

In reply to my suggestion that this is a legal question, more properly belonging to the Judicial than 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's not a political one"