36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 627.

KENTUCKY CONTESTED ELECTION.

JUNE 14, 1860.—Laid upon the table and ordered to be printed.

Mr. STRATTON, from the Committee on Elections, made the following

REPORT.

On the first of August, eighteen hundred and fifty-nine, an election for representatives in Congress was held in the State of Kentucky.

In the fourth congressional district William C. Anderson and James S. Chrisman were the opposing candidates.

Mr. Anderson received a certificate of election from the proper officers under the laws of Kentucky, and is now the sitting member in the present Congress from that district. Mr. Chrisman being dissatisfied with the action of the board of State canvassers, served notice of contest upon the returned member, in accordance with the provisions of the act of February, 1851, to which the latter responded, and proofs in support of their respective allegations have been regularly taken under said act and returned to this House.

The fourth congressional district of Kentucky comprises eleven counties and sixty-four voting precincts. By the laws of that State the election board at each precinct consists of two judges, a clerk, (who are appointed by the county court,) and the sheriff or his deputy. It is the duty of this board to count the votes cast at each precinct and certify the result, under their signatures, to the board of county canvassers. The latter board consists of the presiding judge of the county court, the clerk thereof, and the sheriff or other officer acting for him at an election.

The poll-books from the different precincts are required by law to be deposited with the county clerk *within two days* after an election. On the *next* day the board (that is, the county board) shall meet in the clerk's office, between ten and twelve o'clock in the morning, compare the polls, ascertain the correctness of the summing up of the votes, and in case of an election for a representative in Congress, it is made the duty of the board of examiners of each county, *immediately* after the examination of the poll-books, to make out three or more certificates in writing, over their signatures, of the number of votes given in the county for each candidate for said office; one of the certificates to be retained in the clerk's office, another the clerk shall send by the *next mail*, under cover, to the secretary of state, at

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Frankfort, and the other to be transmitted to the secretary by any private conveyance the clerk may select.

The governor, attorney general, and secretary of state, and in the absence of either, the auditor or any two of them, are a board for examining the returns of elections for representatives in Congress and certain State officers.

The State board is required when the returns are all in, or on the fourth Monday after an election, whether they are in or out, to make out, in the secretary's office, from the returns made, duplicate certificates in writing, over their signatures, of the election of those having the highest number of votes.

These are the main features of the law prescribing the mode of canvassing the votes and ascertaining the result of an election in Kentucky; and your committee believe from an examination of the evidence and exhibits in the case, with the exception of a single precinct, (which we shall hereafter refer to,) these requirements were substantially complied with.

The voting is *viva voce;* the name of each voter and of the candidate for whom he votes being publicly cried by the sheriff or his deputy, and recorded by the clerk.

According to the summing up and certificate of the board of State canvassers, of the whole number of votes cast Mr. Anderson received 7,204, and Mr. Chrisman 7,201.

The county boards of the respective counties met according to law, and ascertained, as was their duty, the correctness of the summing up of the votes in the different precincts of each county, and transmitted the result of their labors to the board of State canvassers at Frankfort.

The following is a summary of the vote in each of the counties:

	Anderson.	Chrisman.
Adair	547	1,057
Boyle	789	303
Casey	696	448
Clinton	312	578
Cumberland	652	368
Greene	482	681
Lincoln	935	440
Pulaski	1,214	1,375
Russell	479	432
Taylor	357	648
Wayne	741	831
	7,204	7,201

These returns having been cavassed by the State board, who met and proceeded according to law, the certificate of election, as before stated, was awarded to Mr. Anderson.

In the notice of contest there are several grounds set forth upon

which the contestant bases his claim to the seat. The sitting member has responded fully to the charges made, and denies their existence in point of fact. The committee do not deem it necessary to refer to all the grounds of contest set forth in the notice and response.

The issue turns upon three points, and to these your committee have directed their investigations.

By the laws of Kentucky, the election having been held on the 1st day of August, it will be remembered that it was the duty of the county canvassers to canvass the returns sent in from the several voting precincts on the *fourth* of August, and transmit the result to the State board *immediately*. This, your committee believe, was done in every instance.

It seems, however, that after the board of canvassers for the county of Boyle had discharged this official duty, and broken up, a supposed mistake of four votes, to the prejudice of the sitting member, was discovered; and in order to correct this, the board reassembled on the *tenth* of August, made a recount, and transmitted an amended certificate to the State board.

This amended certificate the State board refused to receive, giving as a reason therefor that the county board had no right, after they had discharged a particular duty in the manner and at the time and place required by law, to act further in the premises.

In other words, that their power over the subject-matter had ceased, and they had no longer a legal existence.

The same state of facts existed also in the county of Adair, in which, after the votes had been summed up, and the result transmitted to the State board, a mistake of one vote to the prejudice of Anderson was discovered. For the reasons above stated, the State board declined to receive the amended certificate from the county of Adair.

In the county of Cumberland it was discovered that in registering the votes in one of the precincts a mistake of *ten* votes to the prejudice of the contestant had occurred, and also that he sustained a loss of four votes from their having been incorrectly recorded.

On the *thirteenth* of August, *two* of the county boards of this county met for the purpose of correcting these mistakes, and certified to the State board the facts herein stated. The State board also declined to receive this supplemental certificate. In so doing, they gave their reasons at length; and as their opinion is a part of the record in this case, we beg leave to submit it to the consideration of the House. It is proper to say that this board is composed of legal gentlemen of eminence, whose opinions upon the construction of the laws of their own State is entitled to much weight.

Mem.—The above certificate is based on returns regularly made out and certified by the respective boards of examiners on the day fixed by law, and duly returned to the secretary of state. An amended return was forwarded from Boyle county certifying that there was a mistake of four votes against W. C. Anderson, as appeared by a re-examination and scrutiny of the poll-books. Appended to this cor-

rected return is a statement by the clerk, that after the examiners had given the certificate of the vote of the county, he, the clerk, had loaned the poll-books from his office to some gentlemen, who discovered the error which is attempted to be corrected, and reported it to the examiners, who, on re-examination, found it was so. After this, and after all the returns for the district were in, letters were filed with the secretary, stating that the examiners of Cumberland county had made a mistake in their certificate of the vote of that county, and time was asked to have it corrected. This was granted in order that all questions might be fairly made, and a decision had upon the facts as they existed. An amended certificate from Cumberland county was accordingly forwarded to the secretary, stating that the vote of W. C. Anderson in that county was 650, and that of J. S. Chrisman 380. A certificate was also filed from the county of Adair, stating that there was a clerical mistake of one vote against Anderson.

We have felt constrained, in the exercise of our best judgment on the proper construction of the law, to reject all these amended returns, and to issue the certificate according to the original returns made to the secretary of state.

The law in relation to elections provides that the judges shall attend to the summing up of the votes, certify the poll-books, and deliver them in a *sealed envelope to the sheriff*. The same law requires that each judge shall retain a duplicate statement of the summing up of his precinct, which, in a contingency named, may be used as evidence of the vote. It also requires that the poll-books of the different precints shall, within two days after the election, be deposited by the sheriff with the clerk of the county court, and on the next day thereafter the board of examiners shall compare them, ascertain the correctness of the summing up, and make out three written certificates in the case of a representative in Congress, certifying the number of votes given in the county for each of the candidates, one of which certificates is to be retained in the clerk's office, another forwarded by mail to the secretary of state, and the third sent to the secretary by any private conveyance. We, as a State board, are to act on the returns thus made, and make out triplicate certificates of those having the highest number of votes; and our functions as examiners do not more clearly cease when we have made our certificate of election, than in our opinion do those of the county examiners after they have certified the full vote of the county. If this be not the just and proper construction of the law, why require the poll-books to be *sealed* when they pass out of the hands of the judges of election? If a correction can be made nine days after the poll-books are unsealed and opened to the inspection of whoever may choose to examine them, or after they have been taken out of the clerk's office, there would be but little efficacy in requiring them to be sealed in the first instance.

If such additional returns are legal, the State board of examiners would be bound to receive and act on whatever correction should be made before their certificates were given; and as their functions are confined to the summing up the votes, they would be precluded from

any inquiry as to the manner in which such corrections were brought about. They could not institute an inquiry as to whether or not the poll-books had been changed or altered after the seals were broken and they had passed into other hands than the examiners. The amended certificates would, in all cases, necessarily be conclusive on the examiners here.

We think, therefore, it is clear, when the county board have acted on the poll-books of the whole county, and delivered their certificates to the clerk, who has transmitted them to the secretary, that their functions cease, and they have no power to recall or change those certificates.

The supposed analogy between this case and that of the special judicial election in 1857, will be found, on examination, not to exist. In that case, as in this, time was given for the correction of a supposed error in Meade county of twelve votes against Mr. Bullitt, so that a decision might be had upon the effect of such correction, but as the correction, if made and allowed, would not have changed the result of the election, no decision was had by the board on the question.

In the judicial election the certificate first forwarded to the secretary from the county of Hart gave Wheat 122 votes. The State board of examiners, before this certificate was acted on, were notified that there was a clerical mistake in copying this certificate as to the number of votes cast for Wheat, and that the other two certificates, made out at the same time, contained the true number of votes according to the poll-books. One of these certificates was transmitted to the secretary, showing that Wheat had received 222 votes, instead of 122. We thus had two original certificates which were authorized by law to be sent to the secretary, and the question was, which was right? The clerk and examiners made affidavit that the last one sent was an exact copy of the one on file in the clerk's office, and contained the correct result of the poll-books, and our action was accordingly based on the last one.

The examiners of Nelson county first sent a certificate of the votes of that county, *stating on its face* that they had not included the vote of the Bloomfield precinct, as they had not received it. They afterwards forwarded an additional certificate giving the vote of that precinct, which had in due time been delivered by the sheriff under seal to the deputy clerk, and by neglect had not been laid before the examiners. They did not attempt to make any change in the vote of the precinct which they had before certified, but certified the vote of the precinct thus returned under seal by them. The vote of this precinct was counted in favor of Mr. Bullitt, simply on the ground, that as the law required the examiners to act on the books of each precinct, their duty did not cease until they had so acted. But in no instance did they attempt to re-count the votes of any precinct after it had been once certified.

It is proper to add that a distinction was made at the time, by the examiners, between the case as presented by this special election, and the correction of the poll-books after they had been certified by

the county examiners, and the corrections were allowed on the express ground that they did not involve the legality of a re-scrutiny and re-examination of the vote as certified. It may not be improper also to state, that when the amended return from Boyle was filed, and before it was known what effect it was to have on the result, the opinion of the undersigned is known to have been adverse to its reception.

Given under our hands this 29th of August, 1859.

C. S. MOREHEAD.
MASON BROWN, *Secretary of State.*
JAMES HARLAN, *Attorney General.*

After a careful examination of the laws prescribing the mode of canvassing, summing, and returning the votes by the officers of the precinct, county and State boards, your committee concur in the conclusion arrived at by the board of State canvassers. They believe the action of the board was in strict conformity with the statutes of Kentucky.

Your committee, however, do not suppose that the action of the State board is final and conclusive upon this House. In every case of a contested election we believe it to be the duty of the House, by its constituted agents, to go behind all certificates for the purpose of inquiring into and correcting all mistakes which may be brought to its notice.

Entertaining these views, if the mistakes above mentioned were the only ones which occurred in the district, the contestant would undoubtedly be entitled to the seat now occupied by the sitting member.

But having once opened the contest, as well the sitting member as the contestant, with a degree of zeal and industry almost without a parallel, entered upon a searching investigation and purgation of the polls in the entire district. The whole time allowed by law was consumed in taking testimony, and the evidence, which fills two volumes, containing nearly fifteen hundred pages, has been submitted to your committee. The case was fully argued by both parties upon the law and the evidence.

After a careful investigation, we submit the following as the conclusions to which we have arrived:

First, as to the correction of the mistakes at the different polls.

The official vote for Anderson was 7,204

To this we add the following votes cast for Anderson, but through mistake not counted for him:

A mistake in Boyle county in adding up 4

A mistake in recording the vote of William R. Bowman, of Boyle county 1

A mistake in recording the vote of Richard Pendergrast, of Boyle county 1

A mistake in recording the vote of James Stout, of Lincoln county 2

A mistake in recording the vote of Hiram Withers, of Pulaski county	2
A mistake in recording the vote of George R. Vaught, of Pulaski county	1
A mistake in recording the vote of Frank Harrison, of Pulaski county	1
A mistake in recording the vote of James Hunt, of Wayne county	2
A mistake in recording the vote of Peter Phips, of Wayne county	1
A mistake in recording the vote of S. M. Baker, of Adair county	1
A mistake in recording the vote of A. J. Yerk, of Clinton county	1
A mistake in erasing the names of the following persons from the poll-list in Clinton county, after they had voted and left the polls, said persons having voted for Anderson, (viz.:) W. A. Sidwell, Jesse Sidwell, and W. G. Ellis	3
A mistake in not recording and counting for Anderson the votes of B. W. Moss and C. B. Kirkland, who were legal and qualified voters, and who offered to cast their votes for Anderson	2
A mistake in recording the votes of Delany, Griffin, and Chilton after the closing of the polls	3
	7,229

Vote for Anderson, after correcting *mistakes*		7,229
The official vote for Chrisman was	7,201	
To this add the mistake at Kettle Creek precinct in registering votes	10	
A further mistake in said precinct	4	
A mistake in recording the vote of Nelson Pendergrast	2	
A mistake in recording the vote of Virgil P. Moore, of Pulaski county	2	
A mistake in recording the vote of Ebenezer P. Rice, of Wayne county	2	
A mistake in recording the vote of William Davis, of Pulaski county	1	
		7,222
Majority for Anderson		7

Thus it will be seen, that after correcting all the mistakes in recording votes, &c., which are sustained by the proof, the sitting member has a majority of seven votes.

Both the contestant and the sitting member, in the notice and answer filed, call upon the committee to reject the entire poll of certain precincts, because of alleged irregularities. Upon a careful exami-

nation of the returns from the precincts objected to, we are of opinion that the objections are not sustained, save in one instance.

The poll-book from Casey precinct, Casey county, is not certified to by *any* of the officers of the election, neither judges nor clerk. Its correctness is vouched for by no one.

(See printed testimony, vol. 1, page 449.)

Your committee are therefore of opinion that this precinct should not be counted.

The vote stood for Chrisman	95	
The vote stood for Anderson	49	
Anderson's vote	7,229	
Deduct Casey precinct	49	
		7,180
Chrisman's vote	7,222	
Deduct Casey precinct	95	
		7,127
Anderson's majority		53

We proceed now to a consideration of the illegal votes cast for each party. In every case where the challenge is sustained by competent and sufficient testimony we have deducted the vote from the party for whom it was cast. In every case where the committee had any doubt as to the challenge being fully sustained by the evidence the vote has not been disturbed. The contestant has challenged by name one hundred and thirteen votes, and the sitting member two hundred and eleven. In many instances no proof was offered to sustain the challenge. We find that of the number challenged by the contestant twenty-five are shown by competent proof to have been illegal votes, and we have deducted them from the poll of the sitting member. Of those challenged by the sitting member eighty-one are proved to have been illegal, and they are deducted from the poll of the contestant. We append to our report schedules marked A and B respectively, which contain the names of the voters whose votes we have deducted from the respective polls, and a reference to the evidence by which each challenge is sustained.

With these corrections of the polls, to which our attention has been directed, the result is as follows:

Anderson's vote		7,180
Deduct illegal votes		25
		7,155
Chrisman's vote	7,127	
Deduct illegal votes	81	
		7,046
Anderson's majority		109

In conclusion, the committee beg leave to remark that had every vote challenged by the contestant been sustained and deducted from the poll of the sitting member, it would still have left him a majority beyond that ascertained by the official returns. In every view of the case which has been presented, we believe the sitting member is the duly elected representative of the fourth congressional district of Kentucky, and we therefore ask the concurrence of the House in the following resolution:

Resolved, That the Hon. William C. Anderson is entitled to the seat how held by him as representative in the thirty-sixth Congress from the fourth congressional district of Kentucky.

SCHEDULE A.

A list of voters challenged by Anderson, and which the committee consider illegal, with a reference to the proof.

Name.	County.	Vol.	Page.
1. Nicholas Walter, (admitted by Chrisman)	Boyle		
2. Charles Voss	do	2	42
		2	56
		2	67
3. C. P. Springer	do	2	24
		2	46
		2	42
4. John Haggin	do	2	35
5. Henry White	do	2	67
		2	47
		2	43
		2	57
		2	71
Total illegal votes cast in Boyle county for Chrisman, 5.			
1. John Sherron	Lincoln	2	101
		2	113
2. Adam Petree	do	2	141
		2	106
		2	110
		2	107
3. Jesse Haythe	do	2	98
		2	99
Total illegal votes for Chrisman in Lincoln county, 3.			
1. Martin Blevins	Casey	2	440
		2	442
2. Commodore Miner, (admitted by Chrisman to be illegal.)			
3. Michael McCarty	do	2	441
4. Isaac Roaten	do	2	443
5. J. F. Ulsted	do	2	441
6. John Henry Bryant; (also a transcript of the proceedings of the circuit court for Casey county, showing his conviction to the penitentiary.—*Manuscript.*)	do	2	441
		2	444
Total illegal votes cast for Chrisman in Casey county, 6.			
1. S. E. Reed	Russell	2	218
		2	223
2. Albert McDowell	do	2	222
		2	219
3. James M. Luster	do	2	216
4. Lindsey Brummett	do	2	218
5. W. Sharp	do	2	222
		2	224
6. Silas Collins	do	2	224
		2	225
		2	228
Total illegal votes for Chrisman in Russell county, 6.			
1 William Boston	Clinton	2	504
2 S. J. Vance	do	2	475
		1	84
3 John Travis	do	2	486

SCHEDULE A—Continued.

Name.	County.	Vol.	Page.
4 John Lemons	Clinton	2	480
5 Joshua Birdwell	do	2	499
6 F. E. Greer	do	2	499
Total illegal votes cast for Chrisman in Clinton county, 6.			
1 Ben Farmer, (admitted by Chrisman to be illegal.)			
2 John Wright	Cumberland	2	539
		2	540
		2	561
		2	575
3 John Neal	do	2	587
4 John Cooksey	do	2	579
		2	585
5 Joseph H. Bird	do	2	516
		2	581
		2	582
6 Henry Grimes, (admitted by Chrisman to be illegal.)			
7 John Johnson	do	2	554
		2	511
8 Samuel Sparks	do	2	573
		2	580
		2	512
9 John Green	do	2	547
		2	558
10 John Powell	do	2	547
		2	558
11 Irwin Keeton	do	2	547
		2	559
12 A. J. Wilkerson	do	1	119
13 J. J. Smith	do	2	571
		1	132
Total illegal votes cast for Chrisman in Cumberland county, 13.			
1 Morgan Simpson	Adair	2	28
		2	361
2 William Woodward	do	2	357
		2	357
3 William Walkup	do	2	359
		2	209
		1	213
		1	214
4 Joshua Prweit	do	2	361
5 B. F. Allen	do	2	356
6 Samuel Vier	do	2	158
		2	161
		2	356
Total illegal votes cast for Chrisman in Adair county, 6.			
1 Selden Renfro, (admitted by Chrisman to be illegal.)			
2 Samuel Chaney	Greene	2	388
		2	389
		2	395
		2	396
3 Daniel Sullivan	do	2	400
		2	408
4 Samuel Hartfield	do	2	403
5 Thomas Elmore	do	2	407
6 Samuel Bennett, 2	do	2	407
Total illegal votes in Greene county cast for Chrisman, 6.			

SCHEDULE A—Continued.

Name.	County.	Vol.	Page.
1. James H. Ratliff, (admitted by Chrisman to be illegal)			
2. Milton Simpson	Taylor	2	43
3. William Redding	do	2	593
		2	594
4. Henry Shaffner	do	2	595
Total illegal votes in Taylor county for Chrisman, 4.			
1. Frank Winchester, (admitted by Chrisman to be illegal			
2. George W. St. Johns, (admitted)			
3. Henry Martin do			
4. Stephen Loveall do			
5. Patton Foster do			
6. John Hughes do			
7. William Dobkins do			
8. Asbury Shoat do			
9. Andrew Hill do	Wayne	2	606
		2	609
		2	616
		2	632
10. James Davis	do	2	277
		2	288
		2	299
		2	616
		2	632
11. John Sloan	do	2	316
		2	302
		2	322
12. Samuel Pennington	do	2	347
		2	622
		2	626
		2	627
		2	621
		1	71
13. J. J. Shepperd	do	2	332
		2	333
		2	337
14. M. Sowders	do	2	280
		2	286
15. E. B. Jones	do	2	336
		1	77
16. Cehun Crutchfield	do	2	328
		2	347
		2	619
17. William Brewster	do	2	277
18. C. F. Kidd	do	2	642
		2	623
Total illegal votes cast for Chrisman in Wayne county, 18.		2	
		2	
		2	
1. Abraham Mesmer, (Chrisman, in his memorial, states that this vote is illegal)	Pulaski	2	182
		1	33
		2	153
2. Le Roy Whiters	do	2	177
3. John L. Logan	do	2	173
4. Otho Dougherty	do	2	173
		2	179
		2	165

SCHEDULE A—Continued.

Name.	County.	Vol.	Page.
5. Norris Williams	Pulaski	2	174
		2	180
		2	182
6. Elijah Burton	do	2	162
		2	162
7. W. B. Cowan	do	2	166
8. Wesley Neal	do	2	164
Total illegal votes cast for Chrisman in Pulaski county 8.			

Summary of illegal votes cast for Chrisman.

Boyle	5
Lincoln	3
Casey	6
Russell	6
Clinton	6
Cumberland	13
Adair	6
Greene	6
Taylor	4
Wayne	18
Pulaski	8
	81

SCHEDULE B.

List of illegal votes cast for Anderson, as determined by the committee, with reference to proof.

Name.	County.	Vol.	Page.
1. John Surcy	Boyle	1	202
1. James Patton	Lincoln	1	169
2. James Bliss	do	1	175
		1	176
3. Wiley Summers	do	1	163
		1	168
1. James Brummett	Russell	1	251
		1	253
1. Anderson Maynard	Clinton	1	85
		1	86
		1	87
2. P. H. Clark	do	1	90
		1	91
		1	92
		1	98
3. John Westmoreland	do	1	96
1. Thomas A. Vaughn	Cumberland	1	112
2. James Brummett	do	1	128
		1	138
3. Thomas Rhennis	do	1	114
		1	118
1. James W. Banks	Adair	1	211
		1	215
1. William Rakes	Taylor	1	216
		1	222
2. Francis Wright	do	1	216
		1	217
		1	222
3. J. P. Wright	do	1	217
		1	219
1. John Rollins	Wayne	1	55
		1	69
		1	69
		1	54
2. Joseph Roberts	do	1	74
3. John Fenton	do	1	65
4. John Massengill	do	1	68
5. William Massengill	do	1	72
6. Shadrach Blevins	do	1	287
1. J. N. Massey	Pulaski	1	33
2. William Gibson	do	1	15
		1	16
3. Richard Barnett	do	1	22
		1	24
		1	26
		1	77
4. Riley Phelps	do	1	27
		1	28

SCHEDULE B—Continued.

Total illegal votes cast for Anderson—

Boyle	1
Lincoln	3
Russell	1
Clinton	3
Cumberland	3
Adair	1
Taylor	3
Wayne	6
Pulaski	4
Greene, (no challenges)	
Casey, (no proof)	
Total	25

RECAPITULATION.

Anderson's official vote		7,204
Add mistakes and errors		26
		7,230
From this deduct the vote at Casey Creek counted for him	49	
The vote at Kettle Creek counted for him	88	
Illegal votes	25	
		162
Total vote		7,068
Chrisman's total official vote		7,201
Add mistakes and errors, the whole number claimed by him in brief		24
		7,225
Deduct the vote counted for him at Casey Creek	95	
Vote counted for him at Kettle Creek	95	
Illegal votes	81	
		271
		6,954
Anderson's vote	7,068	
Chrisman's vote	6,954	
Anderson's majority	114	

MINORITY REPORT.

Mr. GARTRELL, from the Committee on Elections, to whom was referred the memorial of James S. Chrisman, contesting the seat of William C. Anderson, the sitting member from the fourth congressional district of Kentucky, submits the following as the views of the minority of said committee:

The congressional district the representation of which is in issue embraces the counties of Adair, Boyle, Casey, Clinton, Cumberland, Green, Lincoln, Pulaski, Russell, Taylor, and Wayne, in Kentucky. The sitting member and contestant were the only candidates for the seat. The vote in Kentucky is taken *viva voce.*

The question arises out of the refusal of the State board of examiners to recognize certain corrected returns from the counties of Cumberland, Boyle, and Adair, by which refusal the contestant was deprived of his certificate of election, and the sitting member, though (after such corrections) admitted not to have received a majority of the votes in the district, obtained the certificate, and has since occupied the seat, and discharged the duties of representative, to the prejudice of the contestant and in derogation of the popular vote for representative in that district.

Before proceeding to discuss the manifest illegality and injustice of this action of the State board of examiners, in thus shutting out that which they should have been glad to have availed themselves of to discharge their duty with a just regard to their own positions and the dignity and integrity of this body, the undersigned submit to the House the law of the State of Kentucky governing the mode and manner in which the various duties of county and other officers in said State, in connexion with elections for Congress, are to be discharged.

"The presiding judge of the county court, the clerk thereof, and the sheriff, or other officer acting for him at an election, shall constitute a board for examining the poll-books of each county, and giving certificates of election. Any two of them may constitute a board.—(Revised Statutes of Kentucky, chapter xxxii, art. v, sec. 1, p. 288.)"

"Within two days after an election the sheriff shall deposit with the clerk of the county court the poll-books of the different precincts; on the next day the board shall meet in the clerk's office between ten and twelve o'clock in the morning, compare the polls, ascertain the correctness of the summing up of the votes, and give triplicate or more written certificates of election, over their signatures, of those who have received the highest number of votes for any office exclusively within the gift of the voters of the county—one copy of the certificate to be retained in the clerk's office, another delivered to each of the persons elected, and the other forwarded to the secretary of state, at Frankfort. For offices not within such gift, they shall give duplicate or more written certificates, over their signatures, of

the number of votes given in the county to each person voted for, particularizing therein the precinct at which the votes were given—one copy to be retained in the clerk's office and the other delivered to the sheriff."—(Id., sec. 2, pp. 288, 289.)

"After an election for governor, lieutenant governor, or other officers elective by the votes of the whole State, or for judges of the court of appeals, clerk of that court, circuit judge, commonwealth's attorney, representative in Congress, &c., it shall be the duty of the board of examiners of poll-books for each county, immediately after the examination of the poll-books, to make out three or more certificates in writing, over their signatures, of the number of votes given in the county for each of the candidates for any of said offices; one of the certificates shall be retained in the clerk's office, another the clerk shall send by the next mail, under cover, to the secretary of state at Frankfort, and the other he shall transmit to the secretary by any private conveyance the clerk may select, free of cost."—(Id., sec. 5, p. 289.)

"The *governor*, *attorney general*, and *secretary of state*, and in the absence of either, the auditor, or any two of them, shall be *a board for examining the returns of elections for any of the officers named in the last section.*"

"It shall be the duty of said board, when the returns *are all in*, or on the fourth Monday after an election, whether they are in or out, to make out, in the secretary's office, *from the returns made*, duplicate certificates in writing, over their signatures, of the election of those having the higher number of votes."—(Id., sec. 6, p. 290.)

Under the law, the election was held on the first Monday, being the first day of August, 1859.

On Thursday, the 4th of August thereafter, the county boards in the various counties in the district met at the places provided for by law.

From the returns first made, the following exhibits a detail of what was then declared to be the result:

	Anderson.	Chrisman.
Cumberland	652	368
Clinton	312	578
Wayne	741	831
Russell	479	432
Pulaski	1,214	1,375
Lincoln	935	440
Boyle	789	303
Taylor	357	648
Green	482	681
Adair	547	1,097
Casey	696	448
	7,204	7,201

Subsequently, on the 10th day of August thereafter, the contestant, upon an examination of the poll-books of his own (Boyle) county,

when he was under the impression that he was defeated by one or two votes, discovered a mistake to have existed in the certified returns of that county of four votes to his prejudice. Thereupon he immediately summoned the examiners of his own county, and had an amended certificate made out and enclosed to the State board, to substitute the one previously sent.—(See Van Winkle's testimony, C., page 58, and Zimmerman's, A., page 66, and amended certificate, C., page 337.)

On the same day a mistake was discovered to have existed in the returns of the county of Adair of one vote to his prejudice, and the county examiners were likewise summoned there, and an amended certificate procured and sent on to the State board to substitute the one for that county previously sent.

(See C., page 340, for amended certificate.)

These constitute all the amended returns procured to the advantage of the sitting member.

Afterwards, on the 12th of August thereafter, there was discovered to exist in the returns of the county of Cumberland an error of computation to the prejudice of the contestant of fourteen votes. The error as to ten of those votes is so plain as but to require an exhibit of that part of the poll-book to show how easily it was committed.

The poll-book was kept in aggregate numerals, and not in units.

Pentecost Precinct.

	Anderson.	Chrisman.
I. W. Graham	....	55
John Neighbors	....	**56**
Person Davidson	41	
A. Eldridge	42	
James W. Lollar	43	
G. H. Wood	44	
A. Carey	45	
A. Carter	46	
Simeon Huddleston	47	
S. J. Jenkins	....	**47**
J. C. Graham	....	48

From this extract from the poll-books at Pentecost precinct it will be seen that John Neighbors was the fifty-sixth voter who had voted for the contestant at that precinct, and that the next voter who voted for contestant was S. J. Jenkins, who should have been recorded as the fifty-seventh voter for him; but the clerk erroneously, as will be seen, recorded it as the forty-seventh vote for contestant, and the next vote for him, that of J. C. Graham, as the forty-eighth vote, and so on this error in number of ten votes was perpetuated to the end of the poll, and not discovered until after the certified returns had been sent to the State board of examiners.

As to the error of the other four votes to make up the correction of fourteen votes embraced in amended certificate of the county of Cumberland, two of them were committed in the same way, one at

precinct No. 4 and the other at precinct No. 5. The other two votes are accounted for in this way: the clerk, as the poll was going on, discovered two votes in error, to the prejudice of the sitting member, at precinct No. 1, and corrected them at the time. Forgetting that he had corrected them, he added at the end of the poll two votes in his favor in summing up, thus giving the sitting member two more votes than he was entitled to.—(For a clear exhibit of these errors see testimony of Napoleon B. Cheatham, a political friend of the sitting member, C., page 142; and for amended return see C., page 337.)

These amended returns from the counties of Adair, Boyle, and Cumberland reached Frankfort, where the board of State examiners convened some ten days before their session, and are admitted to have been received and considered by them. The accuracy of these amended certificates are not disputed, but are conceded on all hands; and when considered prove the contestant, as was shown before the board of State examiners previous to the issue of the certificate to the sitting member, to have been elected the representative of the fourth congressional district of Kentucky by a majority of six votes.

The following table exhibits the vote both as embraced in original and amended certificates:

Counties.	Anderson.		Chrisman.	
	Original.	Corrected.	Original.	Corrected.
Cumberland	652	650	368	380
Clinton	312	312	578	578
Wayne	741	741	831	831
Russell	479	479	432	432
Pulaski	1,214	1,214	1,375	1,375
Lincoln	935	935	440	440
Boyle	789	793	303	303
Taylor	357	357	648	648
Adair	547	548	1,097	1,097
Casey	696	696	448	448
Green	482	482	681	681
	7,204	7,207	7,201	7,213

From this it will be seen that upon the erroneous certificates the sitting member is computed to have received three majority; but upon the amended and truthful certificates, which alone should govern the board of canvassers, the contestant was clearly elected, and was entitled to the certificate to a seat in this body.

After this clear and admittedly correct statement of the facts, the House may well be startled at the contemplation that this district has for six months been deprived of its true representative upon this floor, and the candidate receiving a minority of the votes has been exercising the functions of a representative for so great a length of

time. It may well wonder how the certificate of election, which alone is its guide to determine at its commencement who are entitled to the *prima facie* rights to seats, was refused to its rightful possessor and given to one who had no rightful claim to it whatever. The way in which this great wrong was perpetrated was by the peremptory manner in which the board of State canvassers shut out the returns in discharging their duty, and substituted for them those admitted to be erroneous, which showed a majority for the sitting member. Their reasons for such action, which the minority can but believe struck a fearful blow at the high prerogative of representation in our government, is found in a technical and erroneously legal view of their official duty, which, strange as it may seem, convince them that error must be perpetuated because once committed, though, when they had finally to pass upon it, the truth was in their possession to work its correction.

The pretext upon which the board of State examiners perpetuate the erroneous returns and decline to recognize the corrected certificates is scarcely worthy the serious consideration of the House. If of value at any time, that time has now expired, as the House is to judge of all the facts in connexion with the seat in controversy. But we contend that it never had the sanction of a just construction of the legal authority under which they acted, and will treat it as if the question now was that of the right of the contestant to the *prima facie* certificate of election.

The board of State examiners predicate their refusal to recognize the corrected certificates upon the basis that, as the law provided, after the judges of election shall attend to the summing up of the votes and certifying of the poll-books, they shall deliver them in a sealed envelope to the sheriff. This sealing, if the seal was never broken until it reached the State board, might afford some justification for this *sensitive* aversion of the State board to looking behind the original sealed returns. But, according to the law, within two days after this sealing, the seals are to be broken in the respective counties by the county examiners, who are to compare them with duplicate copies previously ordered to be prepared, and issue three copies of a certificate of the summing up of the result; one to be retained in the clerk's office, another to be sent to the secretary of state by mail, and the third to be forwarded to him by private conveyance. It is upon this idea of the returns having been originally sealed up that the board of State examiners rely upon principally to justify their entire conduct in this case. In their official statement of the grounds on which they rested their decision, they distinctly place it upon this ground. The State examiners say:

"If this be not the just and proper construction of the law, why require the poll-books to be sealed up when they pass out of the hands of the judges of the election?"

Whilst the undersigned do not deem it essential to the merits of the issue to combat the idea of finality embraced in the fact of sealing, they deem it proper, in view of the argument of the State canvassers,

to remind the House that this seal, so reverentially alluded to, is not the seal of authority affixed to official documents, but the mere act of sealing the envelope to perfect the security of the returns in passing from the hands of the judges of election to the sheriff.

The State board also contend, as does the sitting member, that the county boards ceased to exist after having once certified returns to the State board, and they became *functus officio*. So far as the sitting member is concerned, the undersigned think he is estopped from any such plea as that, for the reason that he initiated the convention of these boards, which he now alleges were *functus officio*, and recognized their validity by summoning the board in his own county to correct the certificates, when the result as to his own success was doubtful and he thought a few corrections of alleged errors there would appreciate that success.

So far as the board of examiners are concerned they are estopped by their action in the year 1857. The House will bear in mind that the *personnel* of the board was the same at that time as when they gave the certificate to the sitting member. In that year an election was held for appellate judge, and in determining that result the board decided as follows: This case is alluded to by the State board in their decision on the case in issue.

NOTE.—In the copy of the returns first sent by the clerk from Hart county the vote was stated to be, for Wheat 122 votes, and for Bullitt 396 votes. The corrected copy by the clerk, and also the certificate by the examiners, shows the vote to be as above cast, viz : for Wheat 222 votes, and for Bullitt 396. The first certificate sent from the county of Nelson stated that the vote was for Wheat 457 votes, and for Bullitt 621 votes. An amended certificate was sent by the examiners, which states that there was an error in the first in omitting to include the vote in Bloomfield precinct, No. 3, which, when given, made the vote as above, viz : 525 votes for Wheat, and 694 votes for Bullitt. A note was also received from the clerk of Meade, stating that a mistake of twelve votes was made by the examiners against Mr. Bullitt, in not adding that number to his vote, and that he would reassemble the examiners and have the correction made. *But sufficient time having elapsed to have the mistake corrected*, if it existed, and as it could in no wise change the result, the board did not think it expedient to make longer delay for that purpose.

Given under our hands, at Frankfort, on the 1st day of July, 1857, and in the 66th year of the commonwealth.

C. S. MOREHEAD.
MASON BROWN.
JAMES HARLAN.

By this it will be seen that the board of examiners then were not only conscious of the propriety and legality of admitting corrected certificates from the county canvassers when received, but that they actually waited until sufficient time had elapsed to have mistakes corrected before declaring their determination, and that then they only declined to wait any longer for a correction in the certificates from

the county of Meade, because the errors alleged would not change the result arrived at.

The undersigned do not propose to rest this case upon the suggestions of estoppel so strongly, as they believe, interposing between both the State canvassers and the sitting member and the contestant in issue.

Let the House look at a just construction of the law under which the State canvassers acted, and compare it with the shallow devices resorted to with a view of breaking its force.

The county board, according to the statute, was merely ministerial in its powers. Certain duties were to be discharged by it, viz: "To compare the polls, ascertain the correctness of the summing up of the votes, and give certificates." If, in summing up, it committed an error, and forwarded that error as a result of what they believed a veritable "summing up of the votes," it is a perversion of right to preclude them from correcting the same, and to insist that the error is to be perpetuated, though the truth had reached them, and they desired to substitute it for what had, by an innocent mistake on their part, become a wrong. The time, according to law, between the meeting of the board of State canvassers and that of county canvassers was twenty-five days. One met on the 4th of August, and the other on the 29th. There must have been some object actuating the makers of this law to elapse so long a time between the meeting of these two boards. What was that object? It was to give the county board ample time before the meeting of the State board to carefully examine all returns, and to report to it the true expression of the popular sentiment, so that there might be no mistake by reason of erroneous addition or any other casualty incident to election returns. In the case at issue, whilst at the first meeting of the county canvassers of Cumberland, upon an erroneous summation of the votes in that county, such a result had been arrived at as would, in the aggregate of the district, defeat the contestant, yet, upon the discovery of palpable errors, they reassembled and corrected them, thus electing the contestant. It is folly to argue that their functions ceased upon their first rendition of what they conceived to be the correct result. The statute creating them especially directed them to ascertain the correctness of the summing up. As long as they failed to discharge that duty correctly, just so long did their functions exist. They were directed to ascertain the correct result. How, until they accomplished that, did their powers cease. Besides, the board of county canvassers is something else than a mere temporary tribunal, living to-day and expiring to-morrow. It lives always. It consists of the county judge, clerk of the county court, and sheriff. These are offices that always exist, and are always filled. It is a perpetual, permanent body, and to refuse to it the privilege of correcting its own errors is equivalent to give falsehood the permanent advantage of truth because of the start of the former.

But there is a necessary limitation upon this power to correct as there must be upon every thing in government, and that is furnished

by the statute. The board of county canvassers and the board of State canvassers, being connected, as it were, the latter depending upon certain acts of the former to furnish it with the means to discharge its duty, and being powerless to do so without the limitation upon the power to correct in the board of county canvassers, must necessarily be restricted to such time as will enable the correct returns to be before the State canvassers to enable them to complete their duty in the time fixed for them in the law so to do.

Did these corrected returns from the county of Cumberland, which elect the contestant, reach the board of State canvassers before the issue of the certificate to the sitting member? It is admitted that they reached there some days before the meeting of the board, and that they were considered by it. The conclusion then is irresistible) that upon returns before them, known by them to be incorrect, they gave the certificate to the sitting member, when at the same time, with corrected certificates, known by them to be veritable, they refused the certificate to the contestant and subjected the people of the district to an unfair and unconstitutional representation in this House.

Having disposed of the pretexts upon which the present occupancy of a seat in the House by the sitting member upon a *prima facie* right is sought to be maintained, the undersigned will refer to the points which the contestant, in view of the error of his position upon these discussed, seeks outside of them to maintain that he was duly elected.

He seeks to disfranchise the voters in Casey Creek precinct, Casey county, and in Pentecost precinct, Cumberland county, in both of which the contestant received majorities.

As to the Casey Creek precinct:

The objection to the vote being counted is, that the judges of the precinct *failed to certify the poll-book over their signatures.* But the poll-book is found in its proper depository when the certified copy was obtained, (A., 451,) and there is no pretence that it is not a correct record of the votes, or that it was not acted on as a correct record by both the county board and the State board.

The answer to the objection is very simple, that the provisions of the statute is directory merely, and the omission of the judges to do their duty was not intended by the legislature to disfranchise the voters. That would be punishing the innocent voters for the sin of the judges.—(See the People *vs.* Cook, 14 Barbour, 259 ; S. C., 4 Selden, 67; Truehart *vs.* Addicks, 2 Texas, 217; Ex parte, Heath *et al.*, 3 Hill, 43 ; Batman *vs.* Meguvan, 1 Metcalf's Ky. Rep., 535.)

It might as well be contended that if an envelope was not used for enclosing the poll-book, before delivering it to the sheriff, that circumstance would vitiate the election, though the poll-book was more surely protected than it could be in an envelope. The construction of the sitting member would invalidate almost every election.

As to the Kettle Creek precinct:

The objection to receiving the vote of this precinct is two-fold: 1. That the officers, being sworn by examiner, were not sworn as re-

quired. 2. Because the clerk failed to act during the entire day, and the votes were recorded by a judge. Both grounds are met by the answers to the objection to the Casey Creek precinct above, and the authorities there cited.

But again, by the Kentucky Code of Practice, adopted at the session of 1853–'54, it is provided:

"The examiners shall be authorized to administer oaths and give certificates thereof in all cases in which justices of the peace are so authorized."—(Title xiii, sec. 622.) The first objection, as explained by the sitting member in his verbal argument, was that the judges took the oath before an *examiner*, and not a justice of the peace or the sheriff, as required by chapter xxxii, art. iii, sec. 4, of the Revised Statutes of 1852.—(For the evidence see deposition of C. C. Hughes, C., 136.)

The other and remaining point upon which the sitting member rests to sustain his title is the allegation of clerical errors at the several polls.

After correcting all clerical errors, the contestant is discovered by the undersigned to be elected by eight votes, two more than the number by which he was elected upon the summary of the corrected certificates as they appeared before the State board, and this concedes to the sitting member the votes of Horace Weathers, in Pulaski county, and James Hurt, in Wayne county, claimed by him, but to which, by a strict adherence to the law of 1851, he is not entitled, as he never, in his answer to the contestant's notice, alleged those votes to have been given to him.

If this House will go behind the record, and examine the parol proof on both sides, (which it is impossible to incorporate into the limits of a report,) it will clearly appear that the contestant's majority would be swelled beyond a majority of eight votes, which, the undersigned think, are proved very clearly to be his majority.

The undersigned have full faith that the House will, when it weighs the indisputable facts presented by them, repair the wrong that has been so unjustly and so long visited upon the people of the district in issue, and admit to the seat, now illegally filled by the sitting member, the contestant, who is, in their opinion, the duly elected representative of the fourth congressional district of Kentucky.

They therefore offer the following resolutions as a substitute for those of the majority of the committee:

Resolved, That William C. Anderson is not entitled to a seat upon the floor of this House as the representative from the fourth congressional district of Kentucky.

Resolved, That James S. Chrisman is entitled, and is hereby declared the representative from the fourth congressional district of Kentucky.

W. W. BOYCE,
J. W. STEVENSON.
LUCIUS J. GARTRELL.