refusing to serve when this clear and important right is usurped; and with a further proviso, exempting ministers of the gospel, and the most important civil officers, both of the State and counties, whose official duties are continuous and indispensable from all military service.

It will also be necessary to authorize the governor to appoint such staff officers as may in his judgment be necessary to enable him to organize troops to fill promptly any future requisitions made upon the State, or to meet any other emergencies.

Right to Elect Officers.

In this connection, I earnestly invite the attention of the General Assembly to the correspondence—copies of which are herewith forwarded—between the Secretary of War and myself in reference to the right of Georgia's volunteer militia in the military service of the Confederacy, to elect their own officers. And it is proper that I here remark, that since the correspondence was ended, even the right of the home guard to elect to fill vacancies is also denied, and the power of appointing the company officers as well as the field officers, is claimed by the President.

The Constitution gives Congress power to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the Confederate States, reserving to the States respectively the appointment of the officers. The right of the State to appoint the officers to command her militia, or any part thereof, when employed in the service of the Confederate States is not left for inference, but is reserved in plain, simple language, which admits of no two constructions. The State, by her Constitution and laws, has provided how she will make these appointments. Her militia officers are to be elected by the people subject to do military duty under them, and the officers of the volunteer militia are to be elected by the members of the volunteer organization to be commissioned by the officers when elected, and all vacancies are to be filled in the same way. In a word, the State appoints those who are *elected* by the people to be commissioned.

If the militia of Georgia, or any part thereof, is now employed in the service of the Confederate States, no one can question the right of the State as reserved in the Confederate Constitution, to appoint the officers to command them, and the right of the troops, under the Constitution and laws of the State, to have those elected by them appointed or commissioned to command them. Is equally unquestionable.

By the militia of a State, I understand the framers of the Constitution to have meant the arms bearing people of the State. That they intended to use the term in this sense is evident from the fact that they speak of the militia in existence at the time they are making the Constitution, and confer power on Congress not to create a new militia, but to organize that already in existence, but to provide for organizing the militia. In other words, they gave Congress power to provide for forming the militia organizations the arms-bearing people of the respective States. But the Constitution given Congress power to organize the militia without any qualifying words. It would have had power to appoint officers to command them, or to authorize the President to appoint them, as the militia cannot be organized without officers. The language used was well weighed and carefully guarded. Power was given to Congress to provide for organizing that already in existence without any organization—the militia or arms-bearing people of the States. When Congress has provided for the organization, and the States have organized the militia, Congress may call upon the President to employ the militia in the service of the Confederate States, but in the case the States expressly reserve to themselves the right to appoint the officers to command them, and Congress cannot, without usurpation, override the reserved power of the States.

The President has made no call calculated to impair the State organized bodies of her troops for the Confederate service, but his proclamation has invaded his benefited by the order of call to organize and be officered by the State, and they have been accepted by him with their officers as organized. In addition to this, the call has not been confined to persons between 18 and 45 years, which was intended, which was understood, and which was acted on by the State authorities in organizing the militia for the service of the Confederate service. This act has been executed in Georgia. I contemplate no law to compel a person to fill the place of a person between 18 and 45 not specially exempt, is now in Confederate service, and he feel correspondingly nearly with this construction of law. Thus the whole organized militia of the State is now employed in the service of the Confederate States, and now, notwithstanding the State has expressly reserved the right to appoint officers to command them, her right to appoint officers to command a single company, a battalion or regiment is ignored; and it is claimed that they are all in future to be appointed not by the State, but by the President.

One of the reasons given for this unexpected construction is, that it will not do to trust the troops after they are in service with this important right of choosing their own officers, as they would not elect officers who are faithful and competent to discharge their duty. This objection would certainly apply with equal force to the first election, when a regiment or company is being organized. If the men are competent to enter the service and to elect officers to command them, why are they not equally competent to elect to fill vacancies which occur afterwards? Do officers in the military pride and intimate acquaintance with their comrades in arms, make the best men to stand in judge of the qualifications of those who aspire to command? The simple statement of the proposition is a sufficient exposure of its fallacy. At the organization of our regiments, the men elected officers who were acquainted with, and but little; than was allowed them; and officers made some mistakes, proving in their less competent than some other officers; but these mistakes have been tried, to service, and now know who is best qualified. But when a vacancy occurs they are now to be confined to those who were first elected to lower positions in all the higher positions to which they never chose them. And if an officer who claims promotion is not able for promotion by an examining board, the next in rank may step forward and claim his place, and so hold to be entitled, not to the regiment if he is a private, though he may be the choice of every man in the command. It is only the lowest commissioned officer in the company who is taken from the ranks, and if the best and most competent was passed over in the first election, he cannot now repre from the ranks to a higher position than the lowest in command. This policy of filling all vacancies by promotion, not only disregards the rights and interests of the States but it does the greatest injustice to those who are often the most deserving of promotion, and denies to the men the valuable right of selecting their own rulers.

It is said the President may go out of the regular line of promotion, and reward merit in the ranks. It may be truly replied that this is seldom done, and that the man cannot hope for promotion from their companions in arms, but can only look to the President for promotion. This not only contracts all power in his hands, but subjects every manly citizen to his favoritism, prejudice or caprice, and destroys the self-respect of the rank and file, and is compelling all to depend for promotion upon their capacity to flatter or their ability to please a single individual. Georgia's troops have done their duty nobly in the field, and they have a right to look to the government for their State for the protection of their rights. Many of them now under the protection. Shall they have it?

I recommend that this General Assembly pass a joint resolution declaratory of the reserved rights of the State, and of the constitutional right of election by her troops and demanding of the Confederate Government the recognition of this right.

While they took no formal action upon this particular point, your predecessors of the last General Assembly very clearly decided the question in favor of the right of the State to appoint her own officers to command her militia now in Confederate service, and determined further that the troops which the State had furnished to the field were to be considered "employed in the service of the Confederate States," and not the *armies* of the Confederacy, in the sense in which the Constitution uses that term.

Several gentlemen holding commissions in command of Georgia troops in Confederate service, furnished by the State organized by her to fill requisitions made by the President, were members of the General Assembly. The question of their right to hold seats was raised and decided in their favor, on the express ground as I understood from the discussion that they were officers of the State and not officers of the armies of the Confederacy, indeed it was impossible, under the oaths which the members had taken to support the Constitution, for them to have determined that these were officers of the armies of the Confederacy, and not officers of the militia of Georgia, and still have permitted them to have their seats as members of the General Assembly. The 8th paragraph of the 1st section of the 1st article of the Constitution of the State declares that

"No person holding any military commission or other appointment having any emolument or compensation attached to the same, under the United States or Confederate States, or either of them (except justices of the inferior courts, justices of the peace and officers of the militia), shall have a seat in either branch of the General Assembly."

This language of the Constitution is plain, positive and unequivocal. No person holding a military commission under the United States or the Confederate States, having the emolument or compensation attached thereto, (some officers of the militia) shall have a seat in either branch of the General Assembly. If the Georgia troops in Confederate service are officers of the State employed in the service of the Confederate States, or rather in the service of the Confederate States, then their officers are officers of the militia of the State, and not officers of the militia of Georgia, and are, by the express language of the Constitution, excluded from a seat in either branch of the General Assembly. And if their officers are officers of the militia of Georgia "employed in the service of the Confederate States," and are entitled to the constitutional privilege of having seats in the General Assembly, then the men who are commanded are the militia of the State "employed in the service of the Confederate States," and are equally entitled to the exercise of their constitutional right to elect officers to command them. The one right is as plain, as broad, and as valuable as the other. If the General Assembly recognized and protected the right of the officers to have their seats, as I think it should do, I am unable to see how it can withstand a refusal to recognize and protect the rights of the privates to elect their officers. They are constitutional and sacred rights, and the two stand or fall together. The two have been tried together, and now know who is best qualified. But when a vacancy occurs they are now to be confined to those who were first elected to lower positions in all the higher positions to which they never chose them. And if an officer who claims promotion is not able for promotion by an examining board, the next in rank may step forward and claim his place, and so hold to be entitled, not to the regiment if he is a private, though he may be the choice of every man in the command. It is only the lowest commissioned officer in the company who is taken from the ranks, and if the best and most competent was passed over in the first election, he cannot now repre from the ranks to a higher position than the lowest in command. This policy of filling all vacancies by promotion, not only disregards the rights and interests of the States but it does the greatest injustice to those who are often the most deserving of promotion, and denies to the men the valuable right of selecting their own rulers.

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