralleled her attorney’s argument about women’s existing right to vote. Anthony’s arrest and indictment opened the opportunity to draw audiences and engage them in the discussion of woman suffrage. But the most important audience she reached were the adult males in the county who made up the pool of potential jurors at her trial.

In May 1873, when U.S. Attorney Richard Crowley moved that the trial be transferred from the district to the circuit court and thus from Monroe to Ontario County, the press and the public took for granted that he reacted to Anthony’s tour and looked for a new pool of jurors. He did not stop her. With the help of her colleague Matilda Joslyn Gage, Anthony set out to canvass the new county. This time her tour prompted a debate in Rochester’s newspapers about the legality of her actions: Was she tampering with a jury, as her sharpest critics charged? Or, did she simply lack respect for the court, as a friendly editor posited?

Documenting the case

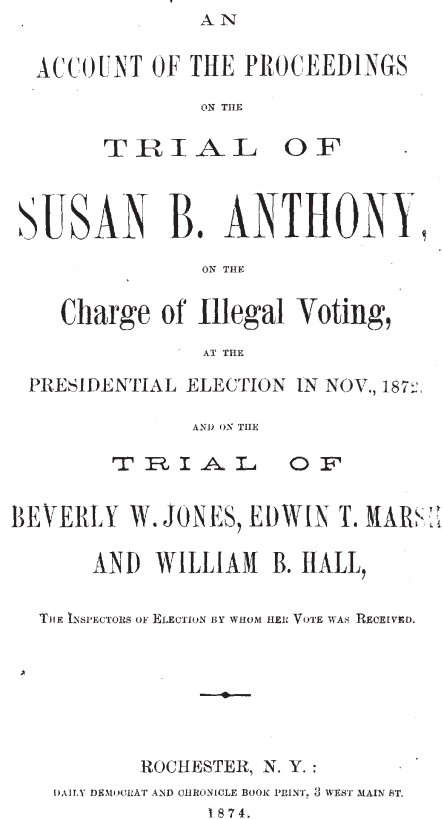
At the conclusion of her trial, Anthony began work on a larger documentary project. In a book of 200 pages, sold for fifty cents, she assembled the indictments, the trial transcripts, the judge’s ruling, the attorneys’ arguments and motions, and her own

speech to the potential jurors. It took months to assemble. *An Account of the Proceedings on the Trial of Susan B. Anthony, on the Charge of Illegal Voting, at the Presidential Election in Nov., 1872, and on the Trial of Beverly W. Jones, Edwin T. Marsh and William B. Hall, the Inspectors of Election by Whom Her Vote Was Received* was published in April 1874. A local newspaper called it “the most important contribution yet made to the discussion of the woman suffrage issue, from a legal stand-point.” Members of Congress, who were then discussing her petition for remission of her fine, received copies, and Anthony continued to sell it and give it away for decades.

Missing from the *Account of the Proceedings* was the argument of U.S. Attorney Richard Crowley. He refused Anthony’s request for a copy, though not out of modesty. Before the end of 1873, Crowley published his own pamphlet with his argument and the text of the judge’s ruling in the case.

The press take sides

From the first reports of the women’s success at the polls, newspaper responses divided along partisan lines. Support on the part of Republican editors was matched by Democratic indignation. The differences in their attitudes were not only toward woman suffrage but also toward the seriousness of the crime and the use of federal power in the states. The tone was set early on. On November 6, 1872, before any suspicion arose about arrests, the Republican *New York Times* said, “We have heard before of solitary instances of the recognition of the female franchise: but this picket guard of nine is a tangible enough force to make people reflect on the future possibilities which it involves.” A week later, the Democratic *Rochester Union and Advertiser* opined that the wave of women voters “goes to show the progress of female lawlessness instead of the progress of the principle of female suffrage. . . . [T]he efforts of Susan B. Anthony & Co. to unsex themselves and vote as men will be so far as they



Title page of Anthony’s account of the trial

From “Votes for Women: Selections from the National American Woman Suffrage Association Collection, 1848–1921,” American Memory Project, Library of Congress.

are successful both criminal and ridiculous.”

The partisan alignment of the press was awkward for the officers of the court and the U.S. attorneys, all of whom were Republicans. A number of editors criticized the decision to prosecute *this* group of voters in an era of corrupt elections. In the *Philadelphia Age*, the editor wrote that the Enforcement Act “was never intended to apply to the case of a person honestly claiming a right to vote under an erroneous construction of the laws on the subject. It was leveled at crime, at frauds on the ballot-box and acts of violence and intimidation.” The *Rochester Evening Express* thought it ridiculous to class these women “with the ordinary illegal voter and repeater,” and, referring to the widespread practice of buying votes, added, “The prosecutors of the ladies are mightily particular about a gnat, but find no difficulty in swallowing a camel.”

Directed verdict

Newspapers across the country published daily reports, provided by the Associated Press, of the trials of Anthony and the inspectors of election. Rochester newspapers sent their own reporters, and the editor of Canandaigua’s weekly paper attended the trial himself. The event was a great legal match, introducing the new associate justice of the Supreme Court on circuit, showcasing the defiant Anthony, and pitting accomplished lawyers against each other. By June 1873, readers of newspapers everywhere understood that this was *the* test of the claims of woman suffragists. The lawyers’ arguments and the judge’s ruling filled several columns of the daily papers.

Justice Ward Hunt’s directed verdict of guilty overshadowed his decision that the Constitution did not protect the right of women to vote. The tone of the press changed rapidly as editors took sides on the legality of Hunt’s action. One of the first newspapers to condemn it was the *New York Sun*. Hunt had “overthrown civil liberty in the United States,” an editor wrote. “He must be impeached and removed.” A lively debate ensued, with editors from Chicago to Boston arguing about the meaning of a trial by jury. Rather than fading away as time passed, the criticism of Hunt gained important support. Anthony’s *Account of the Proceedings*, available in April 1874, included an essay by John Hooker, the reporter of Connecticut’s Supreme Court of Errors, which called Hunt’s action “contrary to all rules of law” and “subversive of the system of jury trials in criminal cases.” In May and June, members of the U.S. House of Representatives and the Senate reviewed the trial transcript, and some of them joined the chorus of condemnation. The *Albany Law Journal*, New York’s leading legal journal, which sneered at Hunt’s critics in the summer of 1873, reversed itself in the summer of 1874. In a lengthy review of the law, the journal reached the conclusion that “Miss Anthony had no trial by jury. She had only a trial by Judge Hunt. This is not what the constitution guarantees.”

Historical Documents

Commitment of Susan B. Anthony

Susan B. Anthony thought her audiences should be able to picture this form of commitment and the alterations made in it to accommodate the arrest of a woman. It underscored one of her chief points about inconsistency in the law: that gendered words were ignored in some laws and honored in others. She cited New York statutes on taxation as an example; they uniformly used “he,” “him,” and “his,” and yet the state taxed females. The Enforcement Act of 1870 used male pronouns throughout, and yet the government applied it to Susan B. Anthony. The word “male” was taken literally in references to voting. None of the papers served on her, she explained, “had a feminine pronoun printed in it; but, to make them applicable to me, the Clerk of the Court made a little carat at the left of the ‘he’ and placed an ‘s’ over it, thus making she out of he. Then the letters ‘is’ were scratched out, the little carat under and ‘er’ over, to make her out of his, and I insist if government officials may thus manipulate the pronouns to tax, fine, imprison and hang women, women may take the same liberty with them to secure to themselves their right to a voice in the government.”

The commitment signed by Commissioner William Storrs authorized the U.S. marshal to detain Anthony in custody pending the grand jury’s consideration of an indictment against her. The text below distinguishes the printed form by capital letters and small capitals, while the handwritten entries of the clerk are printed in lower case type.

[Document Source: *United States v. Susan B. Anthony*, Case 130, Case Files, U.S. Circuit Court, Northern District of New York, RG 21, National Archives and Records Administration—Northeast Region (New York City).]

Circuit Court of the United States,
for the Northern District of New York,
Monroe County.

TO Isaac F. Quinby, MARSHAL OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF NEW YORK, AND HIS DEPUTIES, OR EITHER OF THEM, AND TO THE KEEPER OF THE COMMON JAIL OF THE COUNTY OF Albany N Y

THESE ARE TO COMMAND YOU, THE SAID MARSHAL AND DEPUTIES, OR EITHER OF YOU, TO CONVEY AND DELIVER INTO THE CUSTODY OF THE SAID KEEPER, THE BODY OF Susan B. Anthony CHARGED THIS DAY BEFORE ME, A COMMISSIONER OF THE UNITED STATES, IN AND FOR SAID DISTRICT, ON THE OATH OF Sylvester Lewis

AND OTHERS, WITH HAVING on the Fifth Day of November 1872 at the First Election District in the Eighth Ward of the City of Rochester Monroe County State of New York at an Election on that day then and there had for a Representative in the Congress of the United States for the 29 Congressional district of the State of New York, and also for a Representative in said Congress at large from said State, voted for said Representatives, without having a lawful right so to vote, and contrary to the 19th section of an act of Congress approved 31 May 1870 entitled “an act to Enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes.”

contrary to the statute in such case made and provided.

AND THE SAID Susan B. Anthony HAVING BEEN REGULARLY BROUGHT BEFORE ME TO ANSWER SAID CHARGE, AND FROM THE EXAMINATION OF Sylvester Lewis AND OTHERS, ON OATH, IN THE PRESENCE AND HEARING OF THE SAID Susan B. Anthony IN REGARD TO THE OFFENCE THUS CHARGED, AND FROM AN EXAMINATION OF THE SAID Susan B. Anthony WITHOUT OATH, IN RELATION THERETO, S_^HE HAVING BEEN BY ME PREVIOUSLY INFORMED OF THE CHARGE MADE AGAINST HIM_^ER AND THAT S_^HE WAS AT LIBERTY TO REFUSE TO ANSWER ANY QUESTION THAT MIGHT BE PUT TO HIM_^ER AND HAVING BEEN ALLOWED A REASONABLE TIME TO SEND FOR AND ADVISE WITH COUNSEL, AND FROM AN EXAMINATION OF THE WHOLE MATTER IT APPEARING TO ME THAT THE SAID OFFENCE HAS BEEN COMMITTED, AND THAT THERE IS PROBABLE CAUSE TO BELIEVE THE SAID Susan B. Anthony was GUILTY THEREOF.

AND THE SAID Susan B. Anthony NOT HAVING OFFERED SUFFICIENT BAIL FOR HIS_^ER APPEARANCE AT THE NEXT COURT HAVING COGNIZANCE OF SUCH OFFENCE, TO ANSWER THEREFOR, YOU, THE SAID KEEPER OF THE SAID COMMON JAIL OF THE SAID COUNTY OF Albany N Y ARE HEREBY REQUIRED TO RECEIVE THE SAID Susan B. Anthony INTO YOUR CUSTODY, AND HIM_^ER THERE SAFELY KEEP FOR WANT OF SURETIES, AND UNTIL S_^HE SHALL BE DISCHARGED BY DUE COURSE OF LAW.

GIVEN UNDER MY HAND SEAL, AT the City of Rochester IN THE SAID COUNTY OF Monroe N Y THIS Twenty Sixth DAY OF December ONE THOUSAND EIGHT HUNDRED AND ~~SIXTY~~ seventy two

William C. Storrs

United States Commissioner

in and for the Northern District of New York

Indictment of Susan B. Anthony, U.S. District Court for the Northern District of New York

A grand jury in the U.S. District Court for the Northern District of New York, convened in Albany, indicted Susan B. Anthony for voting “without having a lawful right to vote in said election district.” The indictment cited her votes for a candidate for New York’s at-large seat in the U.S. House of Representatives and for a candidate for the House of Representatives from New York’s Twenty-ninth Congressional District. The Enforcement Act of 1870 made it a federal crime to vote in congressional elections if the voter was not qualified to vote under state law. As the indictment stated, Anthony was not qualified to vote under New York law since she was “then and there a person of the female sex.”

[Document Source: *United States v. Susan B. Anthony*, Case files, U.S. Circuit Court, Northern District of New York, RG 21, National Archives and Records Administration, Northeast Region (New York City).]

District Court of the United States of America, in and for the Northern District of New York.

At a stated Session of the District Court of the United States of America, held in and for the Northern District of New York, at the City Hall, in the city of Albany, in the said Northern District of New York, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and seventy-three, before the Honorable Nathan K. Hall, Judge of the said Court, assigned to keep the peace of the said United States of America, in and for the said District, and also to hear and determine divers Felonies, Misdemeanors and other offences against the said United States of America, in the said District committed.

Brace Millerd, James D. Wasson, Peter H. Bradt, James McGinty, Henry A. Davis, Loring W. Osborn, Thomas Whitbeck, John Mullen, Samuel G. Harris, Ralph Davis, Matthew Fanning, Abram Kimmey, Derrick B. Van Schoonhoven, Wilhelmus Van Natten, James Kenney, Adam Winne, James Goold, Samuel S. Fowler, Peter D. R. Johnson, Patrick Carroll, good and lawful men of the said District, then and there sworn and charged to inquire for the said United States of America, and for the body of said District, do, upon their oaths, present, that Susan B. Anthony now or late of Rochester, in the county of Monroe, with force and arms, etc., to-wit: at and in the first election district of the eighth Ward of the City of Rochester, in the County of Monroe, in said Northern District of New York, and within the jurisdiction of this Court, heretofore, to-wit: on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-two, at an election duly held at and in the first election district of the said eighth Ward of the City of Rochester, in said County, and in said Northern District of New York, which said election was for Representa-

tives in the Congress of the United States, to-wit: a Representative in the Congress of the United States for the State of New York at large, and a Representative in the Congress of the United States for the twenty ninth Congressional District of the State of New York, said first election district of said eighth Ward of said City of Rochester being then and there a part of said twenty ninth Congressional District of the State of New York, did knowingly, wrongfully and unlawfully vote for a Representative in the Congress of the United States for the State of New York at large, and for a Representative in the Congress of the United States for said twenty ninth Congressional District, without having a lawful right to vote in said election district (the said Susan B. Anthony being then and there a person of the female sex) as she, the said Susan B. Anthony then and there well knew, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace of the United States of America and their dignity.

Second Count: And the jurors aforesaid upon their oaths aforesaid do further present that said Susan B. Anthony, now or late of Rochester, in the County of Monroe, with force and arms, etc., to-wit: at and in the first election district of the eighth Ward of the City of Rochester, in the County of Monroe, in said Northern District of New York, and within the jurisdiction of this Court, heretofore, to-wit: on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-two, at an election duly held at and in the first election district of the said eighth Ward of said City of Rochester, in said County, and in said Northern District of New York, which said election was for Representatives in the Congress of the United States, to-wit: a Representative in the Congress of the United States for the State of New York at large, and a Representative in the Congress of the United States for the twenty ninth Congressional District of the State of New York, said first election district of said eighth Ward of said city of Rochester being then and there a part of said twenty ninth Congressional District of the State of New York, did knowingly, wrongfully and unlawfully vote for a candidate for Representative in the Congress of the United States for the State of New York at large, and for a candidate for Representative in the Congress of the United States for said twenty ninth Congressional District, without having a lawful right to vote in said first election district (the said Susan B. Anthony being then and there a person of the female sex) as she, the said Susan B. Anthony, then and there well knew, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace of the United States of America and their dignity.

Richard Crowley

Attorney of the United States for the Northern District of New York.

Henry Selden's trial arguments for the defendant

Henry Selden argued that the Fourteenth Amendment, by defining U.S. citizenship, protected the right of women to vote. Everyone agreed, Selden said, that women were citizens under the meaning of the Fourteenth Amendment and that voting was the most important liberty guaranteed to citizens. Selden cited the Declaration of Independence and many political writers to establish that the consent of the governed, as expressed through the vote, had long been recognized as the fundamental right that gave meaning to all other political rights. The Fourteenth Amendment's protection of the "privileges and immunities" of citizens must therefore extend to the right to vote or all other liberties, such as the right to life, liberty, and property, would be left unprotected. Selden's argument, like that of Anthony and the other members of the National Woman Suffrage Association, was based on the belief that the right to vote was a natural right that arose with citizenship and that served as the foundation of republican political society.

Selden also offered a lengthy discussion of the moral justice of extending the vote to women. He recounted numerous examples of the great wrongs suffered by women in many cultures, in part because they did not play a role in choosing the governments under which they lived. Finally, Selden argued that Anthony could not be convicted of the crime of voting without the right to vote if she had voted in good faith with the belief that she had a valid right to vote.

The selection here is the summary of Selden's argument that the Fourteenth Amendment protected Anthony's right to vote in the congressional elections of 1872.

[Document Source: An Account of the Proceedings on the Trial of Susan B. Anthony, on the Charge of Illegal Voting, at the Presidential Election in Nov., 1872, and on the Trial of Beverly W. Jones, Edwin T. Marsh and William B. Hall, the Inspectors of Election by whom her Vote was Received (Rochester, N.Y.: Daily Democrat and Chronicle Book Print, 1874), 35–38.]

By reference to the provisions of the original Constitution, here recited, it appears that prior to the thirteenth, if not until the fourteenth, amendment, the whole power over the elective franchise, even in the choice of Federal officers, rested with the States. The Constitution contains no definition of the term "citizen," either of the United States, or of the several States, but contents itself with the provision that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." The States were thus left free to place such restrictions and limitations upon the "privileges and immunities" of citizens as they saw fit, so far as is consistent with a republican form of government, subject only to the condition that no State could place restrictions upon the "privileges or immunities" of the citizens of any other State, which would not be applicable to its own citizens under like circumstances.

It will be seen, therefore, that the whole subject, as to what should constitute the “privileges and immunities” of the citizen being left to the States, no question, such as we now present, could have arisen under the original constitution of the United States.

But now, by the fourteenth amendment, the United States have not only declared what constitutes citizenship, both in the United States and in the several States, securing the rights of citizens to “all persons born or naturalized in the United States;” but have absolutely prohibited the States from making or enforcing “*any law which shall abridge the privileges or immunities of citizens of the United States.*”

By virtue of this provision, I insist that the act of Miss Anthony in voting was lawful.

It has never, since the adoption of the fourteenth amendment, been questioned, and cannot be questioned, that women as well as men are included in the terms of its first section, nor that the same “privileges [sic] and immunities of citizens” are equally secured to both.

What, then, are the “privileges and immunities of citizens of the United States” which are secured against such abridgement, by this section? I claim that these terms not only include the right of voting for public officers, but that they include that right as pre-eminently the most important of all the privileges and immunities to which the section refers. Among these privileges and immunities may doubtless be classed the right to life and liberty, to the acquisition and enjoyment of property, and to the free pursuit of one’s own welfare, so far as such pursuit does not interfere with the rights and welfare of others; but what security has any one for the enjoyment of these rights when denied any voice in the making of the laws, or in the choice of those who make, and those who administer them? The possession of this voice, in the making and administration of the laws—this *political* right—is what gives security and value to the other rights, which are merely personal, not political. A person deprived of political rights is essentially a slave, because he holds his personal rights subject to the will of those who possess the political power. This principle constitutes the very corner-stone of our government—indeed, of all republican government. Upon that basis our separation from Great Britain was justified. “Taxation without representation is tyranny.” This famous aphorism of James Otis, although sufficient for the occasion when it was put forth, expresses but a fragment of the principle, because government can be oppressive through means of many appliances besides that of taxation. The true principle is, that all government over persons deprived of any voice in such government, is tyranny. That is the principle of the declaration of independence. We were slow in allowing its application to the African race, and have been still slower in allowing its application to women; but it has been done by the fourteenth amendment, rightly construed, by a definition of “citizenship,” which includes women as well as men, and in the declaration that “the privileges and immunities of citizens shall not be abridged.” If there is any privilege of the citizen

which is paramount to all others, it is the right of suffrage; and in a constitutional provision, designed to secure the most valuable rights of the citizen, the declaration that the privileges and immunities of the citizen shall not be abridged, must, as I conceive, be held to secure that right before all others. It is obvious, when the entire language of the section is examined, not only that this declaration was designed to secure to the citizen this *political* right, but that such was its principal, if not its sole object, those provisions of the section which follow it being devoted to securing the *personal* rights of “life, liberty, property, and the equal protection of the laws.” The clause on which we rely, to wit:—“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” might be stricken out of the section, and the residue would secure to the citizen every right which is now secured, excepting the political rights of voting and holding office. *If the clause in question does not secure those political rights, it is entirely nugatory, and might as well have been omitted.*

Trial arguments of Richard Crowley, U.S. attorney

The prosecuting attorney for the federal government denied the claim of Anthony’s lawyers that the Fourteenth Amendment protected the right of women to vote. Richard Crowley argued that the privileges and immunities protected by the Fourteenth Amendment extended only to broad fundamental liberties traditionally associated with citizenship, such as the right to life, liberty, and property. Crowley challenged Henry Selden’s argument that voting was a natural right associated with citizenship. Crowley argued that the authors of the Fourteenth Amendment anticipated and approved of restrictions of the franchise based on gender and age. In support of the arguments set out in these passages, Crowley cited numerous state and federal court decisions, recent reports of the Senate judiciary committee, and two recent decisions of the Supreme Court. Federal and state courts had repeatedly upheld the right of states to restrict the suffrage based on sex, age, residence, and other factors. A Senate report had stated that “the privileges and immunities of citizens of the United States,’ . . . as secured by the Fourteenth Amendment, do not include the right of suffrage.” Crowley read extensive excerpts from the Supreme Court’s decisions in the Slaughter-House cases and Bradwell v. Illinois, in both of which the Court endorsed a narrow interpretation of the privileges and immunities protected by the Fourteenth Amendment.

[Document Source: *Woman Suffrage Question*. United States Circuit Court, Second Circuit, Northern District of New York. *The United States vs. Susan B. Anthony*. Argument of Richard Crowley, U.S. District Attorney, and Opinion of the Hon. Ward Hunt, Associate Justice of the United States Supreme Court, Holding the Circuit Court, Canandaigua Circuit June Term, 1873 (Lockport, N.Y.: M.C. Richardson & Co., Printers, n.d.), 3–5, 6, 14, 19.]

The only question in the case is, had the defendant, being a female, the right to vote? it being conceded that she is a female, and did vote at the time and place, and for members of Congress, as charged in the indictment.

She bases her right to vote on the Fourteenth Amendment to the Constitution of the United States, adopted July, 28, 1868.

[Text of the amendment omitted.]

By the first part of section one, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the States wherein they reside." The framers of the amendment did not mean, and we think it cannot be claimed, that this language gives the right to vote to all citizens. If so, then there is no limitation as to sex or age or disqualification on account of conviction for crime, or unsoundness of mind; for persons of unsound mind, criminals, and persons under twenty-one years of age, are citizens, if born or naturalized in the United States and subject to the jurisdiction thereof.

By the first clause of the second part of section one, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

We submit that under the Constitution of the United States, the right to vote without restriction or qualification on the part of the States, is not given, nor included in the words "privileges or immunities."

These words have a well defined meaning. Ordinarily their signification is to carry exemption or immunity from some general duty or burden, or protect a right peculiar to some individual or body. They are used to describe a peculiar right or favor granted by law, contrary to the common rule, an exemption from some common burden.

...

The second part of Sec. 2, of the Fourteenth Amendment clearly, we think, demonstrates that the framers of that amendment did not, in framing it, intend thereby to confer the right to vote upon females.

It provides that when the right to vote at any election for electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the *male* inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, &c.; the basis of representation in such State shall be reduced in the proportion which the number of such *male* citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Here the distinction of *sex* and *age* is clearly and explicitly maintained, and precludes the theory or supposition that the right to vote, was, by that amendment conferred upon females.

...

Under the Constitution and laws of the State of New York, the right to vote is conventional, not natural.

The people, in their sovereignty, had and have the right to prescribe qualifications for electors and the elected.

They have done this in the Constitution of the United States, and of the State of New York.

...

Under the Constitution of the State of New York, the defendant clearly had no right to vote. Nothing in the Constitution of the United States, except the Fifteenth Amendment, takes from the respective States the right to prescribe the qualifications of its voters.

...

The Fifteenth Amendment, takes from the United States and the respective States, the right to prescribe qualifications in regard to voting, only “on account of race, color, or previous condition of servitude”—leaving them untrammelled as to sex, and other qualifications.

From the principle applied in the construction of statutes, to ascertain the meaning of Legislatures, it must be held that the adoption of the Fourteenth Amendment did not in any respect take from the States the power to regulate the qualifications of voters, so far as sex is concerned, if at all.

Susan B. Anthony’s speech before the circuit court

On June 19, after he denied a defense motion for a new trial, Justice Ward Hunt posed a routine question of Susan B. Anthony, asked of any criminal before the pronouncement of a sentence. He offered a golden opportunity to a person who had been denied the chance to testify in her own trial and whose indignation had grown as she watched the judge direct a verdict of guilty and refuse her attorney’s motion. Anthony delivered a speech that gained instant fame. She would repeat it herself as a part of many lectures in the years to come. A popular entertainer, Helen Potter, noted for her imitations, added the speech to her repertoire. She studied Anthony’s patterns of speech and stage manner, dressed herself to look like Anthony, and performed the speech across the country years after the trial. Three reports of what Anthony said survive, and none of them comes from the stenographer’s transcript of the trial. This, the longest version, is what she chose to publish herself.

[Document Source: Ann D. Gordon, ed., *Against an Aristocracy of Sex, 1866 to 1873*, vol. 2 of *Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* (New Brunswick, N.J.: Rutgers University Press, 2000), 613–16.]

Judge Hunt—(Ordering the defendant to stand up), Has the prisoner anything to say why sentence shall not be pronounced?

Miss Anthony—Yes, your honor, I have many things to say; for in your ordered

verdict of guilty, you have trampled under foot every vital principle of our government. My natural rights, my civil rights, my political rights, my judicial rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this, so-called, form of government.

Judge Hunt—The Court cannot listen to a rehearsal of arguments the prisoner's counsel has already consumed three hours in presenting.

Miss Anthony—May it please your honor, I am not arguing the question, but simply stating the reasons why sentence cannot, in justice, be pronounced against me. Your denial of my citizen's right to vote, is the denial of my right of consent as one of the governed, the denial of my right of representation as one of the taxed, the denial of my right to a trial by a jury of my peers as an offender against law, therefore, the denial of my sacred rights to life, liberty, property and—

Judge Hunt—The Court cannot allow the prisoner to go on.

Miss Anthony—But your honor will not deny me this one and only poor privilege of protest against this high-handed outrage upon my citizen's rights. May it please the Court to remember that since the day of my arrest last November, this is the first time that either myself or any person of my disfranchised class has been allowed a word of defense before judge or jury—

Judge Hunt—The prisoner must sit down—the Court cannot allow it.

Miss Anthony—All of my prosecutors, from the 8th ward corner grocery politician, who entered the complaint, to the United States Marshal, Commissioner, District Attorney, District Judge, your honor on the bench, not one is my peer, but each and all are my political sovereigns; and had your honor submitted my case to the jury, as was clearly your duty, even then I should have had just cause of protest for not one of those men was my peer; but, native or foreign born, white or black, rich or poor, educated or ignorant, awake or asleep, sober or drunk, each and every man of them was my political superior; hence, in no sense, my peer. Even, under such circumstances, a commoner of England, tried before a jury of Lords, would have far less cause to complain than should I, a woman, tried before a jury of men. Even my counsel, the Hon. Henry R. Selden, who has argued my cause so ably, so earnestly, so unanswerably before your honor, is my political sovereign. Precisely as no disfranchised person is entitled to sit upon a jury, and no woman is entitled to the franchise, so, none but a regularly admitted lawyer is allowed to practice in the courts, and no woman can gain admission to the bar—hence, jury, judge, counsel, must all be of the superior class.

Judge Hunt—The Court must insist—the prisoner has been tried according to the established forms of law.

Miss Anthony—Yes, your honor, but by forms of law all made by men, interpreted by men, administered by men, in favor of men, and against women; and hence, your

honor's ordered verdict of guilty, against a United States citizen for the exercise of "that citizen's right to vote," simply because that citizen was a woman and not a man. But, yesterday, the same man-made forms of law, declared it a crime punishable with \$1,000 fine and six months' imprisonment, for you, or me, or any of us, to give a cup of cold water, a crust of bread, or a night's shelter to a panting fugitive as he was tracking his way to Canada. And every man or woman in whose veins coursed a drop of human sympathy violated that wicked law, reckless of consequences, and was justified in so doing. As then, the slaves who got their freedom must take it over, or under, or through the unjust forms of law, precisely so, now, must women, to get their right to a voice in this government, take it; and I have taken mine, and mean to take it at every possible opportunity.

Judge Hunt—The Court orders the prisoner to sit down. It will not allow another word.

Miss Anthony—When I was brought before your honor for trial, I hoped for a broad and liberal interpretation of the Constitution and its recent amendments, that should declare all United States citizens under its protecting aegis—that should declare equality of rights the national guarantee to all persons born or naturalized in the United States. But failing to get this justice—failing, even, to get a trial by a jury not of my peers—I ask not leniency at your hands—but rather the full rigors of the law.

Judge Hunt—The Court must insist—
(Here the prisoner sat down.)

Judge Hunt—The prisoner will stand up.
(Here Miss Anthony arose again.)

The sentence of the Court is that you pay a fine of one hundred dollars and the costs of the prosecution.

Miss Anthony—May it please your honor, I shall never pay a dollar of your unjust penalty. All the stock in trade I possess is a \$10,000 debt, incurred by publishing my paper—*The Revolution*—four years ago, the sole object of which was to educate all women to do precisely as I have done, rebel against your man-made, unjust, unconstitutional forms of law, that tax, fine, imprison and hang women, while they deny them the right of representation in the government; and I shall work on with might and main to pay every dollar of that honest debt, but not a penny shall go to this unjust claim. And I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that "Resistance to tyranny is obedience to God."

Judge Hunt—Madam, the Court will not order you committed until the fine is paid.

Justice Ward Hunt's decision

Justice Ward Hunt ruled that Susan B. Anthony violated federal law when she voted in 1872 because the state of New York, where Anthony voted, limited the right to vote to males. Except in those few categories designated by the Constitution, New York had undisputed authority to set the rules for voting, and Anthony violated those rules. Hunt conceded that the Fourteenth Amendment established U.S. citizenship and that women were citizens. However, he dismissed Anthony's claim that the establishment of U.S. citizenship in the Fourteenth Amendment extended the right to vote to women or indeed to anyone else. Hunt's ruling began with the facts of the case and his own history of the Thirteenth, Fourteenth, and Fifteenth Amendments. Drawing on the Supreme Court's decision in the Slaughter-House cases, he distinguished citizenship of the United States from citizenship of a state and reiterated the Court's opinion that the Fourteenth Amendment protected only rights associated with U.S. citizenship. He then proceeded to discuss voting rights.

[Document Source: *United States v. Susan B. Anthony*, 24 Fed. Cases 829–33.]

The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such a person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States. If the state of New York should provide that no person should vote until he had reached the age of thirty years, or after he had reached the age of fifty, or that no person having gray hair, or who had not the use of all his limbs, should be entitled to vote, I do not see how it could be held to be a violation of any right derived or held under the constitution of the United States. We might say that such regulations were unjust, tyrannical, unfit for the regulation of an intelligent state; but, if rights of a citizen are thereby violated, they are of that fundamental class, derived from his position as a citizen of the state, and not those limited rights belonging to him as a citizen of the United States; and such was the decision in *Corfield v. Coryell*.

The United States rights appertaining to this subject are those, first, under article 1, § 2, subd. 1, of the United States constitution, which provides, that electors of representatives in congress shall have the qualifications requisite for electors of the most numerous branch of the state legislature; and second, under the fifteenth amendment, which provides, that “the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.” If the legislature of the state of New York should require a higher qualification in a voter for a representative in congress

than is required for a voter for a member of the house of assembly of the state, this would, I conceive, be a violation of a right belonging to a person as a citizen of the United States. That right is in relation to a federal subject or interest, and is guaranteed by the federal constitution. The inability of a state to abridge the right of voting on account of race, color, or previous condition of servitude, arises from a federal guaranty. Its violation would be the denial of a federal right—that is, a right belonging to the claimant as a citizen of the United States. This right, however, exists by virtue of the fifteenth amendment. If the fifteenth amendment had contained the word “sex,” the argument of the defendant would have been potent. She would have said, that an attempt by a state to deny the right to vote because one is of a particular sex is expressly prohibited by that amendment. The amendment, however, does not contain that word. It is limited to race, color, or previous condition of servitude. The legislature of the state of New York has seen fit to say, that the franchise of voting shall be limited to the male sex. In saying this, there is, in my judgment, no violation of the letter, or of the spirit, of the fourteenth or of the fifteenth amendment.

This view is assumed in the second section of the fourteenth amendment, which enacts, that, if the right to vote for federal officers is denied by any state to any of the male inhabitants of such state, except for crime, the basis of representation of such state shall be reduced in a proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a state, notwithstanding the existence of that clause under which the defendant claims to the contrary, to deny to classes or portions of the male inhabitants the right to vote which is allowed to other male inhabitants. The regulation of the suffrage is thereby conceded to the states as a state’s right.

The case of *Bradwell v. State*, 16 Wall. [83 U.S.] 130, decided at the recent term of the supreme court, sustains both of the positions above put forth, viz., first, that the rights referred to in the fourteenth amendment are those belonging to a person as a citizen of the United States and not as a citizen of a state; and second, that a right of the character here involved is not one connected with citizenship of the United States. Mrs. Bradwell made application to be admitted to practice as an attorney and counsellor at law in the courts of Illinois. Her application was denied, and, upon a writ of error, it was held by the supreme court, that, to give jurisdiction under the fourteenth amendment, the claim must be of a right pertaining to citizenship of the United States, and that the claim made by her did not come within that class of cases. Justices Bradley, Swayne, and Field held that a woman was not entitled to a license to practice law. It does not appear that the other judges passed upon that question. The fourteenth amendment gives no right to a woman to vote, and the voting by Miss Anthony was in violation of law.

If she believed she had a right to vote, and voted in reliance upon that belief, does that relieve her from the penalty? It is argued, that the knowledge referred to in the act relates to her knowledge of the illegality of the act, and not to the act of

voting; for, it is said, that she must know that she voted. Two principles apply here: First, ignorance of the law excuses no one; second, every person is presumed to understand and to intend the necessary effects of his own acts. Miss Anthony knew that she was a woman, and that the constitution of this state prohibits her from voting. She intended to violate that provision—intended to test it, perhaps, but, certainly, intended to violate it. The necessary effect of her act was to violate it, and this she is presumed to have intended. There was no ignorance of any fact, but, all the facts being known, she undertook to settle a principle in her own person. She takes the risk, and she can not escape the consequences. It is said, and authorities are cited to sustain the position, that there can be no crime unless there is a culpable intent, and that, to render one criminally responsible a vicious will must be present. A. commits a trespass on the land of B., and B., thinking and believing that he has a right to shoot an intruder upon his premises, kills A. on the spot. Does B.'s misapprehension of his rights justify his act? Would a judge be justified in charging the jury, that, if satisfied that B. supposed he had a right to shoot A., he was justified, and they should find a verdict of not guilty? No judge would make such a charge. To constitute a crime, it is true that there must be a criminal intent, but it is equally true that knowledge of the facts of the case is always held to supply this intent. An intentional killing bears with it evidence of malice in law. Whoever, without justifiable cause, intentionally kills his neighbor, is guilty of a crime. The principle is the same in the case before us, and in all criminal cases. The precise question now before me has been several times decided, viz., that one illegally voting was bound and was assumed to know the law, and that a belief that he had a right to vote gave no defence, if there was no mistake of fact. [Here Hunt cited five cases from courts in various states.] No system of criminal jurisprudence can be sustained upon any other principle. Assuming that Miss Anthony believed she had a right to vote, that fact constitutes no defence, if, in truth, she had not the right. She voluntarily gave a vote that was illegal, and thus is subject to the penalty of the law.

The Fourteenth and Fifteenth Amendments (excerpts)

No advocates of woman suffrage in the 1870s argued that Congress intentionally enfranchised women with the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Indeed, they knew that Congress added the word "male" to the Fourteenth Amendment to protect the congressional representation of all the states that counted women in their population but would not allow them to vote. Instead, woman suffragists relied on the words themselves and raised the question, had Congress done so despite itself? At issue were sections one and two of the Fourteenth Amendment and section one of the Fifteenth Amendment. In United States v. Susan B. Anthony, Henry R. Selden joined an ongoing debate about the amendments' meaning and reminded the court that "very able men have expressed contrary opinions on

that question, and, . . . there has been no authoritative adjudication upon it; or, at all events, none upon which the public mind has been content to rest as conclusive.” Citizens of the United States were entitled to vote, he argued, and women were now indisputably citizens.

In his opinion in the case, Justice Ward held that voting rights were not included in the “privileges and immunities” protected by the establishment of U.S. citizenship in the Fourteenth Amendment. The only restrictions on the states’ authority to define the suffrage were those specified in the Fifteenth Amendment.

Fourteenth Amendment to the U.S. Constitution, Sections 1 and 2

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
[Proposed June 16, 1866; declared July 28, 1868.]

Fifteenth Amendment to the U.S. Constitution

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[Proposed February 27, 1869; declared ratified March 30, 1870.]

The Enforcement Act of 1870 (excerpt)

“An act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other purposes” became law on May 31, 1870, shortly after states ratified the Fifteenth Amendment. The act principally implemented the amendment, stating that race, color, or previous condition of servitude would not bar anyone otherwise qualified from voting, no matter what discriminatory language remained in state or local laws. It further promised federal prosecution of anyone who obstructed citizens in the exercise of that right. Section 19, however, under which Susan B. Anthony was convicted, had a different purpose: to authorize federal authorities to prosecute irregularities and corrupt practices in congressional elections anywhere in the country. The section made no reference to race, but it did catalogue a host of crimes that might occur at the polls. The U.S. Constitution granted Congress a right to oversee the election of its members by voters in the states, but this act marked the first time Congress regulated state procedures and provided criminal penalties for violations of those regulations.

[Document Source: *Statutes at Large of the United States of America, 1789–1873* 16 (1871): 144–45.]

Sec. 19. *And be it further enacted.* That if at any election for representative or delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person

shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

Report on the petition of Victoria Woodhull, asking Congress to carry into execution the constitutional right to vote, regardless of sex; U.S. House of Representatives, Committee on the Judiciary

On January 30, 1871, the House Committee on the Judiciary responded to a petition of Victoria C. Woodhull asking that Congress enact laws “for carrying into execution the right vested by the Constitution in the Citizens of the United States to vote, without regard to sex.” The committee’s report, written for the majority by Representative John A. Bingham, dismissed Woodhull’s interpretation of the Fourteenth and Fifteenth Amendments and denied that Congress had the authority to override state laws about voting. Bingham argued that the amendments created no new rights for citizens of the United States, left intact the right of states to define qualified voters, and implied a right of states to exclude women from voting. Bingham’s views had enormous influence because he was regarded as an author of the amendments and a careful analyst of their meaning.

[Document Source: House of Representatives, Committee on the Judiciary, *Victoria C. Woodhull. Report*, 41st Cong., 3d sess., January 30, 1871, H. Rept. 22.]

The Memorialist asks the enactment of a law by Congress which shall secure to citizens of the United States in the several States the right to vote “without regard to sex.” Since the adoption of the fourteenth amendment of the Constitution, there is no longer any reason to doubt that all persons, born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside, for that is the express declaration of the amendment.

The clause of the fourteenth amendment, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,” does not, in the opinion of the committee, refer to privileges and immunities of citizens of the United States other than those privileges and immunities embraced in the original text of the Constitution, Article IV, Section 2. The fourteenth amendment, it is believed, did not add to the privileges or immunities before mentioned, but was

deemed necessary for their enforcement, as an express limitation upon the powers of the States.

. . . The words “citizens of the United States,” and “citizens of the States,” as employed in the fourteenth amendment, did not change or modify the relations of citizens of the State and Nation as they existed under the original Constitution.

Attorney General Bates gave the opinion that the Constitution uses the word “citizen,” only to express the political quality of the individual in his relation to the Nation; to declare that he is a member of the body politic, and bound to it by the reciprocal obligation of allegiance on the one side and protection on the other. The phrase “a citizen of the United States,” without addition or qualification, means neither more nor less than a member of the Nation. (Opinion of Attorney General Bates on citizenship.) [Further citations supported the view that political rights were not necessary to citizenship.]

The proposition is clear that no citizen of the United States can rightfully vote in



“Victoria Woodhull and Judiciary Committee. Washington, D.C. The Judiciary Committee of the House of Representatives receiving a deputation of female suffragists, January 11th - a lady delegate reading her argument in favor of woman’s voting, on the basis of the Fourteenth and Fifteenth Constitutional Amendments.”

Frank Leslie’s Illustrated Newspaper, v. 31, no. 801 (Feb. 4, 1871), p. 349. Library of Congress, Prints and Photographs Division [reproduction number LC-USZ62-2023].

any State of this Union who has not the qualifications required by the Constitution of the State in which the right is claimed to be exercised, except as to such conditions in the constitutions of such States as deny the right to vote to citizens resident therein "on account of race, color, or previous condition of servitude."

The adoption of the fifteenth amendment to the Constitution imposing these three limitations upon the power of the several States, was by necessary implication, a declaration that the States had the power to regulate by a uniform rule the conditions upon which the elective franchise should be exercised by citizens of the United States resident therein. The limitations specified in the fifteenth amendment exclude the conclusion that a State of this Union, having a government republican in form, may not prescribe conditions upon which alone citizens may vote other than those prohibited. It can hardly be said that a State law which excludes from voting women citizens, minor citizens, and non-resident citizens of the United States, on account of sex, minority or domicil, is a denial of the right to vote on account of race, color, or previous condition of servitude.

It may be further added that the second section of the fourteenth amendment, . . . implies that the several States may restrict the elective franchise as to other than male citizens. In disposing of this question effect must be given, if possible, to every provision of the Constitution. Article 1, section 2, of the Constitution provides:

That the House of Representatives shall be composed of members chosen every second year by the people of several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

This provision has always been construed to vest in the several States the exclusive right to prescribe the qualifications of electors for the most numerous branch of the State legislature, and therefore for members of Congress. And this interpretation is supported by section 4, article 1, of the Constitution, which provides—

That the time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators.

Now it is submitted, if it had been intended that Congress should prescribe the qualifications of electors, that the grant would have read: The Congress may at any time by law make or alter such regulations, and also prescribe the qualifications of electors, &c. The power, on the contrary, is limited exclusively to the time, place and manner, and does not extend to the qualification of the electors. This power to prescribe the qualification of electors in the several States has always been exercised, and is, to-day, by the several States of the Union; and we apprehend, until the Constitution shall be changed, will continue to be so exercised, subject only to express limitations imposed by the Constitution upon the several States, before noticed. We are of opinion, therefore, that it is not competent for the Congress of the United

States to establish by law the right to vote without regard to sex in the several States of this Union, without the consent of the people of such States, and against their constitutions and laws; and that such legislation would be, in our judgment, a violation of the Constitution of the United States, and of the rights reserved to the States respectively by the Constitution. It is undoubtedly the right of the people of the several States so to reform their constitutions and laws as to secure the equal exercise of the right of suffrage, at all elections held therein under the Constitution of the United States, to all citizens, without regard to sex; and as public opinion creates constitutions and governments in the several States, it is not to be doubted that whenever, in any State, the people are of opinion that such a reform is advisable, it will be made.

If, however, as is claimed in the memorial referred to, the right to vote “is vested by the Constitution in the citizens of the United States without regard to sex,” that right can be established in the courts without further legislation.

The suggestion is made that Congress, by a mere declaratory act, shall say that the construction claimed in the memorial is the true construction of the Constitution, or in other words, that by the Constitution of the United States the right to vote is vested in citizens of the United States “without regard to sex,” anything in the constitution and laws of any State to the contrary notwithstanding. In the opinion of the committee, such declaratory act is not authorized by the Constitution nor within the legislative power of Congress. We therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be not granted, that the memorial be laid on the table, and that the Committee on the Judiciary be discharged from the further consideration of the subject.

Minority report on the memorial of Victoria Woodhull

Two members of the House Committee on the Judiciary dissented from John Bingham’s report on Victoria Woodhull’s memorial to Congress. William Loughridge of Iowa and Benjamin Butler of Massachusetts submitted their own views on February 1, 1871. Their very long report found support for woman suffrage in British history, the English common law, the American Revolution, and legal opinions about citizenship in the United States. They also read the language of the Fourteenth and Fifteenth Amendments differently from the committee’s majority, and it is from those portions of their report that these extracts are taken.

[Document Source: House of Representatives, Committee on the Judiciary, *Views of the Minority*, 41st Cong., 3d sess., February 1, 1871, H. Rept. 22, pt. 2.]

The memorialist sets forth that she is a native born citizen of the United States, and a resident thereof; that she is of adult age, and has resided in the State of New York for three years past; that by the Constitution of the United States she is guaranteed the right of suffrage; but that she is, by the laws of the State of New York, denied the exercise of that right; and that by the laws of different States and Territories the privilege of voting is denied to all the female citizens of the United States; and petitions for relief by the enactment of some law to enforce the provisions of the Constitution, by which such right is guaranteed.

The question presented is one of exceeding interest and importance, involving as it does the constitutional rights not only of the memorialist but of more than one-half of the citizens of the United States—a question of constitutional law in which the civil and natural rights of the citizen are involved. Questions of property or of expediency have nothing to do with it. The question is not “Would it be expedient to extend the right of suffrage to women,” but, “Have women citizens that right by the Constitution as it is.”

...

By the fourteenth amendment of the Constitution of the United States, what constitutes citizenship of the United States, is for the first time declared, and who are included by the term citizen. Upon this question, before that time, there had been much discussion judicial, political and general, and no distinct and definite definition of qualification had been settled.

The people of the United States determined this question by the fourteenth amendment to the Constitution, . . .

This amendment, after declaring who are citizens of the United States, and thus fixing but one grade of citizenship, which insures to all citizens alike all the privileges, immunities and rights which accrue to that condition, goes on in the same section and prohibits these privileges and immunities from abridgment by the States.

Whatever these “privileges and immunities” are, they attach to the female citizen equally with the male. It is implied by this amendment that they are inherent, that they belong to citizenship as such, for they are not therein specified or enumerated.

...

We claim that from the very nature of our government, the right of suffrage is a fundamental right of citizenship, not only included in the term “privileges of citizens of the United States,” as used in the fourteenth amendment, but also included in the term as used in section 2, of article 4, and in this we claim we are sustained both by the authorities and by reason. [The authors cited numerous opinions that recognized suffrage as one of the privileges of citizenship, including the Supreme Court’s opinions in the Dred Scott Case.]

Could a State disfranchise and deprive of the right to a vote all citizens who have red hair; or all citizens under six feet in height? All will consent that the States could not make such arbitrary distinctions the ground for denial of political privileges; that

it would be a violation of the first article of the fourteenth amendment; that it would be abridging the privileges of citizens. And yet the denial of the elective franchise to citizens on account of sex is equally as arbitrary as the distinction on account of stature, or color of hair, or any other physical distinction. [The authors reviewed ideas about the natural rights of man as expressed during the American Revolution.]

It is claimed by the majority of the committee that the adoption of the fifteenth amendment was by necessary implication a declaration that the States had the power to deny the right of suffrage to citizens for any other reasons than those of race, color, or previous condition of servitude.

We deny that the fundamental rights of the American citizen can be taken away by “implication.”

There is no such law for the construction of the Constitution of our country. The law is the reverse—that the fundamental rights of citizens are not to be taken away by implication, and a constitutional provision for the protection of one class can certainly not be used to destroy or impair the same rights in another class.

It is too violent a construction of an amendment, which prohibits States from, or the United States from, abridging the right of a citizen to vote, by reason of race, color, or previous condition of servitude, to say that by implication it conceded to the States the power to deny that right for any other reason. On that theory the States could confine the right of suffrage to a small minority, and make the State government aristocratic, overthrowing their republican form.

The fifteenth article of amendment to the Constitution clearly recognizes the right to vote, as one of the rights of a citizen of the United States. This is the language:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.”

...

It is claimed by the committee that the second section of the fourteenth amendment implies that the several States may restrict the right of suffrage as to other than male citizens. We may say of this as we have said of the theory of the committee upon the effect of the fifteenth amendment. It is a proposal to take away from the citizens guarantees of fundamental rights, by implication, which have been previously given in absolute terms.

The first section includes all citizens in its guarantees, and includes all the “privileges and immunities” of citizenship and guards them against abridgment, and under no recognized or reasonable rule of construction can it be claimed that by implication from the provisions of the second section the States may not only abridge but entirely destroy one of the highest privileges of the citizen to one-half the citizens of the country. What we have said in relation to the committee’s construction of the effect of the fifteenth amendment applies equally to this.

The object of the first section of this amendment was to secure all the rights,

privileges, and immunities of all the citizens against invasion by the States. The object of the second section was to fix a rule or system of apportionment for Representatives and taxation; and the provision referred to, in relation to the exclusion of males from the right of suffrage, might be regarded as in the nature of a penalty in case of denial of that right to that class. While it, to a certain extent, protected that class of citizens, it left the others where the previous provisions of the Constitution placed them. To protect the colored man more fully than was done by that penalty was the object of the fifteenth amendment.

In no event can it be said to be more than the recognition of an existing fact, that only the male citizens were, by the State laws, allowed to vote, and that existing order of things was recognized in the rule of representation, just as the institution of slavery was recognized in the original Constitution, in the article fixing the basis of representation, by the provision that only three-fifths of all the slaves (“other persons”) should be counted. There slavery was recognized as an existing fact, and yet the Constitution never sanctioned slavery, but, on the contrary, had it been carried out according to its true construction, slavery could not have existed under it; so that the recognition of facts in the Constitution must not be held to be a sanction of what is so recognized.

The majority of the committee say that this section implies that the States may deny suffrage to others than male citizens. If it implies anything it implies that the States may deny the franchise to all the citizens. It does not provide that they shall not deny the right to male citizens, but only provides that if they do so deny they shall not have representation for them.

So, according to that argument, by the second section of the fourteenth amendment the power of the States is conceded to entirely take away the right of suffrage, even from that privileged class, the male citizens. And thus this rule of “implication” goes too far, and fritters away all the guarantees of the Constitution of the right of suffrage, the highest of the privileges of the citizen; and herein is demonstrated the reason and safety of the rule that fundamental rights are not to be taken away by implication, but only by express provision.

When the advocates of a privileged class of citizens under the Constitution are driven to implication to sustain the theory of taxation without representation, and American citizenship without political liberty, the cause must be weak indeed.

...

The committee say, that if it had been intended that Congress should prescribe the qualifications of electors, the grant would have given Congress that power specifically. We do not claim that Congress has that power; on the contrary, admit that the States have it; but the section of the Constitution does prescribe who the electors shall be. That is what we claim—nothing more. They shall be “the people”; their qualifications may be regulated by the States; but to the claim of the majority of the committee that they may be “qualified” out of existence, we cannot assent.

We are told that the acquiescence by the people, since the adoption of the Constitution, in the denial of political rights to women citizens, and the general understanding that such denial was in conformity with the Constitution, should be taken to settle the construction of that instrument.

Any force this argument may have it can only apply to the original text, and not to the fourteenth amendment, which is of but recent date.

But, as a general principle, this theory is fallacious. It would stop all political progress; it would put an end to all original thought, and put the people under that tyranny with which the friends of liberty have always had to contend—the tyranny of precedent.

From the beginning, our Government has been right in theory, but wrong in practice. The Constitution, had it been carried out in its true spirit, and its principles enforced, would have stricken the chains from every slave in the republic long since. Yet, for all this, it was but a few years since declared, by the highest judicial tribunal of the republic, that, according to the “general understanding,” the black man in this country had no rights the white man was bound to respect. General understanding and acquiescence is a very unsafe rule by which to try questions of constitutional law, and precedents are not infallible guides toward liberty and the rights of man

It is said by the majority of the committee that “if the right of female citizens to suffrage is vested by the Constitution, that right can be established in the courts.”

We respectfully submit that, with regard to the competency and qualification of electors for members of this House, the courts have no jurisdiction.

This House is the sole judge of the election return and qualification of its own members (article 1, section 5, of Constitution); and it is for the House alone to decide upon a contest, who are, and who are not, competent and qualified to vote. The judicial department cannot thus invade the prerogatives of the political department.

And it is therefore perfectly proper, in our opinion, for the House to pass a declaratory resolution, which would be an index to the action of the House, should the question be brought before it by a contest for a seat.

We, therefore, recommend to the House the adoption of the following resolution:

Resolved, by the House of Representatives, That the right of suffrage is one of the inalienable rights of citizens of the United States, subject to regulation by the States, through equal and just laws.

That this right is included in the “privileges of citizens of the United States,” which are guaranteed by section 1 of article 14 of amendments to the Constitution of the United States; and that women citizens, who are otherwise qualified by the laws of the State where they reside, are competent voters for Representatives in Congress.

Letter from Susan B. Anthony to Elizabeth Cady Stanton, November 5, 1872

On election day in 1872, after casting her ballots, Susan B. Anthony wrote this letter to her good friend and collaborator, Elizabeth Cady Stanton, describing the day's events. As Anthony explains, the urge to vote affected many more women in Rochester than the fourteen voters in the Eighth Ward. Officials in other wards made different decisions: some refused to register the women, some registered them but then refused to accept their ballots. At this point, Anthony had no hint that she would be arrested for her actions. Indeed, her mind was busy imagining ways that the women who failed to vote could use the courts to sue for their rights, as women in Washington, D.C., had done in 1871 and as Virginia Minor did in St. Louis in 1872.

[Document Source: Ann D. Gordon, ed., *Against an Aristocracy of Sex, 1866 to 1873*, vol. 2 of *Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* (New Brunswick, N.J.: Rutgers University Press, 2000), 524–25. Original in HM 10549, Ida Husted Harper Collection, The Huntington Library, San Marino, Calif.]

Rochester Nov. 5th 1872—

Dear Mrs Stanton

Well I have been & gone & done it!!—positively voted the Republican ticket—strait—this A.M. at 7 O'clock—& swore my vote in at that—was registered on Friday & 15 other women followed suit in this ward—then in Sunday others some 20 or thirty other women tried to register, but all save two were refused— all my three sisters voted—Rhoda De Garmo—too— Amy Post was rejected—& she will immediately institute bring action against the registrars—then another woman who was registered but vote refused will bring action for that— Similar to the Washington action—& Hon Henry R. Selden will be our Counsel—he has read up the law & all of our arguments & is satisfied that we are right & ditto the Old Judge Selden—his elder brother— So we are in for a fine agitation in Rochester on the question— I hope the morning's telegrams will tell of many women all over the country trying to vote— It is splendid that without any concert of action so many should have moved here so impromptu— [Anthony here changed subject for a paragraph.]

Haven't we wedged ourselves into the work pretty



*Elizabeth Cady Stanton and
Susan B. Anthony*

Library of Congress, Prints and
Photographs Division [reproduc-
tion number, LC-USZ61-791].

fairly & fully—& now that the Repubs have taken our votes—for it is the Repub. members of the Board— The Democratic paper is out against us strong—& that scared the Dem's on the registry board— How I wish you were here to write up the funny things said & done— Rhoda De Garmo told them she wouldn't swear nor affirm “—but would tell them the truth[”]—& they accepted that When the Dems said my vote should not go in the box—one repub said to the other—What do you say Marsh?— I say put it in!— so do I, said Jones—and “We'll fight it out on this line if it takes all winter.”— Mary Hallowell was just here— She & Mrs Willis tried to register but were refused—also Mrs Mann the Unitarian Minister's wife—& Mary Curtiss,—Catharine Stebbins sister— Not a jeer not a word—not a look—disrespectful has met a single woman— If only now all the Woman Suffrage Women would work to this end, of enforcing the existing constitution—supremacy of national law over state law—what strides we might make this very winter—But—I'm awful tired—for five days I have been on the constant run—but to splendid purpose—so all right—I hope you voted too— affectionately—
Susan B. Anthony

Rochester Evening Express, editorial, November 27, 1872

Writing in the days between Susan B. Anthony's arrest and her examination by the commissioner, this Rochester editor steered away from the topic of the legality of Anthony's vote and directed his readers to the larger context of her mission, to a national debate among ministers, intellectuals, and politicians about women's right to vote. Within that context, he described her actions as a legitimate attempt to test the question of her rights in court. Further, he accepted the possibility that a fair reading of the Fourteenth and Fifteenth Amendments might admit women to the political rights accorded men.

[Document Source: *Rochester Evening Express*, November 27, 1872, from Susan B. Anthony scrapbooks, vol. 6, Rare Books Division, Library of Congress.]

Woman Suffrage in the Legislatures

The activity of the advocates of female suffrage is in no degree abating, but rather on the increase. It is probable that very few comprehend the measure of this activity, and the broad fields on which it is being displayed. Not only the ignorant and vulgar, but many comparatively well informed people probably suppose that the advocacy of woman's claim to the suffrage is confined to a few able but erratic women, who are agitating the subject to acquire notoriety. Whether friendly or averse to the movement, the quicker one disabuses his mind of that notion the better for his side of the case. Not only do many of our most influential divines and literary men rank among the friends of the movement, but, also, what gives promise to its advocates of

speedy success, many of our legislators and politicians. The subject has been brought to the attention of nearly every Northern Legislature in the Union. . . . Some of the Legislatures have only given a hearing and taken no action. Others have referred the matter to special committees to report, some of which have reported favorably. In Iowa a constitutional amendment, giving women the right to vote, passed one House of the Legislature, and failed in the other House by only a few votes. In this State, even, a suffrage bill was referred to a committee, and the committee reported in its favor, but no action was taken on their report. It will thus be seen that while some, as Miss Anthony and others, are claiming the ballot on the broad ground of Constitutional right, they with associates of both sexes are at the same time urging, and in some places have the prospect of securing, specific legislation giving the right to vote to women.

The cases of alleged illegal voting on the part of women in this city, afford an opportunity which the leaders of the movement very much desired, to test the constitutionality and legality of their cause in the courts.

It is not probable that the framers of the Constitutional Amendments, under which the ladies claim authority to vote, dreamed of the loop hole they left for the admission of this novel claim, but their work is done, perfectly or imperfectly, as we may choose to regard it, and there appears to many eminent legal minds a door in these amendments wide enough to admit woman in full dress, to both the passive and potent rights of citizenship.

Of the consequences of this admission we have nothing to say. Arguing the case abstractly with a keen advocate of the movement, there is no chance for the negative. In such a discussion Miss Anthony could courteously close the mouth of the sharpest lawyer in Rochester in ten minutes. What the results may be is another matter.

Susan B. Anthony's speech to potential jurors

After her indictment in January 1873, Susan B. Anthony resolved to take her case to the citizens of Monroe County, New York, from whom she expected her jurors to be drawn. With a speech entitled "Is It a Crime for a U.S. Citizen to Vote?" she spoke in twenty-nine of the county's towns and villages. When the court postponed her trial from May until June and moved it to Canandaigua, Anthony repeated her labors in Ontario County with speeches in twenty-one towns. These extracts from Anthony's speech come from the version that Anthony published after her trial. Using the arguments already put forth by lawyers and legislators to make the case that voting rights were guaranteed to citizens of the United States, Anthony focused public attention on the injustice of denying those rights to women and on the dangerous precedent that her conviction would set if it were held that citizenship did not guarantee voting rights.

[Document Source: *An Account of the Proceedings on the Trial of Susan B. An-*

thony on the Charge of Illegal Voting at the Presidential Election in Nov., 1872, and on the Trial of Beverly W. Jones, Edwin T. Marsh and William B. Hall, the Inspectors of Elections by Whom Her Vote Was Received (Rochester, N.Y.: Daily Democrat and Chronicle Book Print, 1874), 151–78.]

Friends and Fellow-citizens: I stand before you to-night, under indictment for the alleged crime of having voted at the last Presidential election, without having a lawful right to vote. It shall be my work this evening to prove to you that in thus voting, I not only committed no crime, but, instead, simply exercised my citizen's right, guaranteed to me and all United States citizens by the National Constitution, beyond the power of any State to deny.

Our democratic-republican government is based on the idea of the natural right of every individual member thereof to a voice and a vote in making and executing the laws. We assert the province of government to be to secure the people in the enjoyment of their unalienable rights. We throw to the winds the old dogma that governments can give rights. Before governments were organized, no one denies that each individual possessed the right to protect his own life, liberty and property. And when 100 or 1,000,000 people enter into a free government, they do not barter away their natural rights; they simply pledge themselves to protect each other in the enjoyment of them, through prescribed judicial and legislative tribunals. They agree to abandon the methods of brute force in the adjustment of their differences, and adopt those of civilization.

Nor can you find a word in any of the grand documents left us by the fathers that assumes for government the power to create or to confer rights. The Declaration of Independence, the United States Constitution, the constitutions of the several states and the organic laws of the territories, all alike propose to protect the people in the exercise of their God-given rights. Not one of them pretends to bestow rights.

“All men are created equal, and endowed by their Creator with certain unalienable rights. Among these are life, liberty and the pursuit of happiness. That to secure these, governments are instituted among men, deriving their just powers from the consent of the governed.”

Here is no shadow of government authority over rights, nor exclusion of any class from their full and equal enjoyment. Here is pronounced the right of all men, and “consequently,” as the Quaker preacher said, “of all women,” to a voice in the government. And here, in this very first paragraph of the declaration, is the assertion of the natural right of all to the ballot; for, how can “the consent of the governed” be given, if the right to vote be denied. Again:

“That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government,

laying its foundations on such principles, and organizing its powers in such forms as to them shall seem most likely to effect their safety and happiness.”

Surely, the right of the whole people to vote is here clearly implied. For however destructive to their happiness this government might become, a disfranchised class could neither alter nor abolish it, nor institute a new one, except by the old brute force method of insurrection and rebellion. One-half of the people of this nation to-day are utterly powerless to blot from the statute books an unjust law, or to write there a new and a just one. The women, dissatisfied as they are with this form of government, that enforces taxation without representation,—that compels them to obey laws to which they have never given their consent,—that imprisons and hangs them without a trial by a jury of their peers, that robs them, in marriage, of the custody of their own persons, wages and children,—are this half of the people left wholly at the mercy of the other half, in direct violation of the spirit and letter of the declarations of the framers of this government, everyone of which was based on the immutable principle of equal rights to all. By those declarations, kings, priests, popes, aristocrats, were all alike dethroned, and placed on a common level, politically, with the lowliest born subject or serf. By them, too, men, as such, were deprived of their divine right to rule, and placed on a political level with women. By the practice of those declarations all class and caste distinction will be abolished; and slave, serf, plebeian, wife, woman, all alike, bound from their subject position to the proud platform of equality.

...

It was we, the people, not we, the white male citizens, nor yet we, the male citizens; but we, the whole people, who formed this Union. And we formed it, not to give the blessings of liberty, but to secure them; not to the half of ourselves and the half of our posterity, but to the whole people—women as well as men. And it is downright mockery to talk to women of their enjoyment of the blessings of liberty while they are denied the use of the only means of securing them provided by this democratic-republican government—the ballot. . . .

If the fourteenth amendment does not secure to all citizens the right to vote, for what purpose was that grand old charter of the fathers lumbered with its unwieldy proportions? The republican party, and Judges Howard and Bingham, who drafted the document, pretended it was to do something for black men; and if that something was not to secure them in their right to vote and hold office, what could it have been? For, by the thirteenth amendment, black men had become people, and hence were entitled to all the privileges and immunities of the government, precisely as were the women of the country, and foreign men not naturalized. . . .

Thus, you see, those newly freed men were in possession of every possible right, privilege and immunity of the government, except that of suffrage, and hence, needed no constitutional amendment for any other purpose. What right, I ask you, has the Irishman the day after he receives his naturalization papers that he did not possess the day before, save the right to vote and hold office? And the Chinamen, now crowding

our Pacific coast, are in precisely the same position. What privilege or immunity has California or Oregon the constitutional right to deny them, save that of the ballot? Clearly, then, if the fourteenth amendment was not to secure to black men their right to vote, it did nothing for them, since they possessed everything else before. But, if it was meant to be a prohibition of the states, to deny or abridge their right to vote—which I fully believe—then it did the same for all persons, white women included, born or naturalized in the United States; for the amendment does not say all male persons of African descent, but all persons are citizens.

The second section is simply a threat to punish the states, by reducing their representation on the floor of Congress, should they disfranchise any of their male citizens, on account of color, and does not allow of the inference that the states may disfranchise from any, or all other causes; nor in any wise weaken or invalidate the universal guarantee of the first section. What rule of law or logic would allow the conclusion, that the prohibition of a crime to one person, on severe pains and penalties, was a sanction of that crime to any and all other persons save that one?

But, however much the doctors of the law may disagree, as to whether people and citizens, in the original constitution, were one and the same, or whether the privileges and immunities in the fourteenth amendment include the right of suffrage, the question of the citizen's right to vote is settled forever by the fifteenth amendment. "The citizen's right to vote shall not be denied by the United States, nor any state thereof; on account of race, color, or previous condition of servitude." How can the state deny or abridge the right of the citizen, if the citizen does not possess it? There is no escape from the conclusion, that to vote is the citizen's right, and the specifications of race, color, or previous condition of servitude can, in no way, impair the force of the emphatic assertion, that the citizen's right to vote shall not be denied or abridged.

The political strategy of the second section of the fourteenth amendment, failing to coerce the rebel states into enfranchising their negroes, and the necessities of the republican party demanding their votes throughout the South, to ensure the re-election of Grant in 1872, that party was compelled to place this positive prohibition of the fifteenth amendment upon the United States and all the states thereof.

If we once establish the false principle, that United States citizenship does not carry with it the right to vote in every state in this Union, there is no end to the petty freaks and cunning devices, that will be resorted to, to exclude one and another class of citizens from the right of suffrage.

It will not always be men combining to disfranchise all women; native born men combining to abridge the rights of all naturalized citizens, as in Rhode Island. It will not always be the rich and educated who may combine to cut off the poor and ignorant; but we may live to see the poor, hardworking, uncultivated day laborers, foreign and native born, learning the power of the ballot and their vast majority of numbers, combine and amend state constitutions so as to disfranchise the Vanderbilts and A.

T. Stewarts, the Conklings and Fentons. It is a poor rule that won't work more ways than one. Establish this precedent, admit the right to deny suffrage to the states, and there is no power to foresee the confusion, discord and disruption that may await us. There is, and can be, but one safe principle of government—equal rights to all. And any and every discrimination against any class, whether on account of color, race, nativity, sex, property, culture, can but embitter and disaffect that class, and thereby endanger the safety of the whole people.

Clearly, then, the national government must not only define the rights of citizens, but it must stretch out its powerful hand and protect them in every state in this Union. . . .

I admit that prior to the rebellion, by common consent, the right to enslave, as well as to disfranchise both native and foreign born citizens, was conceded to the States. But the one grand principle, settled by the war and the reconstruction legislation, is the supremacy of national power to protect the citizens of the United States in their right to freedom and the elective franchise, against any and every interference on the part of the several States. And again and again, have the American people asserted the triumph of this principle, by their overwhelming majorities for Lincoln and Grant.

The one issue of the last two Presidential elections was, whether the fourteenth and fifteenth amendments should be considered the irrevocable will of the people; and the decision was, they shall be—and that it is not only the right, but the duty of the National Government to protect all United States citizens in the full enjoyment and free exercise of all their privileges and immunities against any attempt of any State to deny or abridge. . . .

And it is upon this just interpretation of the United States Constitution that our National Woman Suffrage Association which celebrates the twenty-fifth anniversary of the woman's rights movement in New York on the 6th of May next, has based all its arguments and action the past five years.

We no longer petition Legislature or Congress to give us the right to vote. We appeal to the women everywhere to exercise their too long neglected "citizen's right to vote." We appeal to the inspectors of election everywhere to receive the votes of all United States citizens as it is their duty to do. We appeal to United States commissioners and marshals to arrest the inspectors who reject the names and votes of United States citizens, as it is their duty to do, and leave those alone who, like our eighth ward inspectors, perform their duties faithfully and well.

We ask the juries to fail to return verdicts of "guilty" against honest, law-abiding, tax-paying United States citizens for offering their votes at our elections. Or against intelligent, worthy young men, inspectors of elections, for receiving and counting such citizens' votes.

We ask the judges to render true and unprejudiced opinions of the law, and wherever there is room for a doubt to give its benefit on the side of liberty and equal

rights to women, remembering that “the true rule of interpretation under our national constitution, especially since its amendments, is that anything for human rights is constitutional, everything against human rights unconstitutional.”

And it is on this line that we propose to fight our battle for the ballot—all peaceably, but nevertheless persistently through to complete triumph, when all United States citizens shall be recognized as equals before the law.

Worcester Daily Spy, editorial, May 28, 1873

On May 22, 1873, when the U.S. district judge transferred Susan B. Anthony’s trial from the district court to the circuit court, he also moved it from Monroe County to Ontario County. No longer would the jurors in Anthony’s trial be drawn from the towns of Monroe County, where she had lectured on the right of women to vote. She resolved to begin anew, scheduling speeches in the towns of Ontario County during the month that remained before her trial opened. In this document, a newspaper editor in Worcester, Massachusetts, defended her right to do so.

[Document Source: *Worcester Daily Spy*, May 28, 1873, from Susan B. Anthony scrapbooks, vol. 6, Rare Books Division, Library of Congress.]

Miss Susan B. Anthony, whatever else she may be, is evidently of the right stuff for a true reformer. Of all the woman suffragists she has the most courage and resource and fights her own and her sisters’ battle with the most wonderful energy, resolution and hopefulness. It is well known that she is now under indictment for voting illegally at Rochester last November. Voting illegally in her case means simply voting, for it is held that women cannot lawfully vote at all. She is to be tried soon, but in the meantime, while at large on bail, she has devoted her time to missionary work on behalf of woman suffrage and has spoken, it is said, in almost every school district in Monroe county, where her trial would have been held in the natural course of things. She has argued her cause so well that almost the whole male population of the county has been converted to her views on this subject. The district attorney is afraid to trust the case to a jury from that county and has obtained a change of venue to Ontario county, on the ground that a fair trial cannot be had in Monroe. Miss Anthony, rather cheered than discouraged by this unwilling testimony to the strength of her cause and her powers of persuasion, has made arrangements to canvass Ontario county as thoroughly as Monroe. As county lines do not enclose distinct varieties of the human race it is fair to presume that the people of the former county will be as susceptible to argument and appeal as those of the latter, and by the time the case comes on an Ontario jury will be as little likely to convict as a Monroe jury is now supposed to be. Some foolish and bigoted people who edit newspapers in that part of the world, are complaining that Miss Anthony’s proceedings are highly improper, inasmuch as they are intended to influence the decision of a cause pending

in the courts. They even talk about contempt of court, and declare that Miss Anthony should be compelled to desist from making these insidious harangues. We suspect that the courts will not venture to interfere with this lady's speech-making tour, but will be of opinion that she has the same right which people, male or female, have to explain her political views and make converts to them if she can. We have never known it claimed before that a person accused of an offence was thereby deprived of the common right of free speech on political or other questions.

Trenton State Sentinel and Capital, editorial, June 21, 1873

On June 18, 1873, Justice Ward Hunt pronounced Susan B. Anthony guilty of illegal voting, and the next day he set her fine. Hunt's opinion on the question of women's right to vote was overshadowed by his decision to render a verdict without consulting the jury. In this editorial from a newspaper in Trenton, New Jersey, Justice Hunt's actions are compared to those of a New York state judge, Noah Davis, in a case involving George Francis Train in the spring of 1873. Many editors made the comparison, but in fact Judge Davis directed the verdict of not guilty.

[Document Source: *Trenton State Sentinel and Capital*, June 21, 1873, from Susan B. Anthony scrapbook, volume 6, Rare Books Division, Library of Congress.]

Miss Anthony's Case

Miss Susan B. Anthony, who has been on trial for some days past in the U.S. Court, at Canandaigua, N.Y., for voting, was, on Wednesday, pronounced guilty by the Judge—*not by the Jury*—and on Thursday sentenced to pay a fine of \$100 and the cost of the prosecution.

Before sentence was passed Judge Selden [Anthony's attorney] made a motion for a new trial upon the ground of a misdirection of the Judge in ordering a verdict of guilty without submitting the case to the jury. He argued the right of every person charged with crime to have the question of guilt or innocence passed upon by a constitutional jury, and that there was no power in this court to deprive her of it. The District Attorney replied, and the Court denied the motion.

Is it not possible, yea, certain, that in this view of the case Judge Selden was right and Judge Hunt was wrong? Why have juries at all, if Judges can find verdicts—or direct them to be found, and then refuse to poll the jury, which amounts to just the same—without any reference whatever to the jury? The case is very similar to that of Judge Davis, of New York, in the Train trial, where the Judge ignored the jury, and for which not only was Judge Davis' action set aside by another Judge, but the press of the whole country condemned the act so pointedly and almost universally that it was expected no other Judge would ever be guilty of a like offence.

Whether female suffrage is right or wrong, legal or illegal, it is not our intention now to discuss; but we do say now, and expect ever to say, that action so arbitrary and unjust as that of Judge Hunt in this case, and that of Judge Davis in the Train case, should meet with condemnation from all lovers of fair-play.

Petition to Congress of Susan B. Anthony

In January 1874, Susan B. Anthony petitioned Congress to remit the fine imposed on her by Justice Ward Hunt at her trial in June 1873. Attorney Henry Selden drafted the petition that was signed by Anthony. Arguing that she was denied the constitutional right of trial by jury, Anthony asked Congress to remit the fine “as an expression of the sense” of Congress that the conviction was unjust. In anticipation of the petition, U.S. attorney Richard Crowley wrote Representative Lyman Tremain and insisted that the jury had informally agreed to the verdict.

Representative William Loughridge presented Anthony’s petition in the House of Representatives on January 20, 1874, and Senator Aaron Sargent presented it in the Senate on January 22, 1874. Both houses referred the petition to their judiciary committees, and those committees reported back later in the year. In neither committee did a majority agree that Congress had the power to act in this instance or that Justice Hunt acted improperly. Powerful members of both committees, however, recognized how Anthony’s case exposed, as one senator wrote, “the vicious system which denies to those convicted of offenses against the laws of the United States a hearing before the court of last resort.”

[Document Source: Ann D. Gordon, ed., *National Protection for National Citizens, 1873 to 1880*, vol. 3 of *Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* (New Brunswick, N.J.: Rutgers University Press, 2003), 39–43. Original in House 8E 3/5/4/5, 43d Cong., 1st sess., Records of the U.S. House of Representatives, RG 233, National Archives and Records Administration, Washington, D.C.]

To the Congress of the United States.

The petition of Susan B. Anthony, of the city of Rochester in the county of Monroe and state of New York, respectfully represents:

That prior to the late Presidential election your petitioner applied to the board of registry in the Eighth ward of the city of Rochester, in which city she had resided for more than 25 years, to have her name placed upon the register of voters, and the board of registry, after consideration of the subject, decided that your petitioner was entitled to have her name placed upon the register, and placed it there accordingly.

On the day of the election, your petitioner, in common with hundreds of other American citizens, her neighbors, whose names had also been registered as voters, offered to the inspectors of election, her ballots for electors of President and Vice

President, and for members of Congress, which were received and deposited in the ballot box by the inspectors.

For this act of your petitioner, an indictment was found against her by the grand jury, at the sitting of the District Court of the United States for the Northern District of New York at Albany, charging your petitioner, under the nineteenth section of the Act of Congress of May 31, 1870, entitled, "An act to enforce the rights of citizens of the United States to vote in the several states of this union, and for other purposes," with having "knowingly voted without having a lawful right to vote."

To that indictment your petitioner pleaded not guilty, and the trial of the issue thus joined took place at the Circuit Court in Canandaigua, in the county of Ontario, before the Honorable Ward Hunt, one of the Justices of the Supreme Court of the United States, on the eighteenth day of June last.

Upon that trial, the facts of voting by your petitioner, and that she was a woman, were not denied—nor was it claimed on the part of the government, that your petitioner lacked any of the qualifications of a voter, unless disqualified by reason of her sex.

It was shown on behalf of your petitioner on the trial, that before voting she called upon a respectable lawyer and asked his opinion whether she had a right to vote, and he advised her that she had such right; and the lawyer was examined as a witness in her behalf, and testified that he gave her such advice, and that he gave it in good faith, believing that she had such right.

It also appeared that when she offered to vote, the question, whether, as a woman she had a right to vote, was raised by the inspectors, and considered by them in her presence, and they decided that she had a right to vote, and received her vote accordingly.

It was shown on the part of the government, that on the examination of your petitioner before the commissioner on whose warrant she was arrested, your petitioner stated that she should have voted if allowed to vote, without reference to the advice of the attorney whose opinion she had asked; that she was not induced to vote by that opinion; that she had before determined to offer her vote, and had no doubt about her right to vote.

At the close of the testimony, your petitioner's counsel proceeded to address the jury and stated that he desired to present for consideration three propositions, two of law and one of fact:

First—That your petitioner had a lawful right to vote.

Second—That whether she had a right to vote or not, if she honestly believed that she had that right, and voted in good faith in that belief, she was guilty of no crime.

Third—That when your petitioner gave her vote she gave it in good faith, believing that it was her right to do so.

That the two first propositions presented questions for the Court to decide, and the last a question for the jury.

When your petitioner's counsel had proceeded thus far, the Judge suggested that the counsel had better discuss in the first place the questions of law; which the counsel proceeded to do, and having discussed the two legal questions at length, asked leave then to say a few words to the jury on the question of fact. The Judge then said to the counsel that he thought that had better be left until the views of the court upon the legal questions should be made known.

The district attorney thereupon addressed the court at length upon the legal questions, and at the close of his argument the Judge delivered an opinion adverse to the positions of your petitioner's counsel upon both of the legal questions presented, holding, that your petitioner was not entitled to vote; and that if she voted in good faith in the belief in fact that she had a right to vote, it would constitute no defense—the ground of the decision on the last point being that your petitioner was bound to know that by law she was not a legal voter, and that even if she voted in good faith in the contrary belief, it constituted no defence to the crime with which she was charged.

The decision of the Judge upon those questions was read from a written document, and at the close of the reading the Judge said, that the decision of those questions disposed of the case, and left no question of fact for the jury, and that he should therefore direct the jury to find a verdict of guilty. The judge then said to the jury that the decision of the Court had disposed of all there was in the case, and that he directed them to find a verdict of guilty; and he instructed the clerk to enter such a verdict.

At this time, before any entry had been made by the clerk, your petitioner's counsel asked the Judge to submit the case to the jury, and to give to the jury the following several instructions:

First—That if the defendant at the time of voting, believed that she had a right to vote, and voted in good faith in that belief, she was not guilty of the offence charged.

Second—That in determining the question whether she did or did not believe that she had a right to vote, the jury might take into consideration as bearing upon that question, the advice which she received from the counsel to whom she applied.

Third—That they might also take into consideration as bearing upon the same question, the fact that the inspectors considered the question, and came to the conclusion that she had a right to vote.

Fourth—That the jury had a right to find a general verdict of guilty or not guilty, as they should believe that she had or had not been guilty of the offense described in the statute.

The Judge declined to submit the case to the jury upon any question whatever, and directed them to render a verdict of guilty against your petitioner.

Your petitioner's counsel excepted to the decision of the Judge upon the legal questions, and to his direction to the jury to find a verdict of guilty; insisting that it was a direction which no court had a right to give in any criminal case.

The Judge then instructed the clerk to take the verdict, and the clerk said, "Gentlemen of the jury, hearken to your verdict as the court hath recorded it. You say you find the defendant guilty of the offence charged. So say you all."

No response whatever was made by the jury either by word or sign. They had not consulted together in their seats or otherwise. Neither of them had spoken a word, nor had they been asked whether they had or had not agreed upon a verdict.

Your petitioner's counsel then asked that the clerk be requested to poll the jury. The Judge said, "that cannot be allowed, gentlemen of the jury you are discharged," and the jurors left the box. No juror spoke a word during the trial, from the time when they were empannelled to the time of their discharge.

After denying a motion for a new trial, the Judge proceeded upon the conviction thus obtained to pass sentence upon your petitioner, imposing upon her, a fine of one hundred dollars, and the costs of the prosecution.

Your petitioner respectfully submits, that in these proceedings she has been denied the rights guaranteed by the constitution to all persons accused of crime, the right of trial by jury, and the right to have the assistance of counsel for their defence. It is a mockery to call her trial a trial by jury; and unless the assistance of counsel may be limited to the argument of legal questions, without the privilege of saying a word to the jury upon the question of the guilt or innocence in fact of the party charged, or the privilege of ascertaining from the jury whether they do or do not agree to the verdict pronounced by the court in their name, she has been denied the assistance of counsel for her defence.

Your petitioner, also, respectfully insists, that the decision of the Judge, that good faith on the part of your petitioner in offering her vote did not constitute a defence, was not only a violation of the deepest and most sacred principle of the criminal law, that no one can be guilty of crime unless a criminal intent exists; but was also, a palpable violation of the statute under which the conviction was had; not on the ground that good faith could, in this, or in any case justify a criminal act, but on the ground that bad faith in voting was an indispensable ingredient in the offence with which your petitioner was charged. Any other interpretation strikes the word "knowingly," out of the statute, the word which alone describes the essence of the offence.

The statute means, as your petitioner is advised, and humbly submits, a knowledge in fact, not a knowledge falsely imputed by law to a party not possessing it in fact, as the Judge in this case has held. Crimes cannot either in law, or in morals, be established by judicial falsehood. If there be any crime in the case, your petitioner humbly insists, it is to be found in such an adjudication.

To the decision of the Judge upon the question of the right of your petitioner

to vote she makes no complaint. It was a question properly belonging to the court to decide, was fully and fairly submitted to the Judge, and of his decision, whether right or wrong, your petitioner is well aware she cannot here complain.

But in regard to her conviction of crime, which she insists, for the reasons above given, was in violation of the principles of the common law, of common morality, of the statute under which she was charged, and of the Constitution; a crime of which she was as innocent as the Judge by whom, she was convicted, she respectfully asks, inasmuch as the law has provided no means of reviewing the decisions of the Judge, or of correcting his errors, that the fine imposed upon your petitioner be remitted, as an expression of the sense of this high tribunal that her conviction was unjust.

Dated January 12, 1874.
Susan B. Anthony.

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