



PRESSER v. ILLINOIS
SUPREME COURT OF THE UNITED STATES
116 U.S. 252
January 4, 1886

OPINION: Justice Woods...We think it clear that the sections [of the Military Code] under consideration, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by law, do not infringe the right of the people to keep and bear arms. But a conclusive answer to the contention that this amendment prohibits the legislation in question lies in the fact that **the amendment is a limitation only upon the power of Congress and the National government, and not upon that of the States.** It was so held by this court in the case of *United States v. Cruikshank*¹, in which the Chief Justice, in delivering the judgment of the court, said, that the right of the people to keep and bear arms is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress...

[Presser] was not a member of the organized volunteer militia of the State of Illinois, nor did he belong to the troops of the United States or to any organization under the militia law of the United States. On the contrary, the fact that he did not belong to the organized militia or the troops of the United States was an ingredient in the offence for which he was convicted and sentenced. **The question is, therefore, had he a right as a citizen of the United States, in disobedience of the State law, to associate with others as a military company, and to drill and parade with arms in the towns and cities of the State? If [he] has any such privilege he must be able to point to the provision of the Constitutional statutes of the United States by which it is conferred.** For as was said by this court in *United States v. Cruikshank*, the government of the United States, although it is "within the scope of its powers supreme and above the States, can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction. All that cannot be so granted or so secured are left to the exclusive protection of the State."

¹Case 2A-1 on this website.

We have not been referred to any statute of the United States which confers upon [Presser] the privilege which he asserts. The only clause in the Constitution which, upon any pretence, could be said to have any relation whatever to his right to associate with others as a military company is found in the First Amendment, which declares that "Congress shall make no law...abridging...the right of the people peaceably to assemble and to petition the government for a redress of grievances." This is a right which it was held in *United States v. Cruikshank* was an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. But it was held in the same case that the right peaceably to assemble was not protected by the clause referred to, unless the purpose of the assembly was to petition the government for a redress of grievances.

The right voluntarily to associate together as a military company or organization, or to drill or parade with arms, without, and independent of, an act of Congress or law of the State authorizing the same, is not an attribute of national citizenship. Military organization and military drill and parade under arms are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law. Under our political system they are subject to the regulation and control of the State and Federal governments, acting in due regard to their respective prerogatives and powers. The Constitution and laws of the United States will be searched in vain for any support to the view that these rights are privileges and immunities of citizens of the United States independent of some specific legislation on the subject. **It cannot be successfully questioned that the State governments, unless restrained by their own Constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform the duties or exercise the privileges of citizens of the United States; and have also the power to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power by the States is necessary to the public peace, safety and good order. To deny the power would be to deny the right of the State to disperse assemblages organized for sedition and treason, and the right to suppress armed mobs bent on riot and rapine...**

Presser v. Illinois ruled that the states had the right to strictly regulate private military groups and associations. It also reaffirmed that the Second Amendment acts as a limitation upon the federal government and not the states. However, *Presser* also stated that setting the Second Amendment aside, the states could not prohibit the "people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security..."