

Federalism, School Safety, and Congress

Handout 2

Opinion A

The Gun-Free School Zones Act is unconstitutional. The power of Congress to pass a law under the commerce clause is limited. This act neither regulates a commercial activity nor contains a requirement that the possession of a gun be connected in any way to interstate commerce.

The Constitution created a national government of limited and specified powers. The sharing of power between the federal government and the states, known as federalism, allows states to adopt different approaches to social problems and regulatory activities.

The Constitution gives Congress the power to regulate commerce, and this power is very broad. However, there are limitations on Congress's power under the commerce clause. According to an early Supreme Court decision, commerce is not intended to include internal state activities that do not extend to or affect other states. In fact, about 40 states have enacted a law similar to the School Gun-Free Zones Act. The states have also been free to experiment with other methods of preventing school violence, such as metal detectors and peer-mediation programs. The national government should not interfere with these activities under an extremely broad definition of commerce.

Congress may regulate three broad categories of activity under its commerce power. First, it may regulate the use of the channels of interstate commerce. Second, it has the power to regulate and protect interstate commerce even though a threat to it may come only from intrastate activities. Finally, it has the power to regulate those activities having a substantial relation to interstate commerce. However, Congress may not use a relatively trivial impact on commerce as an excuse for broad general regulation of state or local activities.

The power of Congress to enact the Gun-Free School Zones Act cannot be derived from the first two categories. The act does not regulate the use of the channels of interstate commerce, nor does it attempt to regulate local activities that threaten interstate commerce. Thus, only the third category can be applied as a test of Congress's power in the Gun-Free School Zones Act. Is the act a regulation of an activity that substantially affects interstate commerce? No, the Gun-Free School Zones Act is an act to regulate a local activity. It is not an essential part of a larger regulation of economic activity affecting interstate commerce. The regulation of a state or local activity that has little interstate economic impact is best left to the states.

Opinion B

Under the powers given to it by the commerce clause of the Constitution, Congress is empowered to enact the Gun-Free School Zones Act. This act is an attempt to reduce violence harming the educational system. The impact of crime on our schools has a substantial effect on the national economy that Congress may address.

Three basic principles of the commerce clause support the act. First, Congress may regulate local activities that significantly affect interstate commerce. Its power over commerce is broad and complete. Second, when a local activity has a significant effect on interstate commerce, Congress must consider the cumulative effect of all similar activities (the effect of all guns possessed in or near schools). Third, Congress must have a degree of leeway in determining a significant connection between an activity and interstate commerce for two reasons. The Constitution delegates commerce power directly to Congress. The balance of power between the states and the federal government is essentially a political question best left to the Congress to decide.

Congress has found that violent crime in school zones affects the quality of education and, in turn, will significantly affect the country's economic interests. Many studies show that the serious problem of guns in and around schools is widespread. For example, 12 percent of urban high school students have had guns fired at them, and 20 percent of those students have been threatened with guns. In any 6-month period, several hundred thousand children are victims of violent crimes in or near school. Studies also show that violence in schools significantly interferes with educational quality. School violence has been linked to high dropout rates and lower achievement. Congress could, therefore, conclude that guns contribute substantially to this educational problem.

Congress could have also found that gun-related violence in and around schools is a commercial, as well as a human, problem. There is a clear link between the amount of schooling and potential earnings. Better educated workers make our country more competitive, and most job growth can be attributed to better educated workers. Also, the business of schooling makes up an important part of our economy. In 1990, primary and secondary schools spent \$230 billion—a significant portion of that year's \$5.5 trillion Gross Domestic Product.

As government and economic issues become more complex, Congress is in the best position to determine what issues need a uniform national approach. The Gun-Free School Zones Act is consistent with the evolving definition of federalism.

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