

The Florida Case before the Electoral Commission

(February 1877)

The United States faced a major electoral challenge with the disputed Hayes-Tilden election of 1876. Democratic candidate Samuel J. Tilden won the popular vote for president on November 7 by a 250,000-vote margin. Preliminary Electoral College tallies predicted that Tilden would defeat Rutherford B. Hayes, his Republican opponent. However, the ballots of four states—Florida, Louisiana, South Carolina, and Oregon—were called into question. Each of these states subsequently posted two sets of certified election results, one favoring the Democrats and the other favoring the Republicans. A total of 20 electoral votes were in dispute. Of these votes, Tilden needed only one to become president; Hayes would have to successfully claim all 20 of them to defeat his opponent. With the country still reeling from the Civil War and the election cutting to the heart of continuing sectional conflict, a peaceful resolution was crucial.

An impasse continued well into January 1877, with neither side willing to concede the election. The responsibility for resolving the conflict rested with Congress. But while the U.S. Constitution gives Congress certain election responsibilities—namely, that both the Senate and the House of Representatives must be present as the electoral certificates submitted by each state are counted—it gives no guidance as to what Congress should do if the validity of these certificates is disputed. Finally, on January 29, 1877, Congress created a special electoral commission to review the four states' ballots and to determine the final outcome of the election. The commission was composed of 15 members drawn evenly from both parties among the Senate, the House of Representatives, and the Supreme Court of the United States, together with a single independent justice to ensure partisan balance. David Davis, the independent justice first chosen, declined to serve, and he was replaced by Joseph P. Bradley, a justice appointed to the bench as a Republican but who was acceptable to the Democrats.

During the summers of 1877 and 1878, well-known portrait painter Cornelia Adèle Fassett was permitted to set up a temporary studio in the U.S. Capitol's Supreme Court Chamber while the Court was not in session. Her aim was to paint a group portrait of the Electoral Commission's 1877 meeting in the room. The artist's recognition of the historic significance of this event merits praise. She deserves attention more for her ambition, however, than for her artistic achievement. The federal government did not commission the painting; Fassett created it independently. That she had to wait seven years before Congress agreed to buy it for \$7,500 (much less than her original asking price), and endure public criticism of the painting from newspapers, as well as from the Pennsylvania Academy of the Fine Arts, attests to her determination and endurance. Fassett was a competent painter of miniature portraits and her painting was admired for its realism. But the organizational demands

of such an ambitious group portrait taxed her abilities. Compositionally, *The Florida Case before the Electoral Commission* appears rather stilted.

Fassett's painting has one significant precedent in American art: Samuel F.B. Morse's *The Old House of Representatives*, completed in 1822. That much larger painting shows a similar space, the House Chamber, from the same viewpoint as later selected by Fassett: the left side of the room and slightly above the head level of those on the main floor. This allowed a clear view of many faces. Fassett certainly knew



C. Adèle Fassett's self-portrait was based on a Mathew Brady photograph of the artist.
(Architect of the Capitol)

Morse's painting, because it had recently (1874) been displayed at the Corcoran Gallery of Art in Washington, D.C.

The Morse painting is the masterwork of an excellently trained artist, deft at handling complicated perspective constructions and large groups of figures. Where Morse's figures form subgroups around a central focus, Fassett crowds most of her figures into receding rows. Even the face

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Cornelia Adèle Strong Fassett (1831–1898)

Oil on canvas, 1879

60 x 75 inches (152.4 x 190.5 cm)

Signed and dated (lower right corner): C. Adèle Fassett / 1879

Purchased by the Joint Committee on the Library, 1886

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meant to attract our attention, William M. Evarts, counsel for Hayes, is nearly lost standing amid a sea of faces.

In fairness, Fassett includes nearly three times as many figures as Morse into a much smaller architectural space, and does so on a much smaller canvas. But Fassett includes virtually every person who was relevant to the political crisis, as well as other prominent figures in the capital city. James G. Blaine, for instance, who had unexpectedly lost

The Electoral Commission held its first public hearing on February 1, 1877, and deliberations continued for nine days. Legislators, cabinet members, the press, and prominent men and women of Washington society crowded into the Capitol's Old Senate Chamber (then serving as the Supreme Court's regular meeting place). The long and bitter debate began with the Florida case. Although Tilden had almost certainly won in the electoral balloting, Republicans prevailed and the commission's vote went to Hayes. Subsequent voting also followed party lines, with Bradley, the "independent" justice, joining the Republicans. By the findings of the commission, Rutherford B. Hayes received all of the disputed votes, and thus the required one-vote margin over Tilden. Though Democrats at first protested, they ultimately accepted the decision on the promise that federal troops would be removed from the South and Reconstruction brought to an end. Congress declared Hayes the victor on March 2, just two days before his term began.



***The Old House of Representatives*, painted by Samuel F.B. Morse in 1822, was the artistic precedent for Adèle Fassett's *Electoral Commission*.**

(Corcoran Gallery of Art, Museum Purchase, Gallery Fund)

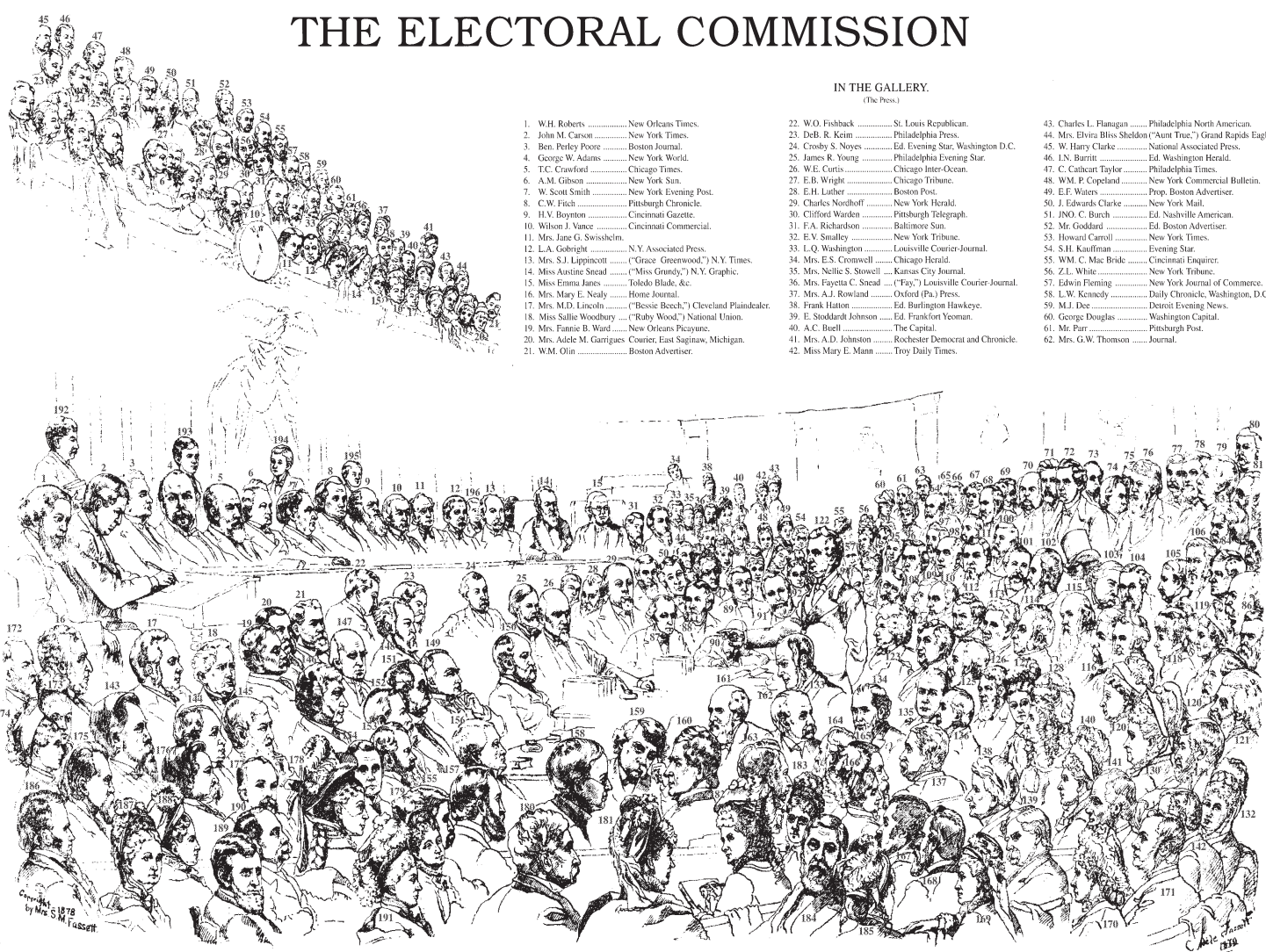
the Republican nomination to Hayes, appears at the lower foreground of the picture (below the standing Evarts), his handsome face turned to the viewer. Also present is the banker and art collector William Wilson Corcoran, seen in the row just below the commissioners, fourth from the left. Fassett took some artistic license—not all of the individuals depicted attended the hearings. Some of the faces were based on existing photographic portraits by Mathew Brady. Several relevant Brady photographs survive, including one of Fassett herself.

Among the 256 persons in Fassett's painting, more than 60 are women. Some are wives or daughters of political figures; others are professionals. Fassett included 17 female journalists in the press gallery and at least one painter in addition to herself on the main floor, Imogene Robinson Morrell. Morrell, prominently placed directly behind Evarts, had studied in Paris with Thomas Couture, had recently exhibited at the Philadelphia Centennial Exposition, and had settled in Washington, D.C. Morrell's portrait of John Adams Dix (p. 100) hangs in the Senate. Fassett, in front (right of center), holds her sketchbook, in which she has drawn Evarts's head.

One of the most prominent professional women in Washington, D.C., at the time was the writer Mary Clemmer Ames. Her just-published *Ten Years in Washington: Life and Scenes in the National Capital, as a Woman Sees Them* vigorously advocated for woman suffrage and equality. Ames sits in the lower right corner of the painting, looking at the viewer, immediately below the great Frederick Douglass, champion of African American equality. Fassett clearly introduced her own concerns into this document, enlarging its record as a turning point in American political life.

Adèle Fassett was born in upstate New York. She experimented with miniature painting and studied art in Paris. After an early career in Chicago, Fassett moved to Washington, D.C., in 1875, where she painted successful documentary portraits of notable government figures. Her 1876 group portrait of the Supreme Court justices was exhibited at the Philadelphia Centennial Exposition. It is now in the collection of the Supreme Court of the United States, along with her portrait of Chief Justice Morrison R. Waite.

Key to Mrs. Fassett's Picture THE ELECTORAL COMMISSION



IN THE GALLERY.
(The Press.)

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|--|---|---|
| 1. W.H. Roberts New Orleans Times. | 22. W.O. Fishback St. Louis Republican. | 43. Charles L. Flanagan Philadelphia North American. |
| 2. John M. Carson New York Times. | 23. DeB. R. Keim Philadelphia Press. | 44. Mrs. Elvira Bliss Sheldon ("Aunt True") Grand Rapids Eagle. |
| 3. Ben. Perley Poore Boston Journal. | 24. Crosby S. Noyes Ed. Evening Star, Washington D.C. | 45. W. Hary Clarke National Associated Press. |
| 4. George W. Adams New York World. | 25. James R. Young Philadelphia Evening Star. | 46. I.N. Burritt Ed. Washington Herald. |
| 5. T.C. Crawford Chicago Times. | 26. W.E. Curtis Chicago Inter-Ocean. | 47. C. Calhoun Taylor Philadelphia Times. |
| 6. A.M. Gibson New York Sun. | 27. E.B. Wright Chicago Tribune. | 48. W.M. P. Copeland New York Commercial Bulletin. |
| 7. W. Scott Smith New York Evening Post. | 28. E.H. Luther Boston Post. | 49. E.F. Waters Prop. Boston Advertiser. |
| 8. C.W. Fitch Pittsburgh Chronicle. | 29. Charles Nordhoff New York Herald. | 50. J. Edwards Clarke New York Mail. |
| 9. H.V. Boynton Cincinnati Gazette. | 30. Clifford Warden Pittsburgh Telegraph. | 51. JNO. C. Burch Ed. Nashville American. |
| 10. Wilson J. Vance Cincinnati Commercial. | 31. F.A. Richardson Baltimore Sun. | 52. M. Goddard Ed. Boston Advertiser. |
| 11. Mrs. Jane G. Swishshin. | 32. E.V. Smalley New York Tribune. | 53. Howard Carroll New York Times. |
| 12. L.A. Gobbright N.Y. Associated Press. | 33. L.O. Washington Louisville Courier-Journal. | 54. S.H. Kaufman Evening Star. |
| 13. Mrs. S.J. Lippincott ("Grace Greenwood") N.Y. Times. | 34. Mrs. E.S. Cromwell Chicago Herald. | 55. W.M. C. Mac Brink Cincinnati Enquirer. |
| 14. Miss Austine Sneed ("Miss Grundy") N.Y. Graphic. | 35. Mrs. Nellie S. Stowell Kansas City Journal. | 56. Z.L. White New York Tribune. |
| 15. Miss Emma Jones Toledo Blade, &c. | 36. Mrs. Fayetta C. Sneed ("Fay") Louisville Courier-Journal. | 57. Edwin Fleming New York Journal of Commerce. |
| 16. Mrs. Mary E. Nealy Home Journal. | 37. Mrs. A.J. Rowland Oxford (Pa.) Press. | 58. L.W. Kennedy Daily Chronicle, Washington, D.C. |
| 17. Mrs. M.D. Lincoln ("Bessie Beach") Cleveland Plaindealer. | 38. Frank Hutton Ed. Burlington Hawkeye. | 59. M.J. Dee Detroit Evening News. |
| 18. Miss Sallie Woodbury ("Ruby Wood") National Union. | 39. E. Shoddard Johnson Ed. Frankfort Freeman. | 60. George Douglas Washington Capital. |
| 19. Mrs. Fannie B. Ward New Orleans Picayune. | 40. A.C. Buell The Capital. | 61. M. Parr Pittsburgh Post. |
| 20. Mrs. Adele M. Garrigue New Orleans East Saginaw, Michigan. | 41. Mrs. A.D. Johnston Rochester Democrat and Chronicle. | 62. Mrs. G.W. Thomson Journal. |
| 21. W.M. Olin Boston Advertiser. | 42. Miss Mary E. Mann Troy Daily Times. | |

THE COMMISSIONERS.

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|---|--|--|---|
| 17. William Wisdom Senator, Minnesota. | 62. Mrs. Catherine Haderbergh. | 107. William E. Chandler Counsel for Hayes. | 152. William C. Whitney Counsel for Tilden. |
| 18. W.W. Crook Senator, Kansas. | 63. John H. Flagg Legislative Clerk, U.S. Senate. | 108. James P. Root Counsel for Hayes. | 153. Thomas W. Ferry Vice President United States. |
| 19. John J. Ingalls Senator, Kansas. | 64. John Hitz Consul General of Switzerland. | 109. James N. Fryer Postmaster General. | 154. James H. Bront Member of Congress, Georgia. |
| 20. J.C.S. Blackburn Member of Congress, Kentucky. | 65. Charles Page Bryan. | 110. William Lawrence M.C., Ohio counsel for Hayes. | 155. J.D. Cameron Senator, Pennsylvania. |
| 21. John H. Reagan Member of Congress, Texas. | 66. George M. Adams Clerk, House of Representatives. | 111. D.T. Cobin. | 156. Martin L. Townsend Member of Congress, New York. |
| 22. B.E. Curtis Assistant Secretary Electoral Com. | 67. Hieratio King. | 112. C.D. Drake Chief Justice, U.S.C. of Claims. | 157. William M. Springer Member of Congress, Illinois. |
| 23. George A. Howard Assistant Secretary Electoral Com. | 68. S.W. Doney Senator, Arkansas. | 113. Charles W. Jones Senator, Florida. | 158. Lyman Trainball Counsel for Tilden. |
| 24. James H. McKenney Secretary Electoral Commission. | 69. M.B. Brady. | 114. P. Phillips. | 159. Matt H. Carpenter Counsel for Tilden. |
| 25. John Sherman Senator, Ohio. | 70. Ambrose E. Burriside Senator, Rhode Island. | 115. Saunders W. Johnston. | 160. Jeremiah S. Black Counsel for Tilden. |
| 26. Samuel Shellabarger Counsel for Hayes. | 71. George C. Gorham Secretary, U.S. Senate. | 116. N.P. Banks Member of Congress, Mass. | 161. George Husaly Counsel for Tilden. |
| 27. William F. Cooper Page to Electoral Commission. | 72. Samuel J. Randall Speaker, House of Representatives. | 117. J.G. Cannon Member of Congress, Illinois. | 162. Ashabel Green Counsel for Tilden. |
| 28. D.J. Murphy Stereographer Electoral Com. | 73. Eli C. Cook Senator, Missouri. | 118. Flora Fassett. | 163. Matthew G. Emery. |
| 29. George W. McCury M.C., Ia., and counsel for Hayes. | 74. J. Proctor Knott Member of Congress, Kentucky. | 119. Elizabeth B. Johnston. | 164. Alex. Porter Moore Counsel for Tilden. |
| 30. Morrison R. Waite Chief Justice, U.S.S.C. | 75. John R. Clark, Jr. Member of Congress, Missouri. | 120. W.A.J. Sparks Member of Congress, Illinois. | 165. H.B. Ranning Member of Congress, Ohio. |
| 31. John G. Thompson Sergeant-at-Arms, H.R. | 76. H.B. Anthony Senator, Rhode Island. | 121. Frederick Douglass. | 166. Mrs. Nannie Merrick. |
| 32. John J. Nicolay Marshal, U.S.S.C. | 77. Bainbridge Wadleigh Senator, New Hampshire. | 122. William M. Everts Counsel for Hayes. | 167. Blanche K. Bruce Senator, Mississippi. |
| 33. Will Reardon Marshal, Electoral Commission. | 78. Benjamin H. Hill Senator, Georgia. | 123. Edwin W. Stoughton Counsel for Hayes. | 168. Henry W. Blair Member of Congress, N.H. |
| 34. E.F. Crovator Messenger, U.S. Senate. | 79. Fernando Wood Member of Congress, New York. | 124. Zachariah Chandler Secretary of the Interior. | 169. Miss M.Y. Frelinghuysen. |
| 35. Mrs. Z. Chandler. | 80. A.C. Harner Member of Congress, Pa. | 125. Abram S. Hewitt Member of Congress, New York. | 170. Mrs. Christine Tjyter British Minister. |
| 36. Miss G.A. Bourwell. | 81. Amariah Herben Messenger U.S. Supreme Court. | 126. Amereus V. Rice Member of Congress, Ohio. | 171. Sir Edward Thornton Member of Congress, Pa. |
| 37. John R. French Sergeant-at-Arms, U.S. Senate. | 82. G.A. Clark Doorkeeper, U.S. Supreme Court. | 127. Mrs. Celia S. Sherman. | 172. Hester Clymer Member of Congress, Pa. |
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| 39. Mrs. Charles E. Hooker. | 84. A.R. Shepard. | 129. Mrs. Susan M. Edmunds. | 174. Mrs. Fannie H. Gordon. |
| 40. Miss Caroline Bradley. | 85. S.L. Phelps Commissioner, District of Columbia. | 130. Mrs. E.V. Miller. | 175. John B. Gordon Senator, Georgia. |
| 41. | 86. J.W. Powell United States Survey. | 131. William D. Kelly Member of Congress, Pa. | 176. John A. Logan Senator, Illinois. |
| 42. Miss Lida Miller. | 87. S.A. Hurlbut M.C., Ill., and counsel for Hayes. | 132. Mrs. Mary Clemmer. | 177. S.S. Cox Member of Congress, New York. |
| 43. Miss Julia D. Strong. | 88. John A. Kason M.C., Ia., and counsel for Hayes. | 133. Charles O'Conor Counsel for Tilden. | 178. Mary E. Waite. |
| 44. Prof. Joseph Henry Smithsonian Institution. | 89. George W. Childs. | 134. Richard T. Merrick M.C., Pa., and counsel for Tilden. | 179. Mrs. Helen M. Dorsey. |
| 45. Charles G. Williams Member of Congress, Wisconsin. | 90. James L. Asdwin Reporter for N.Y. Assn. Press. | 135. George A. Jenks M.C., Va., and counsel for Tilden. | 180. Thomas Swan Member of Congress, Maryland. |
| 46. Mrs. S. Virginia Field. | 91. Stanley Mathews Counsel for Hayes. | 136. W.H. Foncey Member of Congress, Alabama. | 181. Mrs. Mary Cameron. |
| 47. Mrs. Mary A. Matthews. | 92. Mrs. J.A. Garfield. | 137. J. Randolph Tucker M.C., Va., and counsel for Tilden. | 182. Mrs. C. Adele Fassett. |
| 48. Mrs. Robt A. Hour. | 93. George M. Robeson Secretary of Navy. | 138. Timothy D. Howe Sen. Wis., and counsel for Hayes. | 183. Mrs. Mary A. Rice. |
| 49. Mrs. Chapman Coleman. | 94. Alphonso M. Tall Secretary of War. | 139. Henry Watson Member of Congress, Kentucky. | 184. James G. Blaine Senator, Maine. |
| 50. Hamilton Fish Secretary of State. | 95. Belva M. Lockwood. | 140. Mrs. Ellen F. Windom. | 185. Mrs. Sallie R. Knott. |
| 51. Mrs. Julia K. Fish. | 96. George S. Boutwell Senator, Massachusetts. | 141. Thomas B. Bryan. | 186. C. Callie P. Patterson Superintendent U.S. Coast Survey. |
| 52. Mrs. Myra Clark Gaines. | 97. Aaron A. Sargent Senator, California. | 142. Hiram P. Bell Member of Congress, Georgia. | 187. Mrs. C.P. Patterson. |
| 53. Mrs. Julia G. Tyler (Widow of Ex-President Tyler). | 98. Dr. Peter Parker. | 143. L.Q.C. Lamar Member of Congress, Mississippi. | 188. Mrs. Mary M. Gibson. |
| 54. Mrs. L.V. Swearingen. | 99. James O. Woodruff Scientific Expedition. | 144. Harshel Hamilton Senator, Maine. | 189. W.B. Allison Senator, Iowa. |
| 55. Mrs. Virginia M. Wilson. | 100. Eugene Hale Member of Congress, Maine. | 145. George Bancroft Historian. | 190. Randall Lee Gibson Member of Congress, Louisiana. |
| 56. Mrs. Rachael H. Strong. | 101. Charles Foster Member of Congress, Ohio. | 146. Justin S. Merrill Senator, Vermont. | 191. Mrs. Lillie E. Willis. |
| 57. Charles Gordon. | 102. John H. Mitchell Senator, Oregon. | 147. John A. Campbell Counsel for Tilden. | 192. Charles W. Hoffman Librarian of Law Library, U.S.S.C. |
| 58. Mrs. Ingeborg R. Morrell. | 103. W.P. Lynde Member of Congress, Wisconsin. | 148. Roscoe Conkling Senator, New York. | 193. Ch. McCull Page, Supreme Court U.S. |
| 59. Mrs. Jean M. Lander. | 104. John D.C. Adams Member of Congress, Tennessee. | 149. Montgomery Blair Counsel for Tilden. | 194. Robert Brown Page, Supreme Court U.S. |
| 60. Miss Katherine Lee Bayard. | 105. A.A. Haderbergh Member of Congress, New Jersey. | 150. Matt W. Ransom Senator, North Carolina. | 195. Fred W. Mutton Page, Supreme Court U.S. |
| 61. John J. Patterson Senator, South Carolina. | 106. Thomas Ewing Member of Congress, Ohio. | 151. David Dudley Field M.C., N.Y., counsel for Tilden. | 196. H.J. Luck Messenger, Electoral Commission. |

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