

**Discussion Questions for U.S. v. Lopez**

1. What are the facts of the case?
2. What is the issue in the case?
3. What was the Court's decision?
4. What was the Court's rationale?
5. How does the Court interpret Gibbons v. Ogden? Can you suggest another interpretation?
6. What were the government's arguments in Lopez?
7. What reasoning did the Court use to reject the government's arguments?
8. What test is developed to determine whether the Commerce Clause applies to a particular activity?
9. What test is developed by the dissenters to determine whether the Commerce Clause applies to a particular activity?
10. Do you agree with the Court's decision in U.S. v. Lopez? Why or why not?

**Full Text of the Court's Opinion:** <https://supreme.justia.com/cases/federal/us/514/549/case.html>

**PBS Summary of case (Landmark Cases)...**

[http://www.pbs.org/wnet/supremecourt/future/landmark\\_us.html](http://www.pbs.org/wnet/supremecourt/future/landmark_us.html)

**Oyez Summary:** <https://www.oyez.org/cases/1994/93-1260>

**Citation.** [514 U.S. 549, 115 S. Ct. 1624, 131 L. Ed. 2d 626, 1995 U.S.](#)

**Brief Fact Summary.** The Gun-Free School Zones Act (the Act) of 1990 made possessing a gun within a school zone a federal offense. A 12th grade student (Lopez) was convicted of violating the Act when he brought a handgun to his high school.

**Synopsis of Rule of Law.** The power of Congress to regulate activities extends only to those activities that substantially affect interstate commerce. The Act neither regulates commercial activity, nor contains a requirement that the possession be connected in any way to interstate commerce.

**Issue.** Does the commerce power of Congress extend to activities that have no apparent connection to interstate commerce?

### **Brief Summary of the Opinions**

#### **Concurrence (Kennedy)**

The two lessons to be learned from reviewing prior decisions about the commerce clause are that 1) there is imprecision of content-based boundaries involved such as the distinction between “commerce” and “manufacture”; and 2) there is an immense stake in the stability of Commerce Clause jurisprudence. The GFSZA upsets the Federal balance and is an unconstitutional assertion of the Commerce Power.

#### **Concurrence (Thomas)**

The substantial effects test has eviscerated any notion of federalism. Without boundaries limiting the Commerce Clause to truly commercial activity, we give the federal government a blank check to regulate anything under the guise of the Commerce Clause.

#### **Dissent (Stevens)**

Guns are articles of commerce and can be used to interfere with commerce. The national interest justifies prohibiting their use by children in school.

#### **Dissent (Souter)**

The only inquiry should be whether the legislative judgment is within the realm of reason. Congress should have plenary power to legislate under the Commerce Clause as long as the law passes the rational basis test.

#### **Dissent (Breyer)**

Violence in schools interferes with the quality of education and education is inextricably tied to the economy. Congress could have rationally concluded that the possession of guns in school zones is related to interstate commerce. The majority contradicts well settled precedent that has permitted Congress to regulate noncommercial activity affecting interstate commerce.