

persons between 18 & 21 and of course am constrained to differ with you in the views you present —

You do not of course question the right which Congress possesses under the Constitution to provide for calling out the Militia &c, in the exercise of which within the limits of the Constitution its power must be controlling — but if in the exercise of this right the Government could be controlled by the laws which the State has prescribed for herself in contemplating the exercise of a similar right, State legislation might be so shaped and on some occasions doubtless would be, as practically to defeat this Constitutional power of the Government —

The power referred to — "to provide for calling forth the Militia to execute the laws of the Union, suppress insurrection" &c — being unqualified in its character, the utmost extent, as it seems to me (and even of this I am not quite certain) to which the State could go in limiting in effect the exercise of that right, would be by declaring who within its territorial limits are to be reckoned as "Militia" and if you are correctly informed as to the Governor of Pennsylvania having exempted from the draft residents of that State under twenty one years of age, it will be found, I imagine that it is only because by the laws of that State such persons are not subject there to Militia duty — In our State on the contrary although when called into service by the Governor for State purposes, they can only be drafted when over twenty one, yet by the very first line of the Code on this subject "all able bodied Citizens between 18 & 45" are expressly made "subject to Militia duty" —

Now with great deference to your opinion I can not construe this in its application to those between 18 & 21 as meaning merely Volunteer duty — and that when the law declares that such persons shall be subject to Militia duty that it means that they shall be in no case subject to such duty unless they volunteer to perform it.

Being thus subject to Militia duty when they are called into service by the United States under the clause in the Constitution referred to, the Act of Congress and not the Act of the State Legislature must govern the subject — Were this not so, and were the provisions of our State Code suffered to control the draft, then the services of the drafted men could only be enforced for three months, that being the extent of time in any one year for which they can be drafted when it is done under State authority —

You are mistaken, I think, in supposing that the Act of Congress authorizing the present draft "recognizes all State exemptions", and thereby excludes from the operation of the draft those between 18 & 21 — On the contrary the Act of Congress of 17th July last (the Act in question) after providing that the President shall have power to call for 300,000 Militia, and to prescribe the regulations for their enrollment &c &c, expressly declares that "the enrollment of Militia shall in all cases include all able bodied male Citizens between the ages of 18 & 45,