political unrest in Rhode Island), considered the claims of two competing factions vying to be declared the lawful government of Rhode Island.[619] Chief Justice Taney, for the Court, began by saying that the answer was primarily a matter of state law that had been decided in favor of one faction by the state courts.[620] Insofar as the Federal Constitution had anything to say on the subject, the Chief Justice continued, that was embodied in the clause empowering the United States to guarantee to every state a republican form of government,[621] and this clause committed the determination of that issue to Congress.

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal." [622] Here, the contest had not proceeded to a point where Congress had made a decision, "[y]et the right to decide is placed there, and not in the courts." [623]

Moreover, in effectuating the provision in the same clause that the United States should protect states against domestic violence, Congress had vested discretion in the President to use troops to protect a state government upon the application of the legislature or the governor. Before he could act upon the application of a legislature or a governor, the President "must determine what body of men constitute the legislature, and who is the governor . . . ." No court could review the President's exercise of discretion in this respect; no court could recognize as legitimate a group vying against the group recognized by the President as the lawful government.[624] Although the President had not actually called out the militia in Rhode Island, he had pledged support to one of the competing governments, and this pledge of military assistance if it were needed had

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[619] *Cf.* Baker v. Carr, 369 U.S. 186, 218–22 (1962); id. at 292–97 (Justice Frankfurter dissenting).

[620] *Luther*, 48 U.S. (7 How.) at 40.

[621] 48 U.S. at 42 (citing Article IV, § 4).

[622] 48 U.S. at 42.

[623] Id.

[624] 48 U.S. at 43.