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The Boston Globe

April 27, 1995, Thursday, City Edition

**Justices void gun ban for schools;  
Say law usurps local powers in 5-4 vote;  
Paul Langner and John Ellement of the Globe Staff contributed to this report.**

**BYLINE:** By Ana Puga, Globe Staff

**SECTION:** NATIONAL/FOREIGN; Pg. 3

**LENGTH:** 651 words

**DATELINE:** WASHINGTON

In a 5-4 decision, the Supreme Court yesterday struck down as unconstitutional the Gun-Free School Zones Act, a federal law intended to fight youth violence by making it a crime to bring a gun within 1,000 feet of a school.

In the majority opinion, Chief Justice William Rehnquist advanced the conservative argument that Congress must not usurp the authority of state and local governments. To uphold the ban, Rehnquist wrote, "would obliterate the distinction between what is truly national and what is truly local."

Justice Stephen G. Breyer dissented, arguing the gun ban was justified under Congress' constitutional right to regulate interstate commerce, and stressing federal lawmakers' need to curb crime to promote the general economic health of the country.

"Congress could believe that guns near schools amount to a commercial problem as well as a human problem. . . ." Breyer said. "The difference between classrooms that teach and classrooms that don't may spell the difference between well-paying jobs and unemployment."

Advocates of gun control said yesterday that the court's ruling in *United States v. Lopez* handicaps congressional attempts to bolster local law enforcement. Supporters of the right to carry weapons and advocates of state and local government said the ruling strengthens the rights of the individual and the locality against federal intrusion.

Law enforcement officials in Massachusetts said the state does not have a law imposing enhanced penalties for the illegal possession of a gun within 1,000 feet of a school. And a spokesman for the US Attorney's Office in Boston said the office has no cases in which the federal law was used.

Following yesterday's ruling, Massachusetts Attorney General Scott Harshbarger suggested that it might be time to enact a state law similar to the federal law.

"The court has given states the green light to enforce gun-free school zones," Harshbarger said. "We in Massachusetts should use this opportunity to enact legislation that would dramatically raise the legal prices for those who dare bring deadly weapons near our schools."

Besides its immediate practical impact, the opinion represents a major shift to the right in how the court interprets the constitutional clause that gives Congress power to regulate interstate commerce. Since the New Deal, the Supreme Court has tended to interpret the clause broadly. Yesterday's ruling was a rare attempt to rein in Congress.

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The case began in 1992, when authorities at a high school in San Antonio caught a 12th-grade student trying to bring a .38-caliber handgun onto the school grounds. Antonio Lopez was convicted under the Gun-Free School Zones Act and sentenced to six months in prison.

Lopez appealed, arguing that because there was no connection between interstate commerce and the possession of firearms in local schools, Congress had overstepped its authority in enacting the 1990 law. The 5th US Circuit Court of Appeals agreed and overturned Lopez' conviction.

Justices Rehnquist, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy and Clarence Thomas ratified the appellate court's ruling. Rehnquist noted in the majority opinion that states "historically have been sovereign" in the areas of education and criminal law enforcement.

In a concurring opinion, Thomas called for a return to the "original understanding" of the commerce clause, which defined commerce narrowly as restricted to certain transactions involving areas like manufacturing and agriculture. Justices John Paul Stevens, David Souter and Ruth Bader Ginsburg joined Breyer in the dissenting opinion.

In a separate opinion, Stevens noted: "The market for the possession of handguns by school-age children is distressingly substantial. Whether or not the national interest in eliminating that market would have justified federal legislation in 1789, it surely does today."

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Ban on Guns Near Schools Is Rejected; Congress Exceeded Commerce Power, High Court Holds The Washington Post  
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The Washington Post

April 27, 1995, Thursday, Final Edition

## Ban on Guns Near Schools Is Rejected; Congress Exceeded Commerce Power, High Court Holds

Joan Biskupic, Washington Post Staff Writer

**SECTION:** A SECTION; Pg. A01

**LENGTH:** 1400 words

The Supreme Court yesterday struck down a 1990 federal law intended to keep firearms out of schoolyards, ruling that Congress had unconstitutionally exceeded its authority to intervene in local affairs.

In a 5 to 4 ruling, the court added its voice to the nation's increasingly volatile debate over the size and roles of the federal government. For the first time since the New Deal era, the court sharply limited Congress's ability to use the interstate commerce clause of the Constitution to legislate social policy.

In the past, this provision has been used to enact legislation on a variety of issues from discrimination in restaurants to the size of farm crops. But writing for the majority, Chief Justice William H. Rehnquist called the 1990 Gun-Free School Zone Act "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise."

The decision immediately acquired extra resonance because of the Oklahoma City bombing. In the aftermath of that tragedy, President Clinton and Republican leaders have demanded broader investigative powers for federal agencies to combat domestic groups that use explosives and firearms for deadly ends. Meanwhile, new attention is focusing on citizen militia groups and their assertions that gun control laws are the leading edge of a federal conspiracy to trample their constitutional rights.

The court, producing six separate opinions yesterday totaling more than 100 pages, rejected Congress's arguments that banning guns within 1,000 feet of a school arises from its power to regulate interstate economic activity. The government had told the justices that gun possession leads to violence, and violence affects how well the national economy operates. It also asserted that the presence of guns threatens national education efforts.

But Rehnquist said that under the government's reasoning, "Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example."

He was joined by Justices Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas.

"This is quite possibly the most important decision of the decade in how the country does business," said University of Tennessee law professor Glenn Harlan Reynolds, an expert on the constitutional issues invoked. "It could mean a drastic reordering of roles of federal government and states."

Harvard law professor Laurence H. Tribe called the decision a "dramatic move" by the court, but added, "If ever there was an act that exceeded Congress's commerce power, this was it." He noted that in enacting the 1990 Gun-Free School Zones Act, Congress did not make findings of an interstate commerce link to the dangers of guns on school playgrounds, nor did it establish any federal jurisdictional authority to distinguish the law from any similar regulations at the state level.

Kennedy, joined by O'Connor, observed in a concurring statement in *United States v. Lopez* that more than 40 states already have criminal prohibitions on possession of firearms on or near school grounds.

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The gun prohibition was easily adopted five years ago in the wake of various school shootings, as lawmakers were concerned about epidemic gun violence. Sen. Herb Kohl (D-Wis.), who sponsored the gun-free schools bill, decried the decision yesterday as "a piece of judicial activism that ignores children's safety for the sake of legal nitpicking."

Justice Stephen G. Breyer, who led the dissent at the court, said the ruling casts doubt on other prohibitions on the use of guns and explosives. He specifically cited federal penalties for blowing up buildings "used in activity affecting interstate commerce," which could be one of the grounds invoked in a prosecution for the Oklahoma City bombing.

Breyer, who took the unusual step of reading portions of his dissenting opinion from the bench yesterday, was joined by Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg.

Characterizing gun-related violence at schools as a "commercial, as well as human, problem," Breyer referred to numerous studies documenting the prevalence, dangers and economic consequences of violence in the nation's schools. Students preoccupied by fears of violence cannot learn, he suggested, and when they cannot learn they eventually cannot produce in the business world.

Summarizing his critique of the majority view, Breyer said, "[T]he legal uncertainty now created will restrict Congress' ability to enact criminal laws aimed at criminal behavior that . . . seriously threatens the economic, as well as social, well-being of Americans."

How the ruling will play out in future cases involving gun control or other regulation is unknown. The court did not specifically overrule any of its prior, more generous readings of Congress's commerce power. But its strong words about the constraints of federal authority are sure to lead to greater lower court scrutiny of any legislation tied to a clause in the Constitution giving Congress power to "regulate commerce . . . among the several states." Since the 1930s, that clause has been used for almost limitless federal commerce authority.

Yesterday's dispute began when Alfonso Lopez Jr., a San Antonio 12th grader, brought a .38-caliber handgun to school. After Lopez pleaded not guilty to illegal possession of a firearm in a school zone, his lawyer tried to get the case dismissed by arguing that the federal law was unconstitutional. A trial court rejected the argument and Lopez was eventually convicted and sentenced to six months in prison.

On appeal, the 5th U.S. Circuit Court of Appeals agreed with Lopez. While it observed that Congress has been imposing various gun controls for more than a half century based on its power to regulate interstate commerce, it said this law went too far into the local domain and failed even to make clear why such an intrusion was necessary.

In affirming the appeals court yesterday, Rehnquist acknowledged that Congress last year put such findings about the connection between interstate commerce and guns in school in a separate anti-crime law. But the overall tone of his ruling and the assertion that the law breaks new ground in federal firearms legislation suggests a majority would be skeptical of schoolhouse regulations under any circumstances. Rehnquist stressed that federal authority to regulate interstate commerce cannot be used to "obliterate the distinction between what is national and what is local and create a completely centralized government."

He said courts must assess whether the regulated activity -- in this case, possession of guns at local schools -- "substantially affects" interstate commerce. Rehnquist noted that Lopez "was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce."

In Kennedy's separate opinion, he emphasized the need to keep the federal government out of the states' business. "[E]ducation is a traditional concern of the states," he said.

Justice Thomas also wrote separately, saying the court had in recent decades been unfaithful to the original understanding of the commerce clause and suggesting earlier laws should have been struck down.

Dissenting justices said the majority decision conflicted with prior cases upholding statutes with connections to interstate commerce less significant than the effect of school violence. Breyer also asserted that the majority drew an unworkable distinction between "commercial" and "noncommercial" activities. "Schools that teach reading, writing, mathematics and related basic skills serve both social and commercial purposes, and one cannot easily separate the one from the other," he said.

Stevens wrote separately to emphasize: "The market for the possession of handguns by school-age children is, distressingly, substantial. Whether or not the national interest in eliminating that market would have justified federal legis-

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lation in 1789, it surely does today." Souter added in a separate dissent that the ruling betrayed prior decisions and "tugs the court off course."

Staff writer Helen Dewar contributed to this report.

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The Philadelphia Inquirer

APRIL 27, 1995 Thursday FINAL EDITION

**JUSTICES OVERTURN SCHOOL GUN BAN / PRACTICAL EFFECT IS LIMITED BY STATE LAWS STILL IN FORCE****BYLINE:** Aaron Epstein, INQUIRER WASHINGTON BUREAU**SECTION:** NATIONAL; Pg. A03**LENGTH:** 1158 words**DATELINE:** WASHINGTON

In a significant decision that limits the powers of Congress, the Supreme Court voted 5-4 yesterday to overturn a federal law barring anyone from carrying a gun near a school.

Congress exceeded its authority over interstate commerce when it enacted the 1990 law, declared the court's five most conservative members: Chief Justice William H. Rehnquist, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas.

In most communities, the ruling will not have any immediate practical effect. More than 40 states have already outlawed the possession of firearms in or near school grounds. None of those state laws was affected by the high court ruling.

But in a broader sense, the decision was a milestone. It signaled a sharp conservative retreat from the court's longtime willingness to endorse the expanding power of Congress to regulate a vast array of activities - based on Congress' constitutional power to control interstate commerce.

The ruling placed a constitutional cloud over the authority of Congress to legislate in areas traditionally reserved to the states - especially education, local crime, and such family law issues as marriage, divorce, child custody and adoption.

As such, it was a victory for state governments, gun owners and conservatives, who have long sought a halt to the growing commerce power of Congress.

"We applaud the Supreme Court's decision," said Larry Pratt, executive director of the Gun Owners of America. "We already have laws that punish thugs for committing crimes with a gun on school grounds. But the congressional act was not only unconstitutional, it could easily punish law-abiding adults who might carry a gun for self-defense."

In contrast, the decision disturbed Clinton administration officials, gun-control advocates, public school leaders, police organizations, and others who favored the federal law that was declared unconstitutional.

"We are dismayed that it is no longer illegal to carry a handgun in or near schools in some states," said Bob Chase, vice president of the National Education Association, which ardently supported the invalidated law.

In other actions yesterday, the court:

\* Heard arguments on whether Ohio could deny a Ku Klux Klan request to put a cross alongside a menorah and Christmas tree on the square in front of the Statehouse in Columbus.

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\* Heard arguments on whether Brett Kimberlin, a former federal prison inmate who said he sold marijuana during the 1970s to Dan Quayle, was wrongly disciplined when he tried to publicize his allegation shortly before the 1988 election in which Quayle was elected vice president.

\* Ruled, in a case from New York, that states may regulate hospital costs by requiring patients covered by employee benefit plans to pay higher rates than those with other types of health coverage.

To some legal experts, the gun ruling could spell trouble for some environmental laws that regulate individual conduct and for a recently enacted federal statute that makes it a crime to obstruct abortion clinics.

For constitutional specialists, the decision was a doctrinal landmark, one that will be discussed in seminars, legal publications, law schools and government classrooms for years to come.

William Van Alstyne, a Duke University law professor and author of texts on constitutional law, said it was the first time in nearly 60 years that the Supreme Court had overturned an act of Congress that was based on its commerce power and had a direct effect on private activity.

The Gun-Free School Zones Act of 1990 made it a federal crime to possess a firearm within 1,000 feet of a public, private or parochial school.

In defending the act as a proper exercise of the power of Congress to regulate interstate commerce, the Clinton administration forcefully argued that gun-related violence in schools hinders learning to such a serious degree that it damages the American economy and its ability to compete in the world.

The dissenters - led by Justice Stephen G. Breyer, who was joined by John Paul Stevens, David H. Souter and Ruth Bader Ginsburg - made essentially the same argument.

But that theory, Chief Justice Rehnquist wrote for the majority, could justify unfettered federal authority to legislate "even in areas such as criminal law enforcement, or education, where states historically have been sovereign."

"Thus, if we were to accept the government's arguments, we are hard-pressed to posit any activity by an individual that Congress is without power to regulate," Rehnquist wrote.

The government's argument, Rehnquist said, would permit Congress to find a commercial aspect in almost any activity. It could justify a federal curriculum for local classrooms or federal guidelines for rearing children, he said.

Congress does have broad authority, he said, but it cannot "regulate each and every aspect of local schools."

The case before the court, *U.S. v. Alfonso Lopez*, began in 1992, when Lopez, then a 12th grader, was charged with violating Texas and federal laws for carrying a concealed handgun to a San Antonio high school. Lopez said he was to be paid \$40 for delivering the gun for use in a "gang war."

State charges were dismissed, and Lopez was sentenced to six months in prison for the federal violation. On appeal, though, a federal circuit court said Congress lacked power to enact the law.

Agreeing, Rehnquist observed: "The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."

In a concurring opinion, Kennedy said that such federal laws interfere with state efforts to cope with the same problems.

The federal law, he said, "forecloses the states from experimenting and exercising their own judgment in an area to which states lay claim by right of history and expertise."

Breyer, the court's newest justice, led the moderate-to-liberal dissenters in accusing the majority of ignoring numerous studies showing that "the problem of guns in and around schools is widespread and extremely serious."

"Why, then, is it not . . . obvious . . . that a widespread, serious, and substantial physical threat to teaching and learning also substantially threatens the commerce to which that teaching and learning is inextricably tied?" asked Breyer.

Members of Congress, like the justices, appeared divided along ideological lines.

Sen. Orrin G. Hatch (R., Utah), chairman of the Senate Judiciary Committee, said he was pleased that the court had made clear that "there are real limits to Congress' power under the Commerce Clause."

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But to Sen. Herb Kohl (D., Wis.), who had sponsored the school gun law, the ruling "ignores children's safety for the sake of legal nitpicking."

Lopez now works in a San Antonio delicatessen. Instead of facing a prison term, his lawyers said, he will soon join the Marine Corps.

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The New York Times

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## HIGH COURT KILLS LAW BANNING GUNS IN A SCHOOL ZONE

**BYLINE:** By LINDA GREENHOUSE

**SECTION:** Section A; Page 1; Column 6; National Desk

**LENGTH:** 1405 words

**DATELINE:** WASHINGTON, April 26

The Supreme Court today dealt a stinging blow to the Federal Government's ability to move into the realm of local law enforcement, ruling in a bitterly divided 5-to-4 decision that Congress acted beyond its constitutional authority five years ago when it made possession of a gun within 1,000 feet of a school a Federal crime.

The decision, with a majority opinion by Chief Justice William H. Rehnquist, was based on the Court's interpretation of the authority of Congress to regulate interstate commerce. While not overturning any precedents, the decision marked a sharp departure from the modern Supreme Court's expansive view of Congressional power to regulate commerce.

Justice Stephen G. Breyer, in a dissenting opinion, said the decision "threatens legal uncertainty in an area of law that, until this case, seemed reasonably well settled."

The Constitution's grant of authority to Congress to regulate interstate commerce has been the basis for the development of the Federal Government in many of its most familiar aspects, particularly since the Supreme Court reversed course in 1937 and began to uphold the regulatory laws at the heart of the New Deal.

The last time the Court overturned a Federal law on the ground that it exceeded the Congressional commerce authority was 1936, when it struck down minimum-wage and maximum-hour requirements in the coal industry.

The ruling today, declaring unconstitutional the Gun-Free School Zones Act of 1990, cast doubt on the ability of Congress to exercise jurisdiction over a range of activities it has recently defined as Federal crimes, including car jacking, drive-by shootings and violent demonstrations at abortion clinics.

Unlike the law the Court struck down today, which made it a crime simply to have a gun in a particular place, most Federal gun laws regulate activities like buying, selling or importing guns, activities that fall within the classic definition of interstate commerce and that the ruling today did not disturb.

But at the least, the decision is likely to encourage a new round of legal challenges to other gun control laws. "Everything will be tested now," one Congressional aide said.

For example, one recently enacted Federal law, the ban on assault weapons, which is already the subject of a Federal court challenge by the National Rifle Association, makes it a crime to possess the weapons as well as to manufacture or import them. Possession of machine guns, undetectable handguns and "cop-killer" bullets are also crimes under various Federal laws that may now be open to legal attack.

The Brady law, which imposes a five-day waiting period for gun purchases and requires state officials to conduct background checks of purchasers, has already been declared unconstitutional in a half-dozen Federal district courts. The basis for those decisions, which the Clinton Administration is appealing, was not the Congressional commerce power but state autonomy under the 10th Amendment, which reserves to the states the powers not explicitly delegated to the Federal Government by the Constitution.

While that is a different rationale than the one the Court employed today, the 10th Amendment and the commerce clause are closely related elements of an ongoing constitutional debate over state power within the Federal system.

The language of federalism rang strongly through Chief Justice Rehnquist's majority opinion, as well as in a concurring opinion filed by Justices Anthony M. Kennedy and Sandra Day O'Connor. Justices Antonin Scalia and Clarence Thomas, who filed his own concurring opinion, were the other members of the majority.

Joining Justice Breyer in dissenting were Justices John Paul Stevens, David H. Souter and Ruth Bader Ginsburg. Justice Breyer took the unusual step of reading from the bench this morning a portion of the dissenting opinion he wrote for himself and the three others. Justices Stevens and Souter filed their own dissenting opinions as well. Justice Stevens called the majority ruling "extraordinary."

In his majority opinion, Chief Justice Rehnquist said the Administration's arguments for upholding the Gun-Free School Zones Act "would bid fair to convert Congressional authority under the commerce clause to a general police power of the sort retained by the states."

The Chief Justice said the law was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms." He rejected the Administration's argument that guns and violence in schools hurt the economy by undermining the educational process and making children less productive workers and citizens.

"If we were to accept the Government's arguments, we are hard-pressed to posit any activity by an individual that Congress is without power to regulate," Chief Justice Rehnquist said. By the same logic, he added, school curriculums and state laws governing divorce and child custody would also come under Federal control.

In his dissenting opinion, Justice Souter accused the majority of having abandoned the principles of judicial restraint. He urged his colleagues to remember the "painful lesson" of the New Deal era, when the Court's activism in striking down Federal laws under the commerce clause brought the Court into disrepute and under sustained political attack.

"It seems fair to ask whether the step taken by the Court today does anything but portend a return to the untenable jurisprudence from which the Court extricated itself almost 60 years ago," Justice Souter said.

One lesson from that period, he said, was that "nothing about the judiciary as an institution made it a superior source of policy on the subject Congress dealt with."

In the dissenting opinion that Justices Souter, Stevens and Ginsburg also joined, Justice Breyer said the decision "threatens legal uncertainty" in legal matters that until now "seemed reasonably well settled." His opinion included a 17-page appendix listing studies and reference works on violence in the schools and on the connection between education and the economy.

"Why could Congress, for commerce clause purposes, not consider schools as roughly analogous to commercial investments from which the nation derives the benefit of an educated work force?" Justice Breyer asked.

One question the majority left unresolved was whether the Gun-Free School Zones Act might have been upheld had Congress, in passing the legislation, included the references and detailed argument that the dissenting Justices provided.

Some passages in Chief Justice Rehnquist's opinion could be read as indicating that a more detailed rationale for the legislation -- not by Government lawyers defending it in Court but by those sponsoring and voting for it at the time -- could have bolstered the case that education was sufficiently connected with the national economy to come within Congressional authority.

But other part of the opinion appeared to look the other way, both with respect to the question at hand and to the broader issue of structural limits on Federal power over the states. The outer limits of Congressional authority under the commerce clause "always will engender legal uncertainty," he said, adding, "The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation."

Federal actions like caps on medical malpractice awards, which have been approved by the House of Representatives and are being debated in the Senate, will be open to challenge under today's ruling if they ever become law because this area of law is historically a state preserve with a limited connection to interstate commerce. The pending legislation also includes limits on damage awards for defective products, which would be likely to survive a challenge because products move in interstate commerce.

The decision, *United States v. Lopez*, No. 93-1260, upheld a 1993 ruling by the United States Court of Appeals for the Fifth Circuit, in New Orleans. That court overturned the conviction of a San Antonio high school student, Alfonso Lopez Jr., for violating the Gun-Free School Zones Act by carrying a concealed .38-caliber pistol and five bullets to

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school. The appellate court invalidated the law, calling it "a singular incursion by the Federal Government into territory long occupied by the states."

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