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Module 7: The Legislative Branch: How Congress Works

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UNITED STATES V. LOPEZ (1995)

SUMMARY

View the case on the National Constitution Center's Website [here](#).

United States v. Lopez reaffirmed certain limits on congressional power. There, Alphonso Lopez was arrested for carrying a concealed weapon into his high school. He was charged under the Gun-Free School Zones Act of 1990, a congressional law that banned people from bringing guns into school zones. Lopez challenged his conviction, arguing that the law exceeded Congress's power under the Commerce Clause. In a 5-4 decision, the Supreme Court agreed with Lopez and struck down the law. This was the first time that the Court struck down a law passed under Congress's commerce power since the New Deal Revolution of 1937. In the end, the Court used *Lopez* to push back against some of the broadest assertions of congressional power under the Commerce Clause—reaffirming that the Constitution creates a national government with limited powers.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Chief Justice Rehnquist

The Act is designed to keep guns out of school zones; this law is unconstitutional; it extends beyond Congress's power under the Commerce Clause. In the Gun-Free School Zones Act of 1990, Congress made it a federal offense “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.” . . . The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress “[t]o regulate Commerce . . . among the several States”

Lopez brought a gun to school. On March 10, 1992, respondent, who was then a 12th-grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38-caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. . . .

He was found guilty at trial. The District Court conducted a bench trial, found him guilty of violating [Gun-Free School Zones Act], and sentenced him to six months' imprisonment

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The Constitution creates a national government of limited powers. We start with first principles. The Constitution creates a Federal Government of enumerated powers. . . . As James Madison wrote: “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

Congress has the power to regulate interstate commerce. The Constitution delegates to Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” . . . The Court, through Chief Justice Marshall, first defined the nature of Congress’ commerce power in *Gibbons v. Ogden* . . . : “Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. . . .”

But there are limits to this power. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause. . . .

Congress can only regulate interstate commerce. Comprehensive as the word “among” is, it may very properly be restricted to that commerce which concerns more States than one The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State. . . .

The Court didn’t deal with many cases defining Congress’s commerce power prior to the Civil War. For nearly a century thereafter, the Court’s Commerce Clause decisions dealt but rarely with the extent of Congress’ power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. . . . Under this line of precedent, the Court held that certain categories of activity such as “production,” “manufacturing,” and “mining” were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. . . .

Congress became more active in the late 1800s, and the Court set some limits on Congress’s commerce power. In 1887, Congress enacted the Interstate Commerce Act . . . , and in 1890, Congress enacted the Sherman Antitrust Act These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as “production,” “manufacturing,” and “mining.”

The New Deal Revolution set aside these limits and read Congress’s commerce power broadly. *Jones & Laughlin Steel, Darby, and Wickard* [key New Deal-era decisions from 1937 to 1942] ushered in an era of Commerce Clause jurisprudence that greatly expanded the

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previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country.

The economy changed, and more business crossed state lines. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

However, even these expansive decisions acknowledged some limits to Congress's commerce power. But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. . . . Since that time, the Court has . . . undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce.

There are three broad categories of activity that Congress can regulate under its commerce power. Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. . . . First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce

In *Lopez*, the Act can only be upheld as the regulation of an activity that substantially affects interstate commerce. We now turn to consider the power of Congress, in the light of this framework, to [the Gun-Free School Zones Act]. The first two categories of authority may be quickly disposed of: [the Act] is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can [the Act] be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

The Court has upheld many regulations in this category; they generally involve the regulation of economic activities. First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining; . . . intrastate extortionate credit transactions, . . . restaurants utilizing substantial interstate supplies, . . . inns and hotels catering to interstate guests, . . . and production and consumption of homegrown wheat These examples are by no means exhaustive, but the pattern is clear.

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Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

The Act here is a criminal law that doesn't have anything to do with commerce; it doesn't regulate an economic activity. [The Gun-Free School Zones Act] is 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. [The Act] is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

There is no specific language that limits the law's reach to activities that have an explicit connection to or an effect on interstate commerce. Second, [the Act] contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. . . . [The Act] has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

The government argues that the Act is constitutional because a firearm in a school zone may lead to violent crime, and violent crime, in turn, substantially affects the national economy. The Government's essential contention . . . is that we may determine here that [the Act] is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. . . . The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. . . . Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. . . . The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

The government's argument goes too far; it sets virtually no limits on congressional power; plus, law enforcement is an area traditionally left to the states. We pause to consider the implications of the Government's arguments. The Government admits, under its “costs of crime” reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. . . . Similarly, under the Government's “national productivity” reasoning, Congress

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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. Under the theories that the Government presents in support of [the Gun-Free School Zones Act], it is difficult to perceive any limitation on federal power, 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.

The dissent can't identify any meaningful limits on Congress's commerce power under the government's theory. Although JUSTICE BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. . . .

It may sometimes be difficult to determine whether an activity within a single state is commercial or non-commercial, but constitutional law often raises difficult line-drawing questions; we must do our job and police the outer limits of Congress's power.

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty." . . . The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. . . . Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

Lopez doesn't involve an economic activity that might substantially affect interstate commerce. 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. Respondent 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.

If we let the government win here, then we are saying that there are no meaningful limits on Congress's commerce power; but ours remains a government of limited powers. To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. . . . The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated . . . and that there

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never will be a distinction between what is truly national and what is truly local This we are unwilling to do.

Excerpt: Dissent, Justice Breyer

This law is constitutional under well-established precedent. The issue in this case is whether the Commerce Clause authorizes Congress to enact a statute that makes it a crime to possess a gun in, or near, a school. . . . In my view, the statute falls well within the scope of the commerce power as this Court has understood that power over the last half century. . . .

Three principles guide me here; first, Congress may regulate local activity as long as it significantly affects interstate commerce. In reaching this conclusion, I apply three basic principles of Commerce Clause interpretation. First, the power to “regulate Commerce . . . among the several States” . . . encompasses the power to regulate local activities insofar as they significantly affect interstate commerce.

Second, to determine whether an activity has such effects, we may look at the cumulative effects of similar actions. Second, in determining whether a local activity will likely have a significant effect upon interstate commerce, a court must consider, not the effect of an individual act (a single instance of gun possession), but rather the cumulative effect of all similar instances (i. e., the effect of all guns possessed in or near schools). . . .

Third, we should give Congress some flexibility in this area; it involves empirical judgments better left to the elected branches than the courts. Third, the Constitution requires us to judge the connection between a regulated activity and interstate commerce, not directly, but at one remove. Courts must give Congress a degree of leeway in determining the existence of a significant factual connection between the regulated activity and interstate commerce—both because the Constitution delegates the commerce power directly to Congress and because the determination requires an empirical judgment of a kind that a legislature is more likely than a court to make with accuracy. The traditional words “rational basis” capture this leeway. . . . Thus, the specific question before us, as the Court recognizes, is not whether the “regulated activity sufficiently affected interstate commerce,” but, rather, whether Congress could have had “a rational basis” for so concluding. . . .

Even if we uphold this law, there are still limits to Congress’s commerce power; here, violence can disrupt education and this, in turn, would harm the national economy. To hold this statute constitutional is not to “obliterate” the “distinction between what is national and what is local” . . . ; nor is it to hold that the Commerce Clause permits the Federal Government to “regulate any activity that it found was related to the economic productivity of individual citizens,” to regulate “marriage, divorce, and child custody,” or to regulate any and all aspects of education. . . . First, this statute is aimed at curbing a particularly acute threat to the

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educational process—the possession (and use) of life-threatening firearms in, or near, the classroom. The empirical evidence . . . unmistakably documents the special way in which guns and education are incompatible. . . . This Court has previously recognized the singularly disruptive potential on interstate commerce that acts of violence may have. . . . Second, the immediacy of the connection between education and the national economic wellbeing is documented by scholars and accepted by society at large in a way and to a degree that may not hold true for other social institutions. It must surely be the rare case, then, that a statute strikes at conduct that (when considered in the abstract) seems so removed from commerce, but which (practically speaking) has so significant an impact upon commerce.

I am simply applying well-established constitutional doctrine to a new law. In sum, a holding that the particular statute before us falls within the commerce power would not expand the scope of that Clause. Rather, it simply would apply pre-existing law to changing economic circumstances. . . . It would recognize that, in today’s economic world, gun-related violence near the classroom makes a significant difference to our economic, as well as our social, well-being.

The majority’s ruling conflicts with existing doctrine. The majority’s holding—that [the Gun-Free School Zones Act] falls outside the scope of the Commerce Clause—creates three serious legal problems. First, the majority’s holding runs contrary to modern Supreme Court cases that have upheld congressional actions despite connections to interstate or foreign commerce that are less significant than the effect of school violence. . . .

This Act touches on a local activity with massive effects on the national economy. Businesses are less likely to locate in communities where violence plagues the classroom. Families will hesitate to move to neighborhoods where students carry guns instead of books. . . . And (to look at the matter in the most narrowly commercial manner), interstate publishers therefore will sell fewer books and other firms will sell fewer school supplies where the threat of violence disrupts learning. Most importantly, . . . the local instances here, taken together and considered as a whole, create a problem that causes serious human and social harm, but also has nationally significant economic dimensions. . . .

The Court’s new approach will be difficult to apply over time. The second legal problem the Court creates comes from its apparent belief that it can reconcile its holding with earlier cases by making a critical distinction between “commercial” and noncommercial “transaction[s].” . . . That is to say, the Court believes the Constitution would distinguish between two local activities, each of which has an identical effect upon interstate commerce, if one, but not the other, is “commercial” in nature. As a general matter, this approach fails to heed this Court’s earlier warning [in *Wickard v. Filburn*] not to turn “questions of the power of Congress” upon “formula[s]” that would give “controlling force to nomenclature . . . and foreclose consideration of the actual effects of the activity in question upon interstate commerce.”

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The Court’s ruling unsettles a well-settled area of law. The third legal problem created by the Court’s holding is that it threatens legal uncertainty in an area of law that, until this case, seemed reasonably well settled. . . .

I respectfully dissent. In sum, to find this legislation within the scope of the Commerce Clause would permit “Congress ... to act in terms of economic ... realities.” . . . It would interpret the Clause as this Court has traditionally interpreted it, with the exception of one wrong turn subsequently corrected. . . . Upholding this legislation would do no more than simply recognize that Congress had a “rational basis” for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten. . . . Respectfully, I dissent.

[Read the Full Opinion](#)

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**