

SUPREME COURT OF THE UNITED STATES

No. 93-1260

UNITED STATES, PETITIONER v.
ALFONSO LOPEZ, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
[April 26, 1995]

JUSTICE STEVENS, dissenting.

The welfare of our future “Commerce with foreign Nations, and among the several States,” U. S. Const., Art. I, §8, cl. 3, is vitally dependent on the character of the education of our children. I therefore agree entirely with JUSTICE BREYER's explanation of why Congress has ample power to prohibit the possession of firearms in or near schools—just as it may protect the school environment from harms posed by controlled substances such as asbestos or alcohol. I also agree with JUSTICE SOUTER's exposition of the radical character of the Court's holding and its kinship with the discredited, pre-Depression version of substantive due process. Cf. *Dolan v. Tigard*, 512 U. S. ___, ___ (1994) (slip op., at 10-15) (STEVENS, J., dissenting). I believe, however, that the Court's extraordinary decision merits this additional comment.

Guns are both articles of commerce and articles that can be used to restrain commerce. Their possession is the consequence, either directly or indirectly, of commercial activity. In my judgment, Congress' power to regulate commerce in firearms includes the power to prohibit possession of guns at any location because of their potentially harmful use; it necessarily follows that Congress may also prohibit their possession in particular markets. The market for the possession of handguns by school-age

children is, distressingly, substantial.¹ Whether or not the national interest in eliminating that market would have justified federal legislation in 1789, it surely does today.

¹Indeed, there is evidence that firearm manufacturers—aided by a federal grant—are specifically targeting school children as consumers by distributing, at schools, hunting-related videos styled “educational materials for grades four through 12,” Herbert, Reading, Writing, Reloading, N. Y. Times, Dec. 14, 1994, p. A23, col. 1.

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