

Federalism and Gun Control Laws

In 1990, Congress passed the Gun-Free School Zones Act as part of its crime control legislation. The law made it illegal for any person to possess a firearm in a place that he or she knows is a school zone, unless that person is acting in a law enforcement capacity. Most people thought this new law, which was enacted amid increasing concerns about gun violence in schools, was a good idea.

There was soon a major challenge to the law. Early in 1992, 12th grader Alfonso Lopez Jr. brought a concealed handgun into Edison High School in San Antonio, Texas. School officials received an anonymous tip and confronted him. Lopez admitted that he was carrying a .38 caliber handgun and five bullets. He was convicted in federal district court of violating the Gun-Free School Zones Act and was sentenced to six months in prison and another two years of supervised release.

Lopez appealed his conviction, arguing that Congress did not have the constitutional power to pass the Gun-Free School Zones Act. The government, in contrast, contended that the Commerce Clause, which gives Congress the power to “regulate commerce with foreign nations, and among the several states,” gave lawmakers the appropriate constitutional power. It argued that possession of a firearm in a school zone leads to violent crime, which affects the national economy (commerce) by causing insurance rates to rise and by discouraging travel through areas that are thought to be unsafe. The government also argued that allowing guns in schools undermines the goal of a safe learning environment. If students cannot learn, they become less-productive citizens.

Contrary to the government’s argument, however, the power to establish and maintain schools is traditionally reserved for the states. Many states, in turn, pass this responsibility on to local governments. Although Congress has substantial experience in creating firearms legislation, it does not have knowledge about, or experience managing, any one particular school district. States also have the power to provide fire and police protection. In this capacity, many state legislatures have already passed laws similar to the Gun-Free School Zones Act.

In your group, use your Reading Notes, this handout, and the federal system diagram to answer the questions below. You must reach an agreement on Question 3 and be prepared to share your response with the class.

1. Which expressed, concurrent, and reserved powers apply to this issue?
2. What are the strongest arguments in favor of national power in this issue? Against national power?
3. Do you think the national government has the power to prohibit the possession of firearms near schools? Why or why not?