tion, the act of assembly necessarily uses the phrase *legal and qualified voters;* but whether qualified according to the rules and regulations ordained by the old constitution, or those which the convention were authorized to prescribe, is the very question in issue.

In reply to my suggestion that this is a legal question, more properly belonging to the judicial than to the executive department of the State, you argue against the correctness of such a view, and claim the right to ask for executive interference upon the ground of there being no adequate and practicable remedy which a court of law could conveniently apply, and you apparently assume that the substantial injury inflicted is upon the individual voter who is precluded from the exercise of his rightful franchise, and you advert to the practical inconvenience of attempting to remedy that wrong by suits or writs of *mandamus*, brought by every voter thus disfranchised, against the judges of election. To all that I agree—but have not numerous questions of the same kind constantly arisen out of every election we have ever had? Is not the rejection of legal and the taking of illegal votes a subject of complaint always occurring at elections, and has there been yet found no remedy for such abuses but suits by the individual voters against the judge?

The chief wrong inflicted in such cases has been generally supposed to consist in the election of one officer and the defeat of another, resulting from such abuse of the elective franchise, and when an account is kept, as it always may be, of the votes wrongfully admitted or excluded, the tribunals invested with the power of canvassing the matter, when they have purged the polls and counted or excluded the legal or illegal votes, have afforded what has been generally regarded as an adequate remedy, and sufficiently vindicated the disfranchised voter by thus ultimately making his vote effectual.

And so, in the case under consideration, does not the wrong supposed to be occasioned by the action of the convention consist really and substantially more in the other provisions which its constitution has introduced than in qualifying the elective franchise of those to whom it is submitted; and, is not the subject of most absorbing interest connected with the approaching election the question whether that constitution is to supplant the old one, rather than whether this man or that is deprived of the right of voting on it. If this be so, why may not the injuries apprehended from the new constitution be still obviated as in cases of other elections, if it be adopted by what can hereafter be shown to be the unlawful exclusion of those who, if permitted, would have voted against it?

But whatever may be the inconveniences which you recapitulate of seeking a remedy through the courts of law, and however such a consideration might operate in determining me to execute an *admitted* power, it cannot have, and I think you will agree with me, ought not to have any weight in inducing me to employ one of most questionable authority.

Again, you say that if this "were a judicial question it does not follow that it is not a political one," and you intimate the opinion that for the infraction of *political* rights, such as the right of franchise, the law does not always profess to furnish a remedy, and that the executive is clothed with authority to apply one. Doubtless this is in some respect a *political* question, and I may admit, too, that such question may at times arise that can be solved only by the political power of the State; but where is the authority for the assumption that such power is embodied in its executive?

The people of the State are the source of that power, and, according to the acknowledged theory and practice of our form of government we are to search for its representatives among those whom they have duty delegated to ordain or alter their organic law, rather than any where else. I felt, if you will allow me to say so, some surprise that one of your discriminating mind should have referred, at such length, to the proceedings, in the case of General Schenck's order at the election of 1863, and to my action in connection therewith, for the purpose of showing that in the oath which the convention has prescribed there is an interference with the constitutional rights of the voters as unwarrantable as that which General Schenck undertook to exercise, and the same necessity for my interference. I deem it proper to say that my sentiments in regard to that military movement have undergone no change whatever, but I confess myself unable to perceive any analogy between the cases. In the one a military commander arranges the form of an oath which he requires the judges of election in certain cases to administer, menaces them with arrest if they refuse, and sends a squad of soldiers to the polls to see that this order is enforced. I did in that case issue a proclamation, and called to the attention of the judges of election the law they were sworn to administer. No one pretended that any other law existed, and the quotation you make from my message correctly shows my object, and the feeling which prompted my action.

The judges were menaced with arrest for refusing to obey an unauthorized military order instead of the undisputed laws of the State, and I said to them that for thus doing their duty they should be protected to the extent of any power that I possessed.

How does the case stand that we are now considering? The constitution is of course the same to-day that it was a year ago. But the people of the State have declared, in the manner provided by law, their intention to change it. They have elected delegates for that purpose—their delegates assembled in pursu-