

strument of power as was here employed, no election will probably ever occur in which the same means will not be again attempted.

You will perceive by several of the communications I have received on this subject, that I have been appealed to to withhold commissions or certificates of election in districts where these abuses were practiced. I possess, however, no such power. My duty in the premises being simply a ministerial one consequent upon the official returns of the Judges of Election. So frequent were the applications to me to this effect, that I deemed it a proper subject for legal advice and having consulted the Hon. Reverdy Johnson, he forwarded to me a written opinion, sustaining the views I had entertained, and a copy of which is herewith furnished.

It becomes you to consider whether there is any remedy within your power, by which such proceedings may be in any degree restrained.

The Constitution declares that all elections shall be by ballot, and I would earnestly recommend that you secure the benefit of that provision by an effectual prohibition of all such marks upon the ballot as are calculated to expose its contents or to distinguish one ballot from another. If by the use of colored paper or other means of designation, such exposure is effected the whole object of the Constitutional requirement is defeated.

Again, if that provision of our law which has so long existed and been so universally considered as one of the safeguards of free elections, which forbids the mustering of armed troops in the neighborhood of the polls be indeed no longer admissible or appropriate to our condition, it should be repealed, otherwise you will see the propriety of adopting some provision which shall, if possible, cause it to be respected. It might probably be accomplished by requiring the Judges of Election to certify in their return that no military or other armed force had appeared at the place of voting or interfered in the election and making such certificate a condition to any Executive action thereon.

MISCELLANEOUS.

Copies of Resolutions adopted by the Legislatures of several States and forwarded to this Department, are herewith transmitted.

I would call your attention to the case of Myers *vs.* the State of Pennsylvania, which has been for several years pending in the Supreme Court of the United States.