

IN THE SUPREME COURT FOR THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Appellant/respondent on Review,

v.

THOMAS PAUL MOYER,

Defendant-Respondent-Petitioner on Review.

STATE OF OREGON,

Plaintiff-Appellant/Respondent on Review,

v.

VANESSA COLLEEN STURGEON, aka Vanessa Sturgeon, aka Vanessa Colleen Kassab,

Defendant-Respondent-Petitioner on Review.

STATE OF OREGON,

Plaintiff-Appellant/Respondent on Review,

v.

SONJA R. TUNE,

Defendant-Respondent-Petitioner on Review.

**Supreme Court
No. S056990**

**Court of Appeals
No: A128796**

**Multnomah County
Circuit Court
No. 040935104**

**Court of Appeals
No: A128797**

**Multnomah County
Circuit Court
No. 040935105**

**Court of Appeals
No: A128798**

**Multnomah County
Circuit Court
No. 040935106**

**APPENDIX TO BRIEF OF AMICUS CURIAE POLICY
INITIATIVES GROUP
AND SEVEN INDIVIDUAL OREGON ELECTORS**

Efiled as a "supplemental document" 19 pages (including this cover sheet for informational purposes)

OCT. 11, 1862.

TITLE III.

Of oaths and affirmations.

- § 856. Who authorized to take testimony and administer oaths.
- § 859. Same subject.
- § 860. Who may affirm.
- § 857. Form of oath.
- § 861. Affirmation equivalent to oath; when false, to be deemed perjury.
- § 858. Form may be varied to suit witness' belief.

Who authorized to take testimony, etc.

§ 856. Every court, judge, clerk of a court, justice of the peace, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases, as this code elsewhere authorizes. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized.

Form of oath.

§ 857. An oath may be administered as follows: The person who swears, holds up his right hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between _____ and _____ shall be the truth, the whole truth, and nothing but the truth, so help you God;" if the oath be administered to any other than a witness, the same form and manner may be used.

Form of administering, may be varied.

§ 858. Whenever the court or officer before which a person is offered as a witness, is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode.

Same subject.

§ 859. When a person is sworn who believes in any other than the christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Who may affirm.

§ 860. Any person who has conscientious scruples against taking an oath, may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in section 857.

Affirmation equivalent to oath.

§ 861. Whenever, by any provision of this code, an oath is required, an affirmation, as prescribed in the last section, is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath.

CHAPTER XI.

Deady Code (Civil) 1864, C XIII, T II, § 14 "Qualifications of Voters"
(First adopted 1854)

in the county, with two poll-books, at least five days before the time of holding any election.

SEC. 13. If any person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or by any other person entitled to vote at the same poll, the judges shall declare to the person so challenged, the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath:

"You do solemnly swear, (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformable to the laws of the United States on the subject of naturalization, one year prior to this time) and that you have resided six months in the state, and ninety days in the county or district, (as the case may be) next preceding the election; and that you have not voted at this election;"

And if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected.

SEC. 14. If any person so offering such vote, shall take such oath, his vote shall be received, unless it shall be proven by evidence satisfactory to the majority of the judges, that he does not possess the qualification of an elector, in which case a majority of said judges are authorized to reject such vote; and if any person shall take such oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction; suffer such punishment as now is or hereafter shall be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county court, by a civil action, before any justice of the peace in such county.

Penalty for voting improperly.

(1) The words in this section—"one year prior to county or district as the case may be," in the text, this time," are not in the original, but inserted the original reads, "fifteen days in the county;" here because sec. 2 of art. II of the constitution, this change is made to make the oath correspond with the actual requirements of residence as prescribed, requires that the declaration of intention shall have been made, "one year preceding such election." For the words, "ninety days in the election." For the words, "ninety days in the 1 of this chapter.

Deady Code (Criminal) 1872 T II, C V §§ 609-638 (codifying Crimes Against Public Codifying Crimes Against Justice Act of 1864 and Frauds in Elections Act of 1870)

CHAPTER 5.] CRIMES—AGAINST PUBLIC JUSTICE.

§ 610. Every person convicted of the crime of perjury, committed on the trial of, or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than five, nor more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding by a court of justice, other than such criminal action, shall be punished by imprisonment in the penitentiary, not less than three, nor more than ten years, and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary, not less than two, nor more than five years.

§ 611. If any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one, nor more than three years.

§ 612. If any person shall corruptly give, offer or promise to give, any gift, gratuity, valuable consideration or thing, whatever, or shall corruptly promise to do or cause to be done, any act beneficial to any judicial, legislative or executive officer, with intent to influence the vote, opinion, decision, judgment or other official conduct of such officer, in any matter, question, duty, cause or proceeding which then is or by law may come or be brought before such officer, or with intent to influence such officer to act in his official capacity in a particular manner, so as to produce or prevent any particular result, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than two, nor more than ten years.

§ 613. If any judicial, legislative or executive officer shall corruptly accept or receive any gift, gratuity, valuable consideration or thing whatever, or any promise thereof, or any promise to do or cause to be done any act beneficial to such officer, with the understanding or agreement, express or implied, that such officer will give his vote, opinion, decision or judgment in a particular manner, in any matter, question, duty, cause or proceeding which then is, or may by law come or be brought before such officer, or with the understanding or agreement that such officer will in his official capacity, act in a particular manner, or so as to produce or prevent any particular result, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than five, nor more than fifteen years.

§ 614. Every person authorized to act as a judge in a court of justice, including a commissioner of the county court, from the time of his election or appointment; every person summoned as a juror in any court of justice, or upon any inquest, or before any officer, from the time he is so summoned, and every referee, umpire or arbitrator, from the time of his appointment, shall be held and deemed to be a judicial officer, within the meaning of sections 612 and 613, and for the purposes therein expressed.

CRIMES—AGAINST PUBLIC JUSTICE. [CRIM. CODE.

disposed of, as genuine and pure, such person shall, on conviction of such offense, be punished by imprisonment in the penitentiary not less than one year, nor more than five years.

§ 607. If any person shall have any gold dust in his possession, mixed or adulterated as described in section 606 of this chapter, knowing the same to be mixed or adulterated, with intent to pass or sell, or in anywise dispose of the same, as pure and genuine, or to cause the same to be sold, passed, or in any way disposed of, as pure and genuine gold dust, such person, upon conviction of such offence, shall be punished by imprisonment in the penitentiary not less than one year, nor more than five years.

§ 608. If any person shall pass, sell or in any way dispose of any gold dust, mixed or adulterated as described in section 606, or shall cause the same to be passed, sold or otherwise disposed of, or shall attempt to pass, sell or in any way dispose of such dust, knowing the same to be so mixed or adulterated, such person shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one year, nor more than five years.

CHAPTER V.

Of crimes against public justice.

§ 609. Perjury and subornation of perjury, definition of.

§ 610. Perjury and subornation of perjury, punishment of.

§ 611. Inciting persons to commit perjury.

§ 612. Bribe or offering to bribe judicial, legislative or executive officer.

§ 613. Judicial, legislative or executive officer receiving or agreeing to receive a bribe.

§ 614. Judicial officer, definition of.

§ 615. Legislative officer, definition of.

§ 616. Executive officer, definition of.

§ 617. Aiding to escape from prison or legal confinement.

§ 618. Punishment for aiding in escape from prison or legal confinement.

§ 619. Officer suffering person to escape, or refusing to receive person committed to his custody.

§ 620. Officer refusing or delaying to serve process.

§ 621. Rescue or aiding prisoner to escape from officer.

§ 622. Officer refusing or delaying to serve process.

§ 623. Compounding or concealing crime, for reward.

§ 624. Neglecting or refusing to aid officer.

§ 609. If a person authorized by any law of this state to take an oath or affirmation, or of whom an oath or affirmation shall be required by such law, shall wilfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is authorized or required, such person shall be deemed guilty of perjury, and if any person shall procure another to commit the crime of perjury, such person shall be deemed guilty of subornation of perjury.

10 Johns. 107; 4 Sald. 57; 3 Peck. Cr. Rep. 510; 8 Pick. 402; 6 Blun. 240.

Deady Code (Criminal) 1872 T II, C V §§ 609-638 (codifying Crimes Against Public Codifying Crimes Against Justice Act of 1864 and Frauds in Elections Act of 1870)

§ 615. Every member of either house of the legislative assembly, and every member of any common council, board of aldermen, trustees or other municipal, legislative or deliberative body, by whatever name known or called, from the time of his election or appointment, shall be held and deemed to be a legislative officer, within the meaning of sections 612 and 613, and for the purposes therein expressed.

§ 616. Every officer of this state, or of any county, town or other municipal or public corporation therein, not included in the definition of judicial and legislative officers, as defined in sections 614 and 615, from the time of his election or appointment, shall be held and deemed to be an executive officer, within the meaning of sections 612 and 613, and for the purposes therein expressed.

§ 617. If any person shall convey into or about the yard or grounds of any penitentiary, jail, house of correction or other place whatever for the confinement of persons upon any warrant, order or other legal process, any disguise, material, instrument, tool, weapon or other thing adapted to or useful in aiding any person or prisoner there committed or detained, with intent to effect or facilitate the escape of such person or prisoner, or shall by any means whatever aid or assist any such person or prisoner in an intent to escape, whether such escape be effected or attempted or not, such person, upon conviction thereof, shall be punished as in the following section provided.

§ 618. If the person, whose escape was intended or effected was committed or detained upon a charge or conviction of a crime punishable with death or imprisonment for life, the punishment thereof shall be imprisonment in the penitentiary not less than five, nor more than twenty years; but if the person whose escape was intended or effected was committed or detained upon a charge or conviction of a crime not so punishable, the punishment thereof shall be the same as that provided by law for the crime with which such person was charged or convicted; and in case the person whose escape was intended or effected was in custody or confinement upon civil process or otherwise than upon a charge or conviction of crime, the punishment thereof shall be imprisonment in the county jail not less than three months, nor more than one year, or a fine not less than one hundred dollars, nor more than five hundred dollars.

§ 619. If any sheriff, jailor or other officer shall voluntarily suffer any person or prisoner committed to or in his custody, to escape, such sheriff, jailor or other officer, shall be deemed guilty of aiding and assisting in such escape, and upon conviction thereof, shall be punished in the manner provided in section 618.

§ 620. If any sheriff, jailor or other officer shall, through negligence, suffer any person or prisoner committed to or in his custody, to escape; or shall wilfully refuse to receive into his custody any person or prisoner lawfully committed thereto, such sheriff, jailor or other officer, upon conviction thereof, shall be punished by imprisonment in the county jail not less than six months, nor more than one year, or by a fine not less than two hundred dollars, nor more than one thousand dollars.

§ 621. If any person shall rescue or attempt to rescue, any prisoner from any officer or person having the lawful custody of such prisoner, or shall aid or assist any prisoner in escaping or attempting to escape from any officer or person having the lawful custody of such prisoner, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two, nor more than ten years, or by imprisonment in the county jail not less than three months, nor more than one year.

§ 622. If any officer, authorized to serve process, shall wilfully and wrongfully refuse to execute any lawful process to him directed and delivered, requiring him to arrest or confine any person, or shall wilfully and wrongfully omit or delay to execute such process, whereby such person shall escape and go at large, such officer, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months, nor more than one year, or by fine not less than fifty, nor more than five hundred dollars.

§ 623. If any person, having knowledge of the commission of a crime, shall accept or receive any gift, gratuity, valuable consideration or thing whatever, or any promise thereof, or any promise to do, or cause to be done, any act beneficial to such person, with the understanding or agreement, expressed or implied, to compound or conceal such crime, or not to prosecute therefor or give evidence thereof, such person, upon conviction thereof, shall, if such crime be punishable with death or imprisonment for life, be punished by imprisonment in the penitentiary not less than one year, nor more than five years; or if such crime was not so punishable, by imprisonment in the county jail not less than three months, nor more than one year, or by fine not less than fifty dollars, nor more than five hundred dollars.

§ 624. If any person being required by any peace officer or magistrate to assist him in the execution of his office, in the preservation of the peace, or the arrest of any person for a breach of the peace, or the service of any process, shall neglect or refuse to render such assistance, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month, nor more than six months, or by fine not less than twenty-five dollars, nor more than five hundred dollars.

§ 625. If any person shall falsely assume to be a magistrate or peace officer, and shall take upon himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months, nor more than one year, or by fine not less than fifty dollars, nor more than five hundred dollars.

§ 626. If any person shall in any manner disguise himself with intent to obstruct or hinder the due execution of the law, or with intent to intimidate, hinder or interrupt any officer or other person in the legal performance of his duty or the exercise of any right under the law, whether such intent shall be effected or not, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three

OCT. 19, '64, § 604
Legislative officer, definition of.

Ibid, § 605.
Executive officer, definition of.

Ibid, § 606.
Aiding to escape from prison or confinement.

Ibid, § 607.
Same, punishment of.

Ibid, § 608.
Officer voluntarily suffering person to escape.

Ibid, § 609.
Officer negligently suffering person to escape or refusing to take into custody.

OCT. 19, '64, § 610
Rescues, or assisting prisoner from officer.

Ibid, § 611.
Officer refusing or delaying to serve process.

Ibid, § 612.
Compounding or concealing crime for reward.

Ibid, § 613.
Neglecting or refusing to aid officer.

Ibid, § 614.
Falsely assuming to be a magistrate or peace officer.

Ibid, § 615.
Disguise, with intent to obstruct the execution of the law.

Deady Code (Criminal) 1872 T II, C V §§ 609-638 (codifying Crimes Against Public Codifying Crimes Against Justice Act of 1864 and Frauds in Elections Act of 1870)

CRIMES—AGAINST PUBLIC JUSTICE.

CHAP. 5.]

date or prevent any person from challenging another voter, or to prevent any person from voting, such person or persons so offending, shall, upon conviction, be punished by imprisonment in the county jail not less than three months nor more than one year.

§ 632. That any person who shall by promise of favor or reward, or otherwise, induce or persuade any person to come into this state, or into any county or precinct within this state, for the purpose and with the intent that such person shall, by so changing his habitation, vote at any general election which may hereafter be held in this state, at any place where such voter or person is not a bona fide resident, shall be deemed guilty of a felony, and upon conviction thereof shall be punished as hereinafter provided.

§ 633. Any person shall also be deemed guilty of a felony who shall by promises of favor or reward, or otherwise induce or persuade any voter within this state to absent himself from his actual and bona fide place of residence with intent to prevent or hinder such person from voting at such place of residence at any general election in this state.

§ 634. Any person who shall, in the manner provided in the preceding section, induce or persuade any legal voter to remain away from the polls, and not vote at any general election in this state, shall, on conviction, be deemed guilty of a felony.

§ 635. Any person, upon conviction for a violation of either of the preceding sections 632, 633 and 634, shall be imprisoned in the penitentiary not less than one nor more than three years, or shall be fined not less than one hundred nor more than one thousand dollars, or shall be punished by both such fine and imprisonment, in the discretion of the court, and shall be forever ineligible to hold any office of trust or profit in this state.

§ 636. If any officer of this state, or of any county, town or other municipal or public corporation therein, other than the governor, justices of the supreme court, or members of the legislative assembly, shall willfully and knowingly charge, take or receive any fee or compensation, other than that authorized or permitted by law, for any official service or duty performed by such officer, or shall willfully neglect or refuse to perform any duty or service pertaining to his office, with intent to injure or defraud any one, or shall willfully neglect or refuse to perform such duty or service to the injury of any one, or the manifest hindrance or obstruction of public justice or business, whether such injury, hindrance or obstruction was particularly intended or not, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months, nor more than one year, or by imprisonment in the county jail, not less than three months, nor more than one year, or by dismissal from office with or without either or any of such punishments.

1 Enacted, "An act to prevent frauds in elections," and took effect by operation of the constitution, Jan. 24, 1871.
2 Stat. Laws of 1870, 480, 486.

CRIMES—AGAINST PUBLIC JUSTICE.

[C.R.M. CODE]

more than five hundred dollars.

§ 627. If any person shall give, offer or promise to give any gratuity, valuable consideration or thing whatever to any voter of this state, or shall promise to do or cause to be done, any act beneficial to such voter, with intent to influence or induce such voter to vote at any legally authorized election in this state, for or against a particular person or candidate, or in a particular way, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one year, nor more than five years, or by imprisonment in the county jail, not less than three months, nor more than one year.

§ 628. If any voter of this state shall accept or receive any gratuity, valuable consideration or thing, or any promise thereof, or any promise to do or cause to be done any act beneficial to such voter, with the understanding or agreement, expressed or implied, that such voter will, at any legally authorized election in this state, give his vote for or against a particular person or candidate, or in a particular way, such voter, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one year, nor more than five years, or by imprisonment in the county jail, not less than three months, nor more than one year.

§ 629. A person who actually votes or offers to vote at the election specified and designated in sections 627 and 628, although by law he may not be entitled to vote thereat, shall be held and deemed to be a voter within the meaning of such sections 627 and 628, and for the purposes therein expressed. If any person, having been convicted of any crime defined in sections 627 and 628, shall afterwards be convicted of the same or any other crime therein defined, such person shall be punished by imprisonment in the penitentiary as therein provided, and not otherwise.

§ 630. If any person shall vote or offer to vote at any legally authorized election in this state, knowing himself not entitled by law to vote thereat, or shall vote or offer to vote at any poll or in any precinct at any such election, knowing himself not entitled by law to vote at such poll or in such precinct, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred, nor more than five hundred dollars.

§ 631. If any person or persons shall by menace, threat or violence, whether armed or unarmed, intimidate or prevent, or attempt to intimidate or prevent any person or persons from voting at any election, or shall

1 32 Stat. Laws, 501, 4 Dall. 293.
2 § 19 of the act of Oct. 23, 1870, "relating to elections and the mode of filling vacancies in offices," contains this section, except the words "by any," immediately preceding the words, "to vote at such poll." This act purports, in § 45, to repeal all acts in conflict with "his own provisions; but under Act. IV, § 22 of the Constitution, such a provision is inoperative, and therefore § 16 of the act of Oct. 19, 1864, is not affected by it. Said § 16 also provides that if any voter falsely takes the oath prescribed by § 16 of the act of which it is a part, he shall be deemed guilty of perjury. But the act

Oct. 29, '70, § 21. Violence, etc., to prevent per-

Ibid., § 616. Bribing, or offering to bribe voter.

Ibid., § 617. Voter receiving gratuity or promise of the same.

Ibid., § 618. Voter, dissatisfied, or punishment for second offense.

Ibid., § 619. Voting or offering to vote illegally.

Ibid., § 620. Voting or offering to vote at an election.

Ibid., § 621. Voting or offering to vote at an election.

Ibid., § 622. Voting or offering to vote at an election.

Ibid., § 623. Voting or offering to vote at an election.

Ibid., § 624. Voting or offering to vote at an election.

Ibid., § 625. Voting or offering to vote at an election.

Ibid., § 626. Voting or offering to vote at an election.

Ibid., § 627. Voting or offering to vote at an election.

Ibid., § 628. Voting or offering to vote at an election.

Ibid., § 629. Voting or offering to vote at an election.

Ibid., § 630. Voting or offering to vote at an election.

Ibid., § 631. Voting or offering to vote at an election.

Deady Code (Criminal) 1872 T II, C V §§ 609-638 (codifying Crimes Against Public
Codifying Crimes Against Justice Act of 1864 and Frauds in Elections Act of 1870)

§ 637. If any person, having the legal custody of any public record, book, paper or writing, shall wilfully destroy, secrete or mutilate the same; or if any attorney shall wilfully destroy, secrete or mutilate any such record, book, paper or writing, or shall wrongfully take the same from the person having the legal custody thereof, or having obtained the possession of such record, book, paper or writing lawfully, shall wrongfully refuse or neglect to return or produce the same when lawfully required or demanded so to do, such person or attorney, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than six months, nor more than one year, or by imprisonment in the county jail not less than three months, nor more than one year, or by fine not less than one hundred, nor more than five hundred dollars.

Ibid. § 638.

§ 638. If any person, having any interest in the passage or defeat of any measure before, or which shall come before, either house of the legislative assembly of this state, or if any person being the agent of another so interested, shall converse with, explain to, or in any manner attempt to influence any member of such assembly in relation to such measure, without first truly and completely disclosing to such member his interest therein, or that of the person whom he represents, and his own agency therein, such person, upon conviction thereof, shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by fine not less than fifty, nor more than five hundred dollars.

CHAPTER VI.

Of crimes against the public peace.

Excerpts from General Statues of the State of Texas published in 1859, Title VIII, "Offences Affecting the Right of Suffrage"

TITLE VIII.

OF OFFENCES AFFECTING THE RIGHT OF SUFFRAGE.

CHAPTER I.

BRIBERY AND UNDOE INFLUENCE.

| ARTICLE. | | ARTICLE. | |
|--|-----|--|-----|
| Bribery of elector,..... | 257 | Bribing person to influence voters..... | 261 |
| Voter accepting bribe,..... | 258 | Furnishing money to be used in election, ... | 262 |
| Bribery of officers of election,..... | 259 | Attempting to influence voter by violence or | |
| Officer of election accepting, &c.,..... | 260 | threats,..... | 263 |

ART. 257. If any person shall bribe, or offer to bribe, any elector, for the Act of Aug. 28, 1856, purpose of influencing his vote at any public election, he shall be punished by fine, not exceeding five hundred dollars. Bribery of elector.

ART. 258. If any elector shall accept a bribe offered as set forth in the preceding article, he shall be punished in like manner as is provided with respect to the person offering the bribe. Voter accepting bribe.

Bribery of officer of election.

ART. 259. If any person shall bribe, or offer to bribe, any manager, judge, or clerk of a public election, or any officer attending the same, as a consideration for some act done or omitted to be done, or to be done or omitted contrary to his official duty in relation to such election, he shall be punished, by fine, not exceeding five hundred dollars.

Officer of election accepting bribe.

ART. 260. If any manager, judge or clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding article, he shall be punished in the same manner as is provided in reference to the persons offering the bribe.

Bribing person to influence voters.

ART. 261. If any one shall offer or give a bribe to any person whatever, for the purpose of inducing him to persuade, or by means not amounting to bribery, to procure persons to vote at any public election, for or against any particular candidate, the person so giving or offering, and the person so accepting, shall be punished by fine, not exceeding two hundred dollars.

Furnishing money to be used in.

ART. 262. If any person shall furnish money to another, to be used for the purpose of promoting the success or defeat of any particular candidate, or of any particular question submitted to a vote of the people, he shall be punished by fine, not exceeding two hundred dollars.

Attempting to influence voter by violence or threats.

ART. 263. If any person shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, by means of violence, or by threats of violence, or of any injury to the person or property of such elector or person threatened, he shall be punished by fine, not exceeding five hundred dollars.

George H. Himes, *Constitutional Convention of Oregon*

CONSTITUTIONAL CONVENTION OF OREGON.

COMPILED BY GEORGE H. HIMES

Held in Salem, August 17-September 18, 1857. The table gives name of delegate, date of birth, state or country of nativity, residence when starting to Oregon, date of arrival, county represented, occupation and political affiliation. The majority were Democrats; Republicans marked thus—*.

| Name. | Born. | Native. | Came from. | Arrived. | County. | Occupation. |
|-----------------------|-------|---------|------------|----------|------------|-------------|
| *Anderson, Levi | 1818 | Ky. | Iowa | 1852 | Washington | Farmer |
| *Applegate, Jesse | 1810 | Ky. | Mo. | 1848 | Umpqua | Farmer |
| Babcock, A. D. | 1818 | N. Y. | Ind. | 1852 | Polk | Lawyer |
| Boise, Reuben P. | 1819 | Mass. | Mass. | 1850 | Polk | Lawyer |
| Brattain, J. H. | 1813 | Tenn. | Iowa | 1846 | Linn | Farmer |
| *Brattain, Paul | 1801 | N. C. | Iowa | 1852 | Lane | Farmer |
| Bristow, Wm. W. | 1826 | Ky. | Ill. | 1846 | Lane | Farmer |
| Burch, Benj. F. | 1825 | Mo. | Mo. | 1845 | Polk | Farmer |
| Campbell, A. J. | 1828 | Ind. | Ind. | 1853 | Lane | Mechanic |
| Campbell, Hector | 1794 | Mass. | Mass. | 1849 | Clackamas | Farmer |
| Chadwick, Stephen F. | 1825 | Conn. | N. Y. | 1851 | Douglas | Lawyer |
| Cox, Jesse | 1821 | Mo. | Mo. | 1851 | Lane | Farmer |
| Cox, Joseph | 1811 | Ohio. | Mo. | 1847 | Marion | Farmer |
| Coyle, Reuben F. | 1821 | Ky. | Ill. | 1847 | Linn | Farmer |
| Crooks, John T. | 1807 | Va. | Ill. | 1848 | Linn | Farmer |
| Deady, Matthew P. | 1824 | Md. | Ohio | 1849 | Douglas | Lawyer |
| *Dryer, Thomas J. | 1810 | N. Y. | Calif. | 1850 | Multnomah | Editor |
| Duncan, L. J. C. | 1818 | Tenn. | Ga. | 1850 | Jackson | Miner |
| Elkins, Luther | 1809 | Me. | Ohio | 1852 | Linn | Farmer |
| Fitzhugh, Solomon | 1804 | Ky. | Mo. | 1850 | Douglas | Farmer |
| Farrar, William H. | 1826 | N. H. | Mass. | 1853 | Multnomah | Lawyer |
| Grover, L. F. | 1826 | Me. | Pa. | 1851 | Marion | Lawyer |
| Hendershott, S. B. | 1832 | Ill. | Iowa | 1853 | Josephine | Miner |
| Houit, Enoch | 1820 | Va. | Ill. | 1853 | Lane | Farmer |
| Kelly, James K. | 1819 | Pa. | Pa. | 1851 | Clackamas | Lawyer |
| Kelsay, John | 1819 | Ky. | Mo. | 1853 | Benton | Lawyer |
| *Kinney, Robert C. | 1813 | Ill. | Iowa | 1847 | Yamhill | Farmer |
| *Lewis, Haman C. | 1810 | N. Y. | Mo. | 1845 | Benton | Farmer |
| *Logan, David | 1826 | N. C. | Ill. | 1849 | Multnomah | Lawyer |
| Lovejoy, A. L. | 1811 | Mass. | Mo. | 1843 | Clackamas | Lawyer |
| Marple, P. B. | 1819 | Va. | Mo. | 1851 | Coos | Lawyer |
| *Matzger, William | 1819 | Hanover | Ill. | 1847 | Benton | Mechanic |
| *McBride, John R. | 1832 | Mo. | Mo. | 1846 | Yamhill | Lawyer |
| McCormick, S. J. | 1828 | Ireland | N. Y. | 1851 | Multnomah | Printer |
| Meigs, Charles R. | 1830 | Conn. | Ohio | 1855 | Wasco | Lawyer |
| Miller, Richard | 1802 | Md. | Mo. | 1847 | Marion | Farmer |
| *Moore, Isaac R. | 1796 | Ky. | Ill. | 1852 | Lane | Farmer |
| Newcomb, Daniel | 1800 | Va. | Ill. | 1853 | Jackson | Farmer |
| *Nichols, H. B. | 1821 | Conn. | Iowa | 1852 | Benton | Farmer |
| *Olds, Martin | 1799 | Mass. | Mich. | 1851 | Yamhill | Farmer |
| *Olney, Cyrus | 1815 | N. Y. | Iowa | 1851 | Clatsop | Lawyer |
| Packwood, William H. | 1832 | Ill. | Ill. | 1849 | Curry | Miner |
| Peebles, J. C. | 1826 | Pa. | Ind. | 1850 | Marion | Farmer |
| Prim, P. P. | 1822 | Tenn. | Tenn. | 1851 | Jackson | Lawyer |
| Reed, J. H. | 1824 | Pa. | Mo. | 1855 | Jackson | Lawyer |
| Robbins, Nathaniel | 1793 | Va. | Ind. | 1852 | Clackamas | Farmer |
| Shannon, Davis | 1815 | Ind. | Ill. | 1844 | Marion | Farmer |
| *Shattuck, Erasmus D. | 1824 | Vt. | Vt. | 1853 | Washington | Lawyer |
| *Scott, Levi | 1797 | Ill. | Iowa | 1844 | Umpqua | Farmer |
| Shields, James | 1811 | Ky. | Mo. | 1852 | Linn | Farmer |
| *Short, Robert V. | 1823 | Pa. | Ill. | 1847 | Yamhill | Surveyor |
| Shrum, Nicholas | 1803 | Tenn. | Mo. | 1846 | Marion | Farmer |
| Smith, Delazon | 1816 | N. Y. | Iowa | 1852 | Linn | Farmer |
| Starkweather, W. A. | 1822 | Conn. | Ohio | 1850 | Clackamas | Farmer |
| *Watkins, William H. | 1827 | N. Y. | N. Y. | 1852 | Josephine | Physician |
| *Watts, John W. | 1830 | Mo. | Mo. | 1852 | Columbia | Physician |
| *White, John S. | 1828 | Tenn. | Tenn. | 1845 | Washington | Farmer |
| Whitted, Thomas | 1832 | Pa. | Ind. | 1850 | Douglas | Farmer |
| Warmire, Fred | 1807 | Ohio. | Mo. | 1845 | Polk | Mechanic |
| Williams, George H. | 1823 | N. Y. | Iowa | 1853 | Marion | Lawyer |

FORTIETH ANNUAL REUNION

627

SUMMARY

| | | |
|------------------|---|----|
| Connecticut | Chadwick, Meigs, Nichols, Starkweather. | 4 |
| Hanover, Germany | Matzger | 1 |
| Illinois | Hendershott, Kinney, Packwood, Scott. | 4 |
| Indiana | Campbell (A. J.), Shannon | 2 |
| Ireland | McCormick | 1 |
| Kentucky | Anderson, Applegate, Bristow, Coyle, Fitzhugh, Kelsay, Moores, Shields | 8 |
| Maine | Elkins, Grover | 2 |
| Maryland | Deady, Miller | 2 |
| Massachusetts | Boise, Campbell (Hector), Lovejoy, Olds | 4 |
| Missouri | Burch, Cox (Jesse), McBride, Watts | 4 |
| New York | Babcock, Dryer, Lewis, Olney, Smith, Watkins, Williams | 7 |
| North Carolina | Brattain (Paul), Logan | 2 |
| Ohio | Cox (Joseph), Waymire | 2 |
| Pennsylvania | Kelly, Peebles, Reed, Short, Whitted | 5 |
| New Hampshire | Farrar | 1 |
| Tennessee | Brattain (J. H.), Duncan, Prim, Shrum, White | 5 |
| Vermont | Shattuck | 1 |
| Virginia | Crooks, Hoult, Marple, Newcomb, Rob- bins | 5 |
| | | 60 |

Occupations.

| | | | |
|-----------|----------|------------|---------|
| Editors | 1 | Physicians | 2 |
| Farmers | 30 | Printers | 1 |
| Lawyers | 19 | Surveyors | 1 |
| Mechanics | 3 | | |
| Miners | 3 | | 60 |

Members of the convention who afterwards filled important public positions in the state and nation:

Boise, Reuben P., Associate Justice for many years; Chief Justice, 1862-1864, 1868-1870.

Chadwick, Stephen F., Secretary of State, September 14, 1870-February 1, 1877; Acting Governor from latter date to September 11, 1878.

Deady, Matthew P., Associate Judge, Oregon Territory, 1853-1859; United States District Judge, District of Oregon, 1859 to date of death in 1893.

Farrar, William H., Mayor of Portland, 1862.

Grover, L. F., member of Legislature several terms; Representative in Congress, 1859; Governor, September 14, 1870-February, 1877; United States Senator, March 4, 1879-March 3, 1885.

Kelly, James K., United States Senator, March 4, 1871-March 3, 1877; Chief Justice, 1878-1880.

Logan, David, Mayor of Portland, 1863.

McBride, John R., State Senator, 1860; member of Congress, March 4, 1863-March 3, 1865; Chief Justice of Idaho Territory, February 28, 1865.

McCormick, Stephen J., Mayor of Portland, 1859.

Prim, Paige P., Chief Justice, 1879-1880.

Shattuck, Erasmus D., Associate Justice for many years; Chief Justice, 1866-1868.

Smith, Delazon, United States Senator, February 14, 1859-March 3, 1859.

Williams, George H., Chief Justice, 1853-1859; United States Senator, March 4, 1865-March 3, 1871; one of the Joint High Commissioners in settling the "Alabama Claims," 1871; United States Attorney-General, 1872-1875; Mayor of Portland, 1903-1904.

APPENDIX TO MEMORANDUM OPPOSING SUMMARY JUDGMENT FOR
DEFENDANTS AND INTERVENORS

Additional references to "political" or "electioneering" campaigns before
1857 (all available on GoogleBooks)

1826

John Binns was the publisher and editor of the *Democratic Press* in Philadelphia and observer of Pennsylvania politics. In his *LIFE OF JOHN BINNS* (self-published 1854), p. 314, he quotes a letter to him dated September 6, 1826, from Lewis P. Frank relating the history of a "calumny" perpetrated in rival publications during a municipal election, "[D]uring the heat of an electioneering campaign in 1814, Stiles, who then published the *True American* had obtained a copy of the *Democrat* containing [the offending letter]."

1832

B.L. Rayner, *SKETCHES OF THE LIFE WRITINGS AND OPINION OF THOMAS JEFFERSON*, (Francis 1832), p. 208, wrote, "He [Jefferson] took no part whatever in the political campaign [of 1800] and held himself entirely aloof from it."

1840

A satirical "town history" *QUODLIBET*, printed in 1840, attributed to Solomon Secondthoughts (pseud. John Pendleton Kennedy) and compiled from "The Great New Light Democratic Central Committee of Quodlibet," (1840 Lea & Blanchard), pp. 241-242, describes the travails of the "party men" in the Harrison-Van Buren election and notes the Presidential election campaign was underway by July:

Upon adjournment of congress, late in July, the Hon. Middleton Flam returned to Quodlibet, to infuse new energy into our indefatigable committee. Through him we were apprised of many matter of deep interest, touching the progress of the campaign which was now growing amazingly active.

1841

Rep. Robert Winthrop (Massachusetts) spoke on the House floor about trade policy in December 1841, "During the late political campaign, Mr. Tyler was interrogated on the question of a tariff." *Speech on Tariff, Delivered in the House of Representatives December 30, 1841*, *SPEECHES*, (Little, Brown 1852), p. 333.

1843

Charles Francis Adams decried:

Amicus App - 13

A profitable trade has been, for years, carried on, in the southern and western States, in this new species of merchandise [federal land and navigation grants]: and there are probably thousands, in the south and west, who, during the last political campaign, were hugging these fancied slices of El Dorado, and hurraing for Polk and Texas.

TEXAS AND THE MASSACHUSETTS RESOLUTIONS, THE COMPLAINT OF MEXICO, (Eastburnn 1843) p. 12-13.

1848

Theodore Parker, a "Boston radical preacher," asserted, "In the electioneering campaign there has been a certain duplicity in the supporters of General Taylor * * *."

Some Thoughts on the Free Soil Party (dated December 1848), collected in SPEECHES, ADDRESSES, AND OCCASIONAL SERMONS, (Crosby & Nichols 1852), p. 139.

1848

A reference in the HISTORY OF THE TOWN OF DANVERS [Massachusetts], by John Wesley Hanson (self-published 1848), p. 106 notes that "the *Danvers Whig* was published during the Election campaign of 1844."

1848

A novel by A.H. Brisbane, RALPHTON OR THE YOUNG CAROLINIAN OF 1776, A ROMANCE ON THE PHILOSOPHY OF POLITICS, (Burgess and James 1848), p. 136, the author described the political education of the title character, Ralphton, who attends a "barbacue" where his mentor tells him: "[R]emember, I told you some time since, that it required much time and prudent effort to secure the election of a member of congress, and that I had begun the campaign, not only with your adherents in the camp, but parties far and near * * *."

1849

William H. Seward, delivered a public eulogy to John Quincy Adams, referencing, "[a] hotly contested political campaign ensued in the fall of 1828." LIFE AND PUBLIC SERVICES OF JOHN QUINCY ADAMS (DELIVERED BEFORE THE LEGISLATURE OF NEW YORK 1849), (Derby, Miller 1849).

1855

Jacob Barker, in his LIFE OF JACOB BARKER (self-published 1855), p. 36, described a Tammany meeting during the Van Buren re-election campaign of 1834 and noted, "the political campaign progressed with great ardor."

EXAMPLES OF EARLY STATUTES PUNISHING FALSE STATEMENTS TO
ELECTION OFFICERS

1834 Maine Regulation of Elections

§15. Be it further enacted, That no person shall be permitted to give in his vote or ballot, at any meeting for vote for officers * * *, until the person presiding at such meeting shall have had opportunity to inquire his name, and shall have ascertained that the same is in the list aforesaid, and shall have had time to check the same; and any person wilfully voting contrary to the provisions of this section, or who shall give any false answer or false name to the Assessors, when receiving evidence of the qualifications as aforesaid, or to the person presiding in such town meeting, shall forfeit and pay a fine not exceeding thirty dollars, for each and every such offence.

LAWS OF THE STATE OF MAINE (Todd and Colman, Homan & Co. 1834).

1840 Connecticut Registry Law:

Sec. 2. The town clerk and selectmen shall be in session at some convenient place for a reasonable time, within four days next preceding the meetings for the objects aforesaid, for the purpose of receiving evidence of the qualifications of persons claiming a right to vote in such elections, and of correcting the list of voters; and such session shall be held for one hour at least on the day of such election, and before the opening of the meeting at the place where said meeting shall be held ; and notice of the time and place of holding the said sessions shall be given by the town clerk and selectmen, upon the list posted up as aforesaid. Provided, that whenever an adjourned meeting of the electors shall be held, in pursuance of the law for the choice of one or more representatives of the town in the General Assembly, that on the day of each of such adjourned meetings, there shall be a session of at least one hour previous to the opening of the meeting, of the town clerk and selectmen, for the purposes aforesaid ; and such session shall be at the place of holding said meeting

* * *

Sec. 4. If any person shall give a false name, or any false answer, to the board of town clerk and select men, when in session as provided in this act, he shall forfeit the sum of twenty dollars, to be paid into the State treasury.

GREEN'S CONNECTICUT ANNUAL REGISTER AND UNITED STATES CALENDAR
1840, (Green and Durrie & Peck 1840)

| TIMELINE: ELECTION LAW RELATED EVENTS IN AMERICA 1699-1870 | |
|--|---|
| 1699 | Virginia campaign restrictions debated |
| 1787 | Northwest Ordinance enacted |
| 1789 | Gouverneur Morris uses the phrase "political campaign" in a letter dated 1789 |
| 1799 | Kentucky campaign regulations adopted |
| 1813-- present | State statutes criminalizing false affirmations or oaths to elections officers adopted |
| 1801 | North Carolina adopts limits on funds for treating voters |
| 1813 | Francis Scott Key writes of "political campaign" |
| 1820 | Satirical publications uses phrase "election campaign in New-York" |
| 1829- 1855 | Numerous references to "campaign" as a political process |
| 1828 | Henry Clay refutes statements made by Andrew Jackson's partisans in the "political campaign" |
| 1829 | Elbridge Gerry (vice-president to James Madison in 1812) writes of the "energies of an election campaign" |
| 1829 | New York statutes limiting campaign conduct adopted |
| 1830 | First of "Major Jack Dowling" series, evolving use of word "electioneering campaign" (1830) to "this election" in a continuing sense, in columns published during the 1852 campaign |
| 1837 | Held: Lobby contracts against public policy in <i>Hillyer v. John Travers</i> , American Law Reports, July 1837 (New York Court of Common Pleas) |
| 1841 | James Buchanan refers to "election campaign" on floor of U.S. Senate, speech on the National Bank, July 7, 1841 |
| 1843 | Held: Lobbying contracts against public policy: <i>Clippinger v. Hepbaugh</i> , 5 Watts & Serg 315, 1843 WL 5037 (Pa 1843); <i>Marshall v. Baltimore & Ohio Railroad Company</i> , 16 How 314, 57 US 314, 14 LEd 953 (1843) |
| 1843 | <i>Wilson v. Davis</i> , 1843 WL 5088 *3 (Pa 1843), the court describes "the eve of a political campaign * * *" |
| 1843 (May) | Champoeg Convention--delegates from the Northwest Territory vote to produce Organic Act begin and hold provisional legislative sessions |
| 1843 (July) | Oregon Organic Law adopted, elections were to be conducted under Iowa law, giving Legislature the power to control "the time, and place and manner of holding and conducting all elections by the people * * *" |
| 1845 | Second Oregon Organic Law adopted by popular vote |
| 1844- 1848 | Oregon Provisional Legislature operates generally under laws of New York and Iowa as set out in Organic Act; statutes criminalize false statements to elections officials |

| TIMELINE: ELECTION LAW RELATED EVENTS IN AMERICA 1699-1870 | |
|---|--|
| 1846 | Treaty with Great Britain establishing northern United States boundary at 49th parallel; settlers in the Northwest Territory begin petitioning Congress for statehood |
| 1848 | Oregon Territorial Act passed by Congress, § 5 of which gives the Territorial Legislature authority to set out the "time, place and manner of holding and conducting all elections of the people * * *." |
| 1848-1859 | Oregon Territorial Legislature re-adopts generally the earlier adopted Iowa statutes and equity case law, and British common law |
| 1852 | Maryland statute limiting campaign contributions |
| 1852-1857 | Numerous published examples of word "election" alone without the word "campaign" being used in the modern sense of the entire election or political campaign. |
| 1853 | Oregon Provisional Legislature appoints Code Commission |
| 1853 | Washington and parts of Idaho and Montana are removed from the Oregon Territory |
| 1855 | The term "election" used in continuing sense, M.L. Davis, MEMOIRS OF AARON BURR |
| 1855 | Oregon Laws prepared by Code Commission (Kelly, Boise, Bigelow) adopted; Kelly (Senate) and Boise (House) successfully run for Legislature, chair respective judiciary committees |
| 1856 | Texas adopts "Offenses Affecting the Rights of Suffrage," Title VIII, Chapter I and Article 262 provides: If any person shall furnish money to another, to be used for the purpose of promoting the success or defeat of any particular candidate, or any particular question submitted to a vote of the people, he shall be punished by fine, not exceeding two hundred dollars. |
| 1857 | Oregon Constitutional Convention, J. Deady chair (Kelly and Boise and 16 other law-trained delegates) |
| 1857 | Oregon Constitution approved by voters with Article I, § 8, Article II, §§ 8 and 15. |
| 1859 | Oregon Statehood granted; remainder of the Oregon Territory (parts of Idaho and Wyoming) merge with Washington Territory |
| 1860 | Effort to institute secret balloting in Oregon defeated |
| 1862-1864 | Oregon Code compiled, annotated, explained to legislature by J. Deady |

| TIMELINE: ELECTION LAW RELATED EVENTS IN AMERICA 1699-1870 | |
|---|--|
| 1864 | <p>Effort to institute secret balloting in Oregon defeated</p> <p>Crimes Against Public Justice Act of 1864: Conduct which could affect an election long before the day of balloting including offering, receiving or soliciting a promise of "any beneficial thing" in exchange for a later vote. Crimes Against Public Justice Act (1864), §§ 616, 617, 619</p> <p>Speaking to legislator without disclosing personal or lobbyist's interest, or the interest of one's principal when lobbying, made criminal, § 638</p> |
| 1870 | <p>Frauds in Election Act (1870) criminalizes pre-election day speech or conduct such as persuading person to change residence in order to vote through "promises of favor or reward, or otherwise * * or to persuade a legal voter not to vote</p> |