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FLORIDA IN THE BALANCE:
THE ELECTORAL COUNT OF 1876

by JERRELL H. SHOFNER

FOR A FEW WEEKS following the 1876 election, Florida's role in national affairs was greater than the state's four electoral votes would normally warrant. With the presidency depending on one electoral vote and the Florida election in doubt, both the Democratic and Republican parties concentrated attention on the electoral count in Tallahassee. The activities of influential "visiting statesmen" representing the national parties affected the decision of the state canvassing board and caused temporary excitement in Florida. After their departure and the ultimate resolution of the election dispute, political affairs in the state returned to normal with little permanent influence from the visitors or the events surrounding their visit.

Neither national party had shown significant interest in the Florida campaign prior to the November 1876 election. The state parties had conducted an acrimonious but comparatively non-violent campaign and election based primarily on local issues. The incumbent Republicans were badly divided between Governor Marcellus L. Stearns, the regular party nominee for reelection, and United States Senator Simon B. Conover, the gubernatorial nominee of a dissident faction. Only in September did the national party induce Conover to withdraw from the race in favor of the Stearns ticket. Stearns' running mate was David Montgomery of Madison. The Democrats passed over their popular native son, William D. Bloxham of Leon County, and nominated New Hampshire-born George F. Drew, a wealthy lumberman from Madison County, for governor, with Noble A. Hull of Sanford for lieutenant governor. Since the nearly-equal division of the parties in 1876 was well known, both waged energetic campaigns to attract all potential voters. They also undertook elaborate measures to guard against fraud and irregularity.

When the unofficial election returns of November 7 failed to show a victory for either Republican Rutherford B. Hayes or Democrat Samuel J. Tilden, both parties became interested in the

votes of Florida, South Carolina, and Louisiana, the southern states which still had incumbent Republican administrations. New Hampshire Republican Senator William E. Chandler left New York on November 8 for a first-hand examination of affairs in these states.¹ By the time he reached Florida, November 12, it was becoming apparent that the state's election would be decided by only a few votes. Political leaders and several national newspapers believed that the presidential contest depended on Florida's electoral votes.² Chandler agreed, and he decided to remain in Tallahassee and direct Republican efforts to win a favorable decision from the state canvassing board.

While national parties were taking stock of events and evolving plans to secure the disputed electoral votes, Florida politicians were trying to establish their respective victory claims. Both sides sent a barrage of telegrams and newspaper comments across the country claiming victory, although returns from twenty-nine of Florida's thirty-nine counties were as yet unavailable. The ten larger counties in the north-central portion of the state where the Negro population was concentrated were located near telegraph lines and roads. Their approximate votes were known quickly, although the county canvassing boards would not meet and forward official returns to the secretary of state's office until November 13. From West Florida counties even the unofficial reports came in slowly, and as one northern visitor complained, "Quebec was nearer in time than some of the southern counties."³ Democrats held predominant positions in many of these western and southern counties where whites usually outnumbered Negroes. In some, Democratic officials controlled county returns; in others, Republican officials were in the majority. To prevent alteration of the returns, both parties sent couriers to every county seat to obtain certified copies of the returns for later comparison with the official certificates.

A train carrying Republican couriers to West Florida for this purpose was wrecked on November 8. While some blamed the

1. William E. Chandler to Rutherford B. Hayes, November 9, 1876, William E. Chandler Papers, Library of Congress.
2. *New York Tribune*, November 16, 1876; *Cincinnati Commercial*, November 19, 1876; *St. Louis Dispatch*, November 22, 1876; J. N. Tyner to M. C. Comly, November 14, 16, 1876; Alphonso Taft to Comly, November 17, 1876; W. A. Knapp to Comly, November 18, 1876, microfilm of Hayes Papers relating to the 1876 election, Library of Congress.
3. *New York World*, January 17, 1878.

accident on the railroad's poor condition and a Democratic newspaper said "providence" had torn up the rails, Governor Stearns claimed the train was "ku-kluxed."⁴ He immediately asked for additional federal troops to help preserve order until the votes were counted.⁵ Although President Grant and Secretary of War J. D. Cameron were in Philadelphia when notified of Stearns' request, they gave it prompt attention. General W. T. Sherman said he received three telegrams within an hour from the war department ordering troops to Florida.⁶ General Thomas H. Ruger was ordered to leave his affairs in South Carolina and to report to Governor Stearns in Tallahassee. By November 11 twelve companies, including one artillery unit, were on their way to the Florida capital. These troops were reinforcements for those already stationed at critical places in the state. Since there was no disorder after they arrived, the new units camped near Tallahassee where the men hunted and fished while the election dispute went on.⁷

As national excitement increased over the undecided election, the parties became increasingly concerned about a decision in the disputed states which all sides could accept. Prominent Republicans and Democrats, popularly referred to as "visiting statesmen," came to Tallahassee. Besides Senator Chandler, the Republicans included W. H. Robertson, D. G. Rollins, and Francis C. Barlow of New York; General Lew Wallace and Thomas J. Brady of Indiana; R. W. Mackey of Pennsylvania; John A. Kasson of Iowa; J. M. Thornburgh of Tennessee; and A. M. Ampt, John Little, and former Governor Edward F. Noyes of Ohio.⁸ Among the Dem-

4. Savannah *Morning News*, November 9, 1876; *Chicago Times*, December 4, 1876.
5. *New York Times*, November 11, 1876; Jacksonville *Florida Sun*, January 30, 1877; telegram of William H. Smith to Hayes, November 9, 1876, Hayes Papers; D. S. Walker to L. P. Bayne, November 10, 1876; George F. Drew to Louis Bucki, November 10, 1876, Samuel J. Tilden Papers, Box 12, New York Public Library.
6. W. T. Sherman to Thomas H. Ruger, November 9, 1876, War Department, Records of the Adjutant General's Office, Group 94, National Archives; Headquarters to F. Dent, November 11, 1876, War Department, Records of United States Army Commands, Department of the South, Telegrams Sent, Group 98, National Archives.
7. *New York Herald*, November 20, 1876.
8. *New York Times*, November 21, 1876; Concord *New Hampshire Republican Statesman*, December 14, 1876; *New York Herald*, November 20, 1876; Washington *National Republican*, November 20, 1876; Atlanta *Daily Constitution*, November 16, 1876; House Committee to Investigate Alleged Presidential Frauds in Florida and

ocrats were Manton Marble, former owner of the New York *World* and a friend of Tilden, and E. L. Parris of New York; G. W. Biddle, D. W. Sellers, Samuel G. Thompson, John R. Read, Malcolm Hay, George W. Guthrie, C. W. Woolley, and John F. Coyle of Pennsylvania; Leverett Saltonstall of Massachusetts; Perry H. Smith of Illinois; C. Gibson of Missouri; and former Governor Joseph E. Brown, Julian Hartridge, P. M. B. Young, W. E. Smith, and A. R. Lawson of Georgia.⁹

These men were sent ostensibly to observe the proceedings and to assure a fair count in Florida, but they became intimately involved in the contest themselves. Each considered himself a legal counsellor for his own party, and each gathered testimony to support his respective party's case before the state canvassing board. Members of both parties crowded into the City Hotel which was soon overflowing, and the hotel lobby and dining room were filled constantly with animated discussions and hurriedly whispered conferences. Every incoming train brought additional visitors representing neutral civic clubs. All were interested in an "unfettered decision."

The state canvassing board was required to meet and make its count thirty-five days after the election or sooner if all county returns were received. According to the amended law of 1872, the board of state canvassers was empowered to "determine and declare who shall have been elected" and to exclude from consideration any county returns which were "irregular, false, or fraudulent."¹⁰ William Archer Cocke, Democratic attorney general and a canvassing board member, had written an opinion, which had been followed in the 1874 count, declaring that the board had quasi-judicial powers to examine evidence and exclude returns. In 1876 both parties assumed that the board would accept evi-

Louisiana, *Testimony of William E. Chandler* (Washington, 1878), 6 (Chandler testimony extirpolated from "Testimony Taken by the Select Committee on Alleged Frauds in the Presidential Election of 1876," 45th Cong., 3rd Sess., *House Miscellaneous Document* 31, Serial 1864, pp. 468, 525, 1,000, 1,396, 1,439). Cited hereafter as *Chandler Testimony*.

9. Concord *New Hampshire Republican Statesman*, December 14, 1876; *St. Louis Dispatch*, November 15, 1876; *Tallahassee Sentinel*, November 18, 1876; C. Gibson to Samuel J. Tilden, November 28, 1876, Tilden Papers, Box 13.

10. *Florida Acts and Resolutions*, 5th Sess., 1872, 19.

dence proving fraud and irregularity rather than simply count the returns without question as they were received from the counties.

Senator Chandler directed Republican activities in Florida, and subsequently he was credited by his party with having achieved the Republican victory.¹¹ After hurriedly surveying the situation, Chandler wrote for assistance. According to him, most white Floridians were busy gathering evidence for the Democratic party and that, while there were many cases of Democratic frauds, he would be unable to prove them in time to aid his party. In addition to the "visiting statesmen" who answered his call, Chandler received assistance from several agents employed by the postmaster general, attorney general, and secretary of the treasury.¹² Florida's Republicans willingly accepted Chandler's leadership and worked harmoniously with the Northerners. He assigned all the Republicans to specific districts of the state so that they could become familiar with the circumstances of the election, gather evidence, and prepare their arguments for the canvassing board. There were no instructions to report Republican malfeasance. Chandler regarded party representatives and government officials alike as partisan agents.¹³ General Wallace, aided by postal agents from Washington, gathered evidence of Democratic frauds in Jackson County, and during the last few days of his investigation, he was assisted by federal troops. Republicans insisted that the soldiers were needed for the investigators' safety, while Democrats claimed they were sent to frighten reluctant Negroes into signing affidavits.

Rumors circulated that Republican county officials had altered the Archer precinct returns in Alachua County by adding 219 fraudulent Republican votes.¹⁴ It was expected that the Democrats would try to show evidence to have these votes excluded.

11. James G. Blaine to Hayes, February 14, 1877, Hayes Papers; T. W. Osborn to Chandler, November 9, 1876, Chandler Papers; E. R. Tinker to Chandler December 11, 1876, *ibid*; Leon B. Richardson, *William E. Chandler: Republican* (New York, 1940), 184.
12. *St. Louis Dispatch*, November 14, 1876; Tyner to Comly, November 14, 1876, Hayes Papers; Sherman Conant to Taft, November 10, 22, 1876, Records of Justice Department, Attorney General's Papers, Letters Received, Group 60, National Archives; Osborn to Taft, November 16, 1876; Malachi Martin to Taft, December 12, 1876.
13. *Chandler Testimony*, 16.
14. Tallahassee *Weekly Floridian*, November 14, 1876; William R. Stewart to William Wellhouse, November 20, 1876, Tilden Papers, Box 12.

Francis Barlow of New York was assigned to investigate the Alachua County election and to gather evidence for the Republicans. Barlow had been a Union general during the war, and then as New York attorney general he was instrumental, along with Samuel J. Tilden, in bringing legal proceedings against "Boss" Tweed.¹⁵ President Grant had asked him to observe the Florida electoral count and to see that it was free of collusion. To the chagrin of his Republican colleagues, Barlow interpreted the President's request literally, and concluded that the Democrats had a better claim in Alachua County. Chandler was horrified and quickly replaced him with Edward Noyes, who employed federal troops to help obtain affidavits from hundreds of Negroes who purportedly had voted at Archer precinct.¹⁷

As the days passed and no official returns were received from the South Florida counties, Chandler's dread of Democratic frauds in that area increased. He dispatched W. J. Webster and Samuel Hamblen to check on Manatee County where the election, due to a vacancy in the county clerk's office, had been irregular. Arriving at Sumterville (Polk County), the two were stopped by armed men and told they could proceed no farther in safety without a pass from the Democratic executive committee. The spokesman claimed the Democrats had a good majority in that area and did not want anyone tampering with it. Hamblen and Webster were offered safe conduct on their tour if they would follow a guide and stop only where he suggested.¹⁸ Unaccustomed to such frontier hospitality, the two men returned to Tallahassee. Exasperated at this incident and the repeated Democratic assurances that the election was free from Democratic intimidation, Chandler offered to employ anyone who believed the Democratic explanation, to visit South Florida.¹⁹

On November 18, while his assistants were still collecting evidence in the accessible counties, Chandler added up the votes, us-

15. E. H. Abbott, "Francis Channing Barlow," *Harvard Graduates Magazine*, IV (June 1896), 539.

16. *Concord New Hampshire Republican Statesman*, January 11, 18, 1877.

17. *New York Herald*, November 20, 1876.

18. *New York Times*, November 25, 26, 1876; Senate, Committee on Privileges and Elections, "Testimony and Documentary Evidence on the Elections in the State of Florida in 1876," 44th Cong., 2nd Sess., *Senate Report* 611, Part 2, Serial 1733, p. 364. Cited hereafter as *Senate Report* 611.

19. *New York Tribune*, November 18, 1876.

ing the official returns already in the secretary of state's office and adding estimates from about seven unreported counties. He told Hayes that he expected a small majority, about 150 votes, *against* the Republican electors. The Manatee County election favoring the Democrats was invalid, he thought, and there were others which he felt could be attacked, but there was neither time nor money enough to overcome the Democratic case supported as it was by adequate funds and capable personnel. As Chandler reviewed it, everything in Florida was operating against the Republican cause except two of the three canvassing board members.²⁰

Florida Democrats had begun gathering evidence even before the national Democratic party became interested in the state. Samuel Pasco, state executive committee chairman, directed his fellow Democrats to obtain certified copies of all county and precinct returns so that Republican officials could not alter figures without detection. Local Democrats, observing Chandler's activities, expressed surprise that no nationally prominent Democrats had come to Florida, but after all their presence would only furnish additional testimony that the state was clearly Democratic.²¹ At the request of Abram S. Hewitt, Tilden's campaign manager, Governor Brown of Georgia arrived in Tallahassee about a week after the election to assume the Democratic leadership.²² He was alarmed that the party had no central headquarters where its activities could be coordinated, but after conferring with the state executive committee, he expressed his confidence in a Democratic victory. Within a few days, northern Democrats began arriving and the evidence-gathering frenzy was accelerated. The Democrats concentrated on Alachua, Jefferson, and Leon counties where they believed proof of Republican frauds could be established. Samuel Thompson and Malcolm Hay of Pennsylvania directed Democratic efforts in Alachua,²³ while others gathered information in Jackson, Manatee, and places where they expected the Republicans to attack their majorities. They were infuriated

20. Chandler to Hayes, November 18, 1876, Hayes Papers.

21. *New York Herald*, November 15, 1876; *New York World*, November 16, 1876.

22. *Rome (Georgia) Courier*, November 15, 1876; Herbert Fielder, *A Sketch of the Life and Times of Joseph E. Brown* (Springfield, 1883), 506.

23. *New York Herald*, November 16, 20, 1876.

because they were not allowed to see the official returns from the counties. The governor and the secretary of state received copies, but neither released any figures. Democrats feared that the Republicans were making alterations which would be announced only after it was too late to refute them.

Newspapers throughout the country, in the meantime, were publishing estimated majorities for their respective parties in Florida. Based on a combination of fact and individual wishes, each side claimed the state by as much as 2,000 to 3,000 votes. On November 24 the Republican *New York Tribune* commenting on these unsupported claims, predicted that the election would be decided by less than 200 votes with the odds favoring the Democrats.²⁴ Most observers noted that Drew was consistently running a few hundred votes ahead of Tilden; even if Drew were elected governor the Democratic electors might not have a majority. The most important reason for the difference, as had been predicted for many months, was the dissatisfaction of East Florida Republicans with Governor Stearns' administration. While Hayes received two or three votes more than Stearns in most counties, it was in East Florida that the difference was most significant. Hayes received sixty-nine votes more than Stearns in Duval County, twenty-six more in Orange, and eleven more in Nassau.²⁵

Nearly two weeks after the election, Henry Grady, reporting for the *New York Herald*, declared the situation indescribable. "It is all a whisper and a wink, there is nothing frank or easy."²⁶ "The truth of the matter is both parties are at sea," he decided, "neither knows exactly what to do, and yet is bewildered by the fear that the other will do it first."²⁷ Lew Wallace confessed that "money and intimidation can obtain the oath of white man as well as black to any required statement. A ton of affidavits could be carted in . . . and not a word of truth in them, except the names of the parties swearing, . . . If we win our methods are subject to impeachment for possible fraud."²⁸

24. *New York Tribune*, November 24, 1876.

25. *Senate Report* 611, p. 17; *New York Herald*, November 14, 1876.

26. Quoted in Raymond B. Nixon, *Henry W. Grady: Spokesman of the New South* (New York, 1943), 130-31.

27. *New York Herald*, November 20, 1876.

28. Lew Wallace, *Autobiography*, 2 vols. (New York, 1906), II, 901-02.

During the uncertain period which continued for more than three months, both parties applied every conceivable political pressure and legal argument. Each hoped to obtain a favorable decision which would be respected by Florida and national public opinion. Each party sought aid from the branch of government most friendly to its cause. The Republicans had the advantage of majority control of the quasi-judicial state canvassing board, a part of the executive branch. The Democrats, unwilling to leave their case to the decision of the Republican-dominated agency, examined laws and precedents with a view to bringing the judiciary branch into the contest.

The Republicans explained their refusal to disclose the official returns as a preventive measure against contemplated Democratic frauds. Senator Chandler claimed all the Republican counties had already transmitted their returns, but that the Democrats were holding back returns from the counties they controlled. If the Republican secretary of state announced the returns in his possession, the Democrats could then alter de late returns by enough votes to win.²⁹

According to the Florida election law, the canvassing board could wait thirty-five days after the election before counting the votes. A federal law required state electors to cast their votes on December 6 in the electoral college. Since the thirty-five day limit would not expire until after the electoral college met, it was possible for the Republican majority of the canvassing board to wait until the last moment to count. The Democrats thought it necessary to force the canvassing board to convene immediately so that they could present evidence of frauds before the December 6 deadline. On November 17 Samuel Pasco, William Bloxham, and George P. Raney, Democratic executive committee members, asked the board in writing to proceed with the count of those returns already received so there would be sufficient time for presentation of evidence and argument. The following day the board voted two to one against the request, with the single Democratic member favoring an immediate count.³⁰ The

29. *New York Herald*, November 18, 1876; *Chicago Times*, November 21, 1876; *New York World*, November 18, 19, 1876; *Washington National Republican*, November 21, 1876.

30. William A. Cocke to Samuel Pasco, November 18, 1876, Special Collections, Robert L. Strozier Library, Florida State University, Tallahassee.

two Republicans announced that they would obey the election law and wait the thirty-five days or until all returns were received.³¹

While the Democrats were considering ways to obtain judicial assistance against the board, a rumor circulated that Governor Stearns planned to count the votes and certify the results without waiting for the board to act. Federal law required the governor to certify the state's electors, and Stearns, according to the rumor, would have to count the votes in order to certify. It was also believed that since the presidential electors were not state officers, the canvassing board had no authority to count votes cast for them.³² Although it would seem unlikely that Stearns had ever contemplated such a maneuver, a Democratic committee requested a hearing. When he asked them to file a statement on it, the Democrats applied to Circuit Court Judge Pleasant W. White for an injunction forbidding Stearns from counting the votes and a mandamus ordering the canvassing board to do so immediately.³³

When Judge White arrived on November 23, both sides had prepared lengthy arguments. The Democrats were represented by D. W. Sellers of Pennsylvania, Governor Brown of Georgia, and George Raney of Florida. The Republican attorneys, J. P. C. Emmons of Florida and Francis Barlow, pointed out that Stearns had never intended to count the votes alone, that the court had no jurisdiction over the chief executive, and that the injunction could not be enforced because any officer sent to restrain the governor would be met by the militia.³⁴ Chandler contemptuously scoffed that the case had been tried before a circuit judge who lacked jurisdiction, to prevent the governor from doing something that he had not contemplated or to compel the board to act as it had already planned.³⁵ Regardless of Chandler, there was suspense in Tallahassee as the parties awaited Judge White's decision, and the action did not go unnoticed by the canvassing board. Both

31. *Augusta Chronicle and Sentinel*, November 19, 1876.

32. *Chicago Times*, November 20, 1876; *New York Tribune*, November 20, 1876; *Cincinnati Commercial*, November 20, 1876; *Washington National Republican*, November 20, 1876.

33. *Thomasville (Georgia) Times*, November 25, 1876; *Augusta Chronicle and Sentinel*, November 21, 1876.

34. Telegram of J. J. Kiernan to Tilden, November 23, 1876, Tilden Papers, Box 12.

35. Concord *New Hampshire Independent Statesman*, December 14, 1876.

groups of lawyers prepared for immediate appeal to the supreme court as soon as White decided. The governor had notified the out-of-town judges to assemble in Tallahassee.³⁶ While White was still considering the case, Secretary of State Samuel B. McLin announced that the board would begin the canvass on Monday, November 27.³⁷ This was a relief for White, who declared that he would no longer consider the case.

The state canvassing board was composed of three administrative officials—two Republicans and one Democrat appointed by the governor. Each had been involved in the political activities and administrative disagreements of the Reconstruction years. As strong partisans interested in a party victory, they each had political enemies, but both sides generally regarded them as men of ability and integrity. While the board members could be expected to give their own parties the benefit of the doubt, most Floridians believed that the winning party would have to present a strong case before this board.

Secretary of State McLin was chairman of the board. A Tennessee native, he had attended East Tennessee University and was later admitted to the Georgia bar. A Florida resident for about twenty-two years in 1876, McLin had supported the Constitutional Union party in 1860. Reluctantly joining the Confederate army, he was medically discharged after a brief period.³⁸ He was editing a Lake City newspaper when he was named secretary of state in 1873 by Governor Ossian B. Hart. McLin was editor of the *Tallahassee Sentinel* during Stearns' administration and was a central figure in the acrimonious newspaper debate between Stearns and his Republican enemies. He resigned from the *Sentinel* a few days before the canvassing board met since the paper's views conflicted with his new role of supposed impartial arbiter. Clayton A. Cowgill, the other Republican canvasser, had been appointed comptroller of public accounts by Governor Hart. A medical doctor from Delaware and originally a Whig, he had spent most of the war in North Carolina as a Union army surgeon. Moving to

36. *Macon Georgia Weekly Telegraph and Journal and Messenger*, December 1, 1876.

37. *New York Herald*, November 26, 28, 1876; *Augusta Chronicle and Sentinel*, November 26, 1876; *Atlanta Daily Constitution*, November 26, 1876.

38. *Tallahassee Sentinel*, November 25, 1876; Francis A. Rhodes, "Samuel B. McLin," *Florida Educators* (Tallahassee: Florida State University Studies No. 30, 1959), 52.

Florida in 1867, he began growing oranges in St. Johns County. He became active in politics and held local offices there until his appointment as comptroller in 1873.³⁹ Although a staunch Republican, Cowgill sought to arrive at impartial decisions as a board member. He considered himself a balance between the Democratic member and McLin, whom he believed even more firmly committed to the Republican cause. Subjected to extreme pressures during the count, Cowgill wavered from side to side and exasperated his more resolute fellow Republicans. The Democrats offered him a post in Drew's cabinet if he voted for them, but this likely had less effect on him than Francis Barlow's views concerning the election.⁴⁰ Cowgill admired the former New York attorney general, and, when Barlow announced that he could not support the Republican case, Cowgill was profoundly impressed. The sudden decision to convene the canvassing board on November 27 was necessitated by Cowgill's belief that the Democratic case should be heard.⁴¹

William Archer Cocke, the Democratic attorney general, was a Virginian by birth, a graduate of William and Mary, and author of several works on law and constitutional history. He had been living in Florida since 1863, and became a Democrat after the Whig party disintegrated.⁴² Republican Governor Harrison Reed appointed him, along with several other Democrats, as a circuit judge in 1868. Cocke bolted his party in 1872 in opposition to the Greeley-Brown ticket and was one of the few prominent Florida Democrats who supported Grant. Governor Hart appointed him attorney general in 1873. After Hart's death, Cocke opposed Stearns and criticized him publicly, although he refused to resign his cabinet post. Cocke's legal training and his Democratic predilections often conflicted during board proceedings; he tended to over-emphasize technical compliance with the law while dismissing more material irregularities with little examination.

39. *Tallahassee Sentinel*, November 25, 1876.

40. John Stokes Boyd to John Bigelow, November 14, 1876, reprinted in John Bigelow, *Retrospections of an Active Life*. 5 vols. (Garden City, 1913), V, 285-87.

41. *Washington National Republican*, November 22, 1876; *New York Herald*, November 22, 1876; *Atlanta Daily Constitution*, November 28, 1876.

42. *Tallahassee Sentinel*, November 25, 1876.

The board convened at noon on Monday, November 27. It had ten days to determine the election results so that the presidential electors could meet and cast their votes on December 6. Its members assumed, according to precedent, that the board's powers were quasi-judicial rather than ministerial and that it could decide the validity of returns rather than merely count the votes according to the county canvassing boards' certificates. Procedural rules were drawn up to govern the ensuing count.⁴³ Realizing the delicate situation created by the doubtful presidential election and the "visiting statesmen" in Tallahassee, the board allowed ten representatives from each party to attend the proceedings. The secretary of state's small office was crowded even more by the presence of Governor Stearns, George F. Drew, and General John M. Brannan who had replaced General Ruger as federal troop commander.

The board decided to deal with the presidential electors before considering the state offices. Secretary of State McLin would open the returns alphabetically, the board would determine immediately from their face whether they met the legal requirements, and the votes would be announced and recorded, subject to a final review. As each county return was announced, anyone wanting to contest it was required to give notice at that time. Statements were to be filed in writing as soon as possible, furnishing details and the relief demanded. The board had no authority to compel witnesses, and affidavits were to be accepted. If either side wished to present oral testimony, it would have to present a written statement naming witnesses, their places of residence, and the facts to be introduced. The board reserved discretion to accept or reject such testimony on an individual basis. All documentary evidence was to be made available to both parties. Although oral argument was not permitted, this rule was wholly disregarded during the first few sessions. Decisions were to be based on majority votes, and the board further reserved the right to alter its rules if deemed necessary to complete the count.

On Tuesday morning at ten o'clock, McLin began opening returns. At that time only returns from Dade County were still missing. All thirty-eight counties were contested

43. *Senate Report* 611, pp. 11-12.

as they were announced.⁴⁴ Samuel Pasco, Democratic chairman, protested Baker County and the nine large counties, while Malachi Martin, Republican chairman, protested the twenty-eight smaller counties. Baker was the only county whose returns surprised either party. When McLin announced Baker County's votes as eighty-nine Democratic and 130 Republican, Democrats leaped to their feet shouting protests.⁴⁵ They allowed the return to be counted as announced with notice that a protest would be forthcoming. This was probably a tactical error on their part, since they suspected that McLin held conflicting returns which should have been read at the time. When the initial count was completed the announced result was 24,337 for Hayes and 24,294 for Tilden, a Republican majority of forty-three. This news was quickly circulated throughout the country, enhancing the Republican claim to Florida's electoral votes.⁴⁶

There were three Baker County returns - none completely in accord with the election law - in McLin's office, when he announced the one favoring the Republicans. The law required the county judge, county clerk, and a justice of the peace whom they jointly selected, to sign the returns. If one of them was unable to participate because of physical disability, the sheriff could replace him. Until three days after the election there was only one justice of the peace in Baker County. One return, dated November 10 and signed by the county clerk and the justice of the peace, included all four Baker County precincts with a total of 238 Democratic and 143 Republican votes. Another return was identical to the first except that it was dated November 13. The third return was also dated November 13 and was signed by the county judge, sheriff, and another justice of the peace who had been appointed on November 10 at the judge's request. This return included only two precincts listing 130 Republican and eighty-nine Democratic votes.⁴⁷ Although the county canvassing board had no power to

44. *Ibid.*, 416-22.

45. *New York Herald*, November 29, 1876.

46. *New York Times*, November 29, 1876; *New York Tribune*, November 29, 1876.

47. House, "Testimony Taken Before the Special Committee on Investigation of the Election in Florida," 44th Cong., 2nd Sess., *House Miscellaneous Document* 35, Part 1, Serial 1762, pp. 294-96.

exclude precinct returns, the improperly constituted board had thrown out two precincts; one because its members had *heard* that one qualified voter was prevented from voting, and the other because they *heard rumors* that seven illegal votes had been cast.⁴⁸

The Democrats conferred about the Baker County case during the dinner hour. Later, in the evening session, after the returns had been announced showing the small Republican majority, Pasco asked McLin if he did not have other returns from Baker County. After a hostile exchange of words and dilatory comments from Senator Chandler, McLin admitted that there were two other Baker County returns, and he read them. A long argument ensued between the party managers, but the Republicans finally withdrew their arguments and the county was counted Democratic. While this changed the vote on the initial count to a Democratic majority of ninety-four, it came after the Republican version had been widely publicized in the national press.⁴⁹ This Republican tactical victory had been achieved with aid from Republican state officials. Governor Stearns had appointed the new Baker County justice of the peace who was willing to sign the fraudulent return, and McLin had suppressed the two Democratic returns until after he was forced to announce them.

The Wednesday and Thursday, November 29-30, sessions were spent arguing Alachua County's case. It was a large, predominantly Negro county with a strong Republican organization headed by white men. The returns from Archer ballot-box number two showed 399 Republican and 136 Democratic votes.⁵⁰ The Democrats charged that in Gainesville on the day after the election their political opponents had added 219 votes to their total and a like number of names to the registration list.⁵¹ Democrat Samuel T. Fleming

48. *Ibid.*; House, Select Committee, "Recent Election in the State of Florida," 44th Cong., 2nd Sess., *House Report* 143, Part 1, Serial 1769, pp. 3-5.

49. Telegram of Manton Marble to W. T. Pelton, November 28, 1876, Tilden Papers, Box 13; Washington *National Republican*, November 29, 1876; Rome (Georgia) *Courier*, December 6, 1876.

50. *Senate Report* 611, Documentary Evidence, 10.

51. House, Select Committee on Alleged Frauds, "Testimony Taken in the Presidential Election of 1876," 45th Cong., 3rd Sess., *House Miscellaneous Document* 31, Part 1, Serial 1864, pp. 492-95. Cited hereafter as *House Miscellaneous Document* 31.

testified that according to a tally that he had kept, 305 persons entered the Archer polling place in addition to about fifteen persons already inside who also voted.⁵² Several other witnesses testified that poll inspectors had announced, after the polls closed, that 180 Republicans and 136 Democrats had voted.⁵³ The ballot box was left unsealed overnight in the custody of Republican Judge W. K. Cessna who refused to take any precautions to protect it. He carried the box to L. G. Dennis's home in Gainesville where it was discovered that the poll lists had disappeared and only 277 ballots were inside.⁵⁴ Justice of the Peace W. H. Belton, who acted as a county canvasser, refused to accept the Archer return at first, but he was later induced to sign the county return which included it.⁵⁵

Republicans answered the testimony with 317 affidavits from persons claiming to have voted at Archer precinct. Green R. Moore and Floyd Dukes, two Archer poll inspectors, signed affidavits declaring the correct return to be 180 Republican and 136 Democratic votes, but later they signed affidavits asserting that their first affidavits were erroneous. In oral testimony before the board, Moore swore that he had been paid \$100 to sign the second affidavit by a Republican acting on orders from Dennis, Alachua County Republican leader. Dukes said he had signed the second affidavit for \$25.00.⁵⁶ Belton had also signed contradictory affidavits for both parties.⁵⁷ Edward F. Noyes, who was arguing the Republican case before the state canvassing board, asked Dennis to take the stand on Archer precinct. Dennis, however, asked not to be called unless Noyes was prepared to lose his case.⁵⁸ The majority of the board,

52. *Senate Report* 611, pp. 64-65, 85-426, *passim*.

53. *Ibid.*, 427-28.

54. House, "Digest of all the Contested Election Cases in the House of Representatives of the United States from the First to the Fifty-sixth Congress, 1789-1901," 56th Cong., 2nd Sess., *House Document* 510, Serial 4172, p. 326.

55. Tallahassee *Weekly Floridian*, November 14, 21, 1876.

56. *Senate Report* 611, pp. 431-37; Rome (Georgia) *Courier*, December 6, 1876; *Atlanta Daily Constitution*, December 1, 1876; *New York Herald*, November 29, 1876; telegram of Marble to Pelton, November 30, 1876, Tilden Papers, Box 13.

57. *New York Tribune*, November 30, 1876; *Washington Daily Telegram*, December 1, 1876.

58. E. L. Godkin, "Election Frauds in Florida," *Nation*, XXVI (May 1878), 286.

with Judge Cocke dissenting, decided there was insufficient proof to warrant rejecting this return. Alachua County's votes were counted according to the original returns, except for thirteen Democratic and four Republican votes from Waldo where out-of-state train passengers had voted.

On Friday, December 1, everyone realized that the existing method of deciding the contested counties would require more time than the time remaining before the December 6 deadline. The board altered its rules in order to meet this emergency. The rule prohibiting oral argument was to be applied strictly and both parties were to have all their papers filed by December 2. On that day the board heard the remaining charges and accepted the last written information from the contestants. Each party was given one hour on Monday to deliver a final oral argument. The Dade County return arrived on Saturday, and there was general laughter when McLin read off its nine Republican and five Democratic votes. On Monday, December 4, the testimony was finished and final arguments by Republican Noyes and Democrat Biddle were heard.⁵⁹ Biddle pointed out returns which he felt should be excluded, if indeed the board insisted on throwing out votes. If his recommendations were followed, Tilden would have a majority of about 1,700. In the same speech, however, although the Democrats had originally insisted on presenting evidence to justify excluding certain returns, Biddle asked that the board simply count the returns as received from the counties without any alterations, giving Tilden a 129 majority.⁶⁰

During the time the board was considering the case, both sides were accused of attempting to bribe a board member. No agreement was ever reached, but subsequent evidence indicated that prominent Democrats did try to make an arrangement with McLin. The attempt failed because the board completed its count before the Democratic negotiators in Florida could complete arrangements with their New York collaborators. Manton Marble exchanged telegrams with William T. Pelton, Tilden's nephew and one of his campaign managers, concerning a proposition to secure a

59. Tallahassee *Weekly Floridian*, December 5, 1876.

60. *New York Tribune*, December 2, 1876.

favorable decision for \$200,000.⁶¹ About the same time C. W. Woolley, another northern Democrat in Florida, wired that he could obtain a favorable vote for \$50,000. While details were being worked out, the New York collaborators heard that Florida had gone for Tilden without a bribe, and they cancelled the transaction. Then before negotiations could be resumed, it was too late; the board had decided for Hayes. Pelton subsequently admitted his part in the affair, but Marble denied any knowledge of it, saying only that it had been common knowledge in 1876 that McLin's vote was for sale.⁶²

As the board went into secret session, Tallahassee was charged with excitement and uncertainty. No one was sure what the board would do, and there were conflicting opinions among members of both parties about their courses of action. Chandler and some of his northern colleagues, concerned primarily with the national ticket, thought that enough returns could be thrown out on legitimate grounds to obtain a Republican majority. To go beyond that and count in the Republican state ticket, which ran nearly 400 votes behind the national ticket, would require such doubtful procedure that the courts might intervene and overturn the entire Republican case. Some Democrats expected the Republicans to allow a Democratic state victory as a concession for Republican presidential electors. Others, realizing the interdependence of the state and national elections for the Republican party, believed that Stearns would be counted in if Hayes received a majority.⁶³

When Governor Stearns was informed by Chandler that he could not be elected along with the presidential electors, he insisted that a Democratic state victory would destroy

61. *New York Times*, October 12, 1878.

62. Manton Marble, *A Secret Chapter of Political History* (pamphlet reprinted from *New York Sun*, August 3, 1878), 3-4; C. A. Cowgill to Chandler, February 11, 1879, Chandler Papers. Marble's papers are in the Library of Congress but appear to have been carefully sifted for any information on his Florida activities. See Mary Cortona Phelan, *Manton Marble of the New York World* (Washington, 1957), 93.

63. Gibson to Tilden, November 28, 1876, Tilden Papers, Box 13; Noble A. Hull to Edward M. L'Engle, November 8, 1876, L'Engle Papers Southern Historical Collection, University of North Carolina, Chapel Hill.

the Florida Republican party and that that would be poor recompense for having delivered Florida's electoral votes to Hayes. There was a clear implication that the canvassing board members and other important Florida Republicans might lose interest in a Hayes victory in which they did not share.⁶⁴ In trying to throw out enough votes to elect the Republican state ticket, the Republican majority on the canvassing board acted so unfairly that they opened the door for court action against their decision.

Francis Barlow's behavior was becoming increasingly embarrassing and troublesome for the Republicans. He was excluded from inner party circles after his refusal to defend the Alachua case, but his fellow Republicans were further dismayed to see him discussing his views with Democrats in the public rooms of the City Hotel. A visiting statesman from Ohio, A. M. Ampt, complained that the Democrats were quoting Barlow and declaring "the leading Republican lawyer in Florida" had abandoned the case. Ampt could not understand Barlow's role of impartial observer. "Think of a lawyer confessing he had no case in the presence of the jury," Ampt wrote. "If he was true to his client, he would be . . . inclined to regret it . . . , but not to admit it if the jury should be likely to hear. . . ." ⁶⁵

Barlow's remarks damaged the Republican case when the public read them, but of more immediate importance was their effect on one of the Republican board members. Cowgill had been undecided all along and he was impressed by Barlow's statements. After a discussion with Henry Grady and Manton Marble, in which Barlow was reminded of the president's admonitions about an impartial count, he discussed the case with Cowgill.⁶⁶ When Barlow admitted he had tried unsuccessfully to find a Republican majority in Alachua County, Cowgill decided that he could not conscientiously bring himself to vote for the Hayes electors. Governor Stearns, who had joined the conversation, was aghast when Barlow explained his views, and he quickly hurried Cowgill

64. *Chicago Times*, November 28, December 7, 1876; *Washington Sentinel*, January 13, 1877, quoting *Jacksonville Florida Union*.

65. A. M. Ampt to Hayes, December 22, 1876, Hayes Papers.

66. *Ibid.*

away. The two never met again, but Cowgill subsequently wrote Barlow a lengthy explanation of his ultimate decision for Hayes.⁶⁷

The canvassing board limited its jurisdiction and narrowed the scope of its investigation by refusing to entertain questions involving intimidation of voters. This decision resulted from Republican protests of the Nassau County returns, where it was charged Democratic officials of the Florida Railroad Company had issued numbered ballots to employees who were threatened with dismissal if the ballots were not cast. The decision was practical because any other course would have opened the door to endless controversy based on inconclusive evidence, but it caused the board's decisions to depend on procedural irregularities while physical and economic intimidation was not examined.

Even without discussing questions of intimidation, it would have been impossible for the three canvassing board officials to examine the mass of *ex parte* affidavits in the one remaining day. They selected the counties whose returns they would scrutinize. Every county had been contested, but twenty-six were canvassed according to the face of the returns without question. Five others were quickly dispensed with after minor alterations. Five Democratic votes were deleted from the Hernando County returns because they were cast by non-residents. Orange County's return was accepted except for seven illegal Democratic votes. Republican charges of irregularity in Levy County were not sustained, and its returns were counted as received. The Clay County canvassing board had thrown out a precinct because there was no written record that the inspectors had been sworn. Clay was the only county except Baker whose board excluded precinct returns. The state board restored twenty-nine Democratic and six Republican votes because the defect was immaterial.⁶⁸

Leon County was counted as received except for two Republican ballots which were deleted. At Richardson Schoolhouse precinct, seventy-three miniature Republican ballots were counted by Republican inspectors, and the poll lists were tampered with after the poll was closed. Testimony before the congressional investigat-

67. *New York Times*, December 15, 1876.

68. *Senate Report* 611, pp. 17, 20.

ing committees later indicated that Joseph Bowes, a poll inspector, had placed the small ballots in the box and had added to the poll lists names of persons who had voted at other precincts in the county.⁶⁹ The board minutes show a unanimous decision on Leon County, but Judge Cocke later protested that he had voted to throw out precinct number thirteen.⁷⁰ Cowgill swore that he and McLin had not examined the Leon County case but had accepted the returns after Cocke remarked that the Democrats had not established a worthwhile case.⁷¹

The six remaining counties, in addition to Baker and Alachua, were the most seriously disputed and received the closest examination. Jefferson County, with about three Negroes for each white voter, returned 2,660 Republican and 737 Democratic votes. Democrats claimed there were more votes than registered voters, that juveniles had voted, and that members of the county canvassing board served as precinct inspectors. Both sides offered voluminous testimony in the form of affidavits. The Republicans said Jefferson County precinct returns were larger than the total registration because the various lists were erroneous. The 1875 state census takers, they claimed, had failed to count hundreds of Negroes who had long been residents of Jefferson County.⁷² They further maintained that the election law did not specifically prohibit canvassing board members from serving as poll inspectors. Agreeing that some juveniles had voted in the county, Republicans denied the extent of this irregularity. They produced several elderly Negro witnesses who claimed to be among the "juveniles" accused of voting the Republican ticket. The Republican majority of the board, with Judge Cocke dissenting, deleted one Democratic and sixty Republican votes cast by juveniles and accepted the remainder of the county's return.⁷³

The Democrats contested Duval County because the return was not signed by the county judge. The judge, a Democrat, thought his party had been deprived of several votes by the precinct inspectors. He and the county clerk disagreed in choosing a justice of the peace as the third board member. The clerk finally counted with a justice of the peace whom he chose, but

69. *Ibid.*, Documentary Evidence, 385-94.

70. *Ibid.*, 29-30.

71. Cowgill to F. C. Barlow, *New York Times*, December 15, 1876.

72. *Senate Report* 611, pp. 460-61.

73. *Ibid.*, 2.

the judge refused to sign their certificate and forwarded one of his own. The state board canvassed Duval County by comparing the precinct returns with the defective county certificate, and rejected the Democratic claims.⁷⁴ This case was similar to Baker County which was decided for the Democrats by the same pro-Manatee case and all of them had advised that the county's decision.

The Republicans contested Manatee County whose population of about 2,660 whites and 100 Negroes returned 262 Democratic and twenty-six Republican votes. They complained that the county had been without a county clerk, there had been no revision of the registration lists as required by law, no designation of polling places, and no proper notice of the election. The Democrats answered that the absence of a county clerk was part of a plan worked out with Governor Stearns' knowledge to prevent a predominantly Democratic county from having its votes counted. Senator Chandler, contending the election procedure had been so irregular that many citizens had not bothered to vote, cited legal precedents which held that any variation from lawful procedure was sufficient to exclude a county return. Chandler had a strong argument when he reminded the board that armed Democrats had forcefully prevented Republican investigators from going into Manatee County without written approval from the Democratic executive committee.⁷⁶ The two Republicans, with Cocke again opposing, threw out the entire Manatee return. Cowgill said he had consulted with many lawyers before voting on the Manatee case and all of them had advised that the county's election was invalid.

Hamilton County, with a white population outnumbering Negroes about three to two, returned 617 Democratic and 330 Republican votes. The return indicated that about fifty Negroes must have voted the Democratic ticket. This apparently abnormal Negro defection from the Republican party may have resulted from persistent opposition to Governor Stearns from the African Methodist Episcopal Church in Hamilton County. The Republicans attacked two Hamilton County precincts because of irregular procedures. The form used by the White Springs precinct inspectors was faulty, with no place for recording presidential elector's

74. *New York Tribune*, November 29, 1876; *Savannah Morning News*, November 23, 1876.

75. *New York Tribune*, December 8, 1876.

votes. The precinct inspectors did not notice the discrepancy and omitted the votes for electors from the face of the precinct return. The county canvassing board discovered the omission and included the White Springs electoral votes in the county return. The state board rejected eighty-three Democratic and fifty-eight Republican votes from White Springs because the county board had had no records on which to base their count.⁷⁶ Jasper precinct, which returned 323 Democratic and 185 Republican votes, was also excluded from Hamilton County's return. The inspectors, two of whom were Republicans, had allowed various unauthorized persons to assist in the count, had adjourned overnight without completing the returns, had moved the ballot box to a nearby store, and had signed a return the next day which was completed by persons other than the inspectors. The two Republican inspectors had frequently been absent from the poll during the balloting.⁷⁷ The state board threw out both Hamilton County precincts by unanimous vote. Cocke commented at length on the absolute necessity for inspectors to obey the election law. Later though he changed his opinion and protested the board decision on the Jasper precinct, arguing that the Republican inspectors had intentionally disobeyed the law to invalidate the election at their polling place.⁷⁸

The Republicans also attacked irregularities at two Jackson County precincts. Campbellton precinct, with 291 Democratic and seventy-seven Republican votes, was held to be irregular because the ballot box had been placed in a locked store, out of sight and unsealed, during the noon hour. The parties had agreed to vote at alternate hours. By noon all the Democrats had voted and the rule was not observed in the afternoon. When the ballots were counted, there were no Republican ballots in the bottom of the box where the morning's alternate voting should have placed them. Both sides furnished large amounts of *ex parte* evidence, and the Republicans presented more affidavits from individuals claiming to have voted at Campbellton precinct than there were ballots in the box. Friendship Church precinct, with 145 Democratic and forty-four Republican votes, was challenged because the ballot box had been placed in a window above the

76. *Senate Report* 611, p. 5.

77. *Congressional Record*, 50th Cong., 1st Sess.; XIX, Part 9, 8290.

78. Cowgill to Barlow, *New York Times*, December 15, 1876; Tallahassee *Weekly Floridian*, December 16, 1876.

voters' heads during the day and the inspectors had taken the box to a residence two miles away before counting the votes.⁷⁹ Both precincts were excluded from the Jackson County return. Cocke dissented from the decision, but Cowgill justified his vote on Jackson County by citing Cocke's previous remarks in the Hamilton County case about strict compliance with the election law.

The Jackson County case was identical to Archer precinct in Alachua except the parties' positions were reversed. If the rules had been equally applied in Jackson and Alachua, both counties would have been counted or both rejected. Barlow thought they should have been handled the same way and stressed this point in his conversations with Cowgill when the latter was wavering between the two sides.⁸⁰ Cowgill, however, ultimately joined McLin to decide both cases for their party's benefit.

Late Tuesday night, December 5, the board reached the last contested return, Monroe County. The Republicans challenged Key West precinct number three with 401 Democratic and fifty-nine Republican votes. The inspectors had allegedly adjourned before completing the count and met in a different place the next day to sign the returns and announce the results. Some witnesses testified that the results, announced shortly after the polls closed, differed from those recorded the following day, while others said they were identical. According to a third version, no announcement at all had been made on election night. The board voted unanimously to exclude the precinct from the count, following Cocke's strict compliance views.⁸¹ Cocke then left the room while the clerk was tabulating the results. After discussing the board action outside the office, he returned and announced his desire to dissent from the Monroe County decision. His change of mind, however, was not recorded in the minutes of the board meeting. On the following day, after most of the northern visitors had departed Tallahassee, Cowgill also decided to change his Monroe County vote. Governor Stearns' secretary wrote that Cowgill was "frigid with a fit of conscience or Barlow" after the electoral decision was announced, and that he

79. *Senate Report* 611, p. 7; *Congressional Record*, 44th Cong., 2nd Sess., V, Part 2, 1538.

80. *New York Times*, December 15, 1876.

81. Cowgill to Barlow, *New York Times*, December 15, 1876; *Senate Report* 611, pp. 6, 41.

was "threatening to go before the world and make a fool of himself."⁸² A postscript was appended, saying that Cowgill was once more "under contract."

While the board was in secret session on Tuesday night, excitement mounted in the streets of Tallahassee. A crowd began gathering shortly after dark and a small detachment of federal troops moved onto the capital grounds and camped for the night. People were still waiting outside when, after one o'clock, word came from the secretary of state's office that Hayes had received a majority of about 924 votes. Excitement increased when reporters and harried politicians discovered that the telegraph wires had been cut between Tallahassee and Monticello and the news could not be transmitted to the anxious northern newspapers and presidential candidates. Several immediately set out for Monticello by carriage and dispatched messages from there. By the next afternoon the news had spread that Florida's electoral votes had been cast for Hayes.⁸³ There was no violence that night, but Cocke was so angry that he caned McLin when the two met on the street a few days later.⁸⁴

On Wednesday, December 6, the board issued certificates of election giving Hayes a majority of about 924. The total vote was 23,843 for the lowest Hayes elector and 22,919 for the highest Tilden elector.⁸⁵ The original count from the face of the county returns had given the Hayes electors 24,337 to 24,294 for Tilden. This forty-three majority was achieved by counting the Republican version of the Baker County returns. The Democratic version which was later accepted and counted would have given Tilden an initial majority of ninety-four. The Republicans on the canvassing board threw out more than 1,800 Democratic and Republican votes to arrive at the 924 Republican majority.

On that same day, the Republican electors met and cast their votes for Rutherford B. Hayes and William A. Wheeler.

82. F. B. Sherwin to Chandler, December 8, 1876, Chandler Papers.

83. Chandler to editor, *New York Tribune*, December 8, 1876; *New York Herald*, December 9, 1876; *Chicago Times*, December 7, 1876; Marble to editor, *New York World*, January 17, 1878.

84. Macon *Georgia Telegraph and Journal and Messenger*, December 26, 1876.

85. Election returns, 1862-1887, files of Florida secretary of state, Tallahassee.

While they were assembled, attorneys for Tilden and Hendricks applied to the circuit court for a writ of *quo warranto* requiring the Hayes electors to show cause why they were not usurpers.⁸⁶ The Republican sheriff served the writ with a knowing smile and the electors received it with laughter.⁸⁷ There was ample precedent for judicial intervention in Florida elections, but the electors had the federal courts behind them even if the Florida supreme court accepted a case against the state canvassing board. The electors completed their certificate and dispatched it to the president of the United States Senate. Attorney General Cocke issued certificates of election to the Democratic electors who met on the same day, cast their votes for Samuel J. Tilden and Thomas A. Hendricks, and sent their certificates to Washington.⁸⁸

These duplicate returns, together with duplicate returns from Louisiana and South Carolina, created a stalemate in Congress. While congressional leaders were trying to reach an acceptable compromise, the Florida canvassing board began counting votes for state offices. The court battle which was fought in Florida over the state elections was closely watched by national politicians who realized that the court's decision would reflect on the Florida presidential election.

The Republican canvassing board members were severely criticized after the election and their reputations suffered permanent injury. When they decided to examine the county elections and decide on the validity of returns, it was inevitable that their decision would be disputed by the loser. They had been asked to make judicial decisions based on evidence which was at best inconclusive. In fairness to the board members, it should be recognized that much information concerning the election which later became public was not available on December 5, 1876. Both houses of Congress sent investigating committees which compiled volumes of testimony. In 1878 the Potter Committee secured more of this information, including confessions from prominent figures in the Florida case. The "visiting statesmen" not only acted as legal counsel for their respective parties, but also exerted tremendous partisan pressure on the board mem-

86. Tallahassee *Weekly Floridian*, January 23, 1877.

87. Jacksonville *Weekly Florida Florida Union*, December 16, 1876.

88. Tallahassee *Weekly Floridian*, December 12, 1876; telegram of Pasco to Tilden, December 7, 1876, Tilden Papers.

bers. The board members' freedom of action was curtailed by the presence of these Northerners. The entire affair occurred at a time and place where political ethics were lax and perjury and bribery so common that it was impossible to determine which evidence was reliable.

Admitting the difficulty of their positions, the canvassing board members still acted in a questionable manner. They had discretion to choose the method to test the validity of returns, but they were obligated to apply it equally in all cases. If the burden of proof had rested with the side attacking the returns, it would have been proper to count the returns from Manatee, the two Jackson County precincts, the two Hamilton County precincts, the Key West precinct, in addition to Archer precinct in Alachua. This procedure would have given the Tilden electors a little more than 100 votes majority. If the burden of proof had rested with the defenders of the returns, it would have been necessary to reject the returns of Archer precinct in Alachua, Campbellton and Friendship Church in Jackson, White Springs and Jasper in Hamilton, Key West precinct number three in Monroe, all of Manatee, all of Jefferson, and Richardson's Schoolhouse in Leon. This would have resulted in a Tilden majority of more than 1,000 votes. The Republican majority of the state canvassing board arbitrarily changed enough returns to show a victory for the Republican state ticket as well as the Hayes electors.

Cowgill had been uncertain throughout the electoral count and continued to threaten the Republican case with his indecision until Hayes was inaugurated. McLin told the Potter Committee in 1878 that he had given the Republican Party every benefit of the doubt.⁸⁹ He saw his duty as partially political and partially judicial, with the political predominating. He had no idea of acting as an impartial judge and had been influenced by his own partisan feelings and promises of rewards from the "visiting statesmen." McLin's belated "confession" was not much more reliable than his judicial decisions because he was then angry at having been denied a suitable federal appointment by the Hayes administration. Attorney General Cocke's actions were no more commendable than those of his Republican counter-

89. *House Miscellaneous Document* 31, pp. 98-100; Godkin, "Election Frauds in Florida," 286.

parts. He was careful and conscientious in the beginning, but his partisanship increasingly influenced his decisions as he saw the Democratic majority steadily dwindling. He may have changed his methods because the Republicans were only using his strict compliance doctrine when it benefited their party, but he changed his mind on the Monroe County precinct after conferring outside the chamber with the Democratic managers. He finally endorsed the opinion that the board was a ministerial agency without power to exclude returns, when he had clearly held the opposite view in 1874 and as late as November 1876.⁹⁰

With the county returns showing a majority of less than 100 votes for either party, it was to be expected that reasonable men might disagree on the final result. It could also be anticipated that the loser would seek redress in the courts, but it is doubtful that the supreme court would have entertained such a case had the canvassing board acted more judiciously. Senator Chandler was probably right when he argued that the board could have legitimately excluded enough votes to achieve a victory for the Hayes electors but not for the trailing state ticket. The presidential election was so close that there was little the Democrats could have done about such a decision. For example, Waldo and Archer precincts in Alachua and Campbellton and Friendship Church precincts in Jackson could have been thrown out for identical reasons and the Republicans would have had a small majority for their presidential electors. But the Republican dilemma was that the political life of the state officials who were responsible for Hayes' victory depended upon a state victory as well. Since the state ticket had run well behind the presidential electors, a bare majority for Stearns and Montgomery necessitated an overall Republican victory of several hundred votes. When the Republicans tried to throw out enough votes to accomplish this, they applied methods which were so unacceptable as to jeopardize the entire Republican case.

During the weeks following the canvassing board decision, a series of judicial actions awarded the state elections to the Democrats and George F. Drew was inaugurated as governor on January 2, 1877. National Republican observers kept a close watch on these judicial proceedings for any adverse effect they

90. Coker to Pasco, November 18, 1876, Special Collections, Florida State University.

might have on the presidential election, but the electoral commission accepted the canvassing board's decision and counted Florida for Hayes and Wheeler. Although the presidential vote was too close for certainty, the record of the Republican-dominated state canvassing board supports the long-standing Democratic claim that Tilden was unfairly deprived of his victory in Florida and of the presidency.