

propounded by the Judges of Election to all voters who may offer to vote upon the adoption or rejection of the Constitution framed by the Convention, appeals to me to instruct the said Judges of Election to disregard said requirement, and to disregard it myself by announcing that I will not count the votes of any County where such oath is administered to the voters.

Such an act on the part of the Executive of the State would be a proceeding, as it seems to me, obnoxious to the gravest objections, entirely without precedent, and likely to lead to the most injurious results — I deem it altogether unnecessary to enter into any argument as to the propriety or Constitutionality of the act of the Convention to which you take exception — It is defended by many upon the ground of similar provisions in the Constitutions of other States, and under the clause in the Act of Assembly authorizing the assembling of the Convention, which gave it authority for providing for the vote of the people upon the adoption of the Constitution "subject to such rules and regulations as said Convention (may prescribe)." But without undertaking to defend the clause in the Constitution prescribing the oath, it is enough for me to say, that the decision of the question of its unconstitutionality, does not belong to me, that it would be altogether improper for me to undertake to decide it, it being purely a judicial question properly belonging to the Judiciary Department of the State, whose functions I should be usurping were I to venture upon the proceeding you suggest; The Memorial assumes to rely upon my interference in the mode solicited, upon the ground that I objected to the Military order of Genl. Schenck of November 1863, by which an oath was prescribed to the voter to be propounded by the Judges of Election, and they menaced with arrest in case they refused to administer it. I did in that case interfere, calling the attention of the Judges of Election to the laws of the State, and promising them the protection of the State if those laws were faithfully observed — I need hardly specify all the points of difference between the two cases; — In the one case a Military Commander without any authority whatever to modify the Constitution or laws of the State, undertakes nevertheless to do so, and to prescribe to the officers of the State a rule of action not permitted by those laws. In the case now being noticed, a majority of the voters of the State have elected a Convention and charged them with the performance of duties the most important and authoritative that a Representative body can perform — the formation of a new State Constitution — Such Bodies in this State and in many others have been regarded as invested with the most plenary powers; in 1851 a similar Convention adopted the Constitution under which we at present live, although the Constitution which they thereby superseded, expressly declared that