

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?

Federalism and Tobacco Advertising Laws

In November 1998, Massachusetts joined 45 other states to settle a claim against tobacco companies. Massachusetts would receive \$7.6 billion over 25 years to repay money spent on treatment for sick smokers. Though he agreed to the settlement, Attorney General Scott Harshbarger believed that it did not go far enough in restricting tobacco advertising.

Two months later, the attorney general issued 11 regulations on tobacco advertising in Massachusetts, including a ban on tobacco ads within 1,000 feet of elementary and secondary schools, public playgrounds, and public parks with playgrounds. Only simple black-and-white signs saying “Tobacco products sold here” were to be allowed. In-store tobacco ads were to be placed at or above 5 feet to be out of the direct eyesight of children. In addition, new warning labels were to be included on cigar packaging. The new regulations were set to begin August 1, 1999.

Before the new regulations took effect, several tobacco companies filed lawsuits claiming that the regulations were invalid. The companies argued that a national law—the Federal Cigarette Labeling and Advertising Act—preempted any state regulations on advertising. The FCLAA required that a warning be placed on all cigarette packages and advertisements. Furthermore, the law said that states could not place restrictions or bans on the advertising of cigarettes with packaging that contained the warning. The companies also argued that Massachusetts’s restrictions on advertising violated a First Amendment right to free commercial speech. Finally, they said that Massachusetts had overstepped its reserved constitutional powers. Under the Commerce Clause, only Congress has the power to regulate interstate commerce. The tobacco companies felt that the new labels on cigar packaging placed a heavy burden on interstate commerce and, therefore, only Congress could require them.

Massachusetts felt that it had a compelling state interest in preventing smoking among young people. It believed that the new regulations were a natural extension of the FCLAA, which was enacted to provide a uniform warning on all cigarette packages and advertising for all states. Massachusetts did not believe that the FCLAA intended to prevent additional state and local restrictions in places where they had jurisdiction. In addition, the location of commercial advertising was traditionally a power given to local communities. For example, a town could control whether ads were placed on its Little League field, and a state could control whether billboards overlooked its elementary schools. Massachusetts also believed that its regulations were restricting the location, not the content, of tobacco advertising. Because the state was not restricting content, it claimed that its rules did not violate a First Amendment right to free commercial speech.

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 state power in this issue? Against state power?
3. Do you think Massachusetts has the power to regulate tobacco advertising within its borders?

Federalism and Air Pollution Laws

The Clean Air Act is a series of laws that Congress enacted to control air pollution. The most recent change to the act was passed in 1990. This addition provides guidelines on the amount of a pollutant that can be in the air. It also set deadlines for national, state, and local governments to reduce air pollution. Finally, the 1990 Clean Air Act gives the Environmental Protection Agency (EPA) power to enforce the law. Prior to 1990, state and local governments had been responsible for enforcing the Clean Air Act.

Though the 1990 Clean Air Act is a national law covering the entire country, states are expected to carry out many of its provisions. For example, states must develop implementation plans that outline their best method for controlling air pollution in areas that do not meet national air-quality standards. State standards for controlling air pollution can be stricter than those required by the Clean Air Act, but they cannot be weaker. If the EPA finds a state plan to be unacceptable, it can take over enforcement of the Clean Air Act in that state.

In 1998, the owner of a zinc mine in northwest Alaska requested a permit to build a new generator that would release more pollution into the air. The Alaska Department of Environmental Conservation approved a permit for the new generator if the company installed a technology called low NO_x. The state also required the company to install low NO_x on all of its existing generators. The EPA disagreed with the state of Alaska, believing that a better technology was available for the new generator. Though installing low NO_x on all generators would best reduce overall pollution, the EPA said the state had to consider the best technology for each individual generator. When the EPA blocked the construction of the new generator, Alaska filed a lawsuit.

Alaska argued that the EPA did not have the power to override the state's decision. States, not the EPA, were given the power to carry out the provisions of the Clean Air Act. Alaska believed it properly followed the guidelines set forth in the law. If the EPA stepped in simply because of a disagreement, the state would have no authority to implement its plan to control air pollution. Furthermore, the technology that the EPA recommended was more expensive than the one Alaska had authorized. The state was concerned about the negative economic impact of the more expensive technology.

The national government, on the other hand, argued that Congress did give the EPA authority to enforce the Clean Air Act and ensure that states followed the guidelines of the law. Although states do have the power to make decisions about how best to control air pollution, the EPA could review those decisions. If the EPA were not allowed to do so, it would have no power to enforce the Clean Air Act. In this case, because the EPA did not think Alaska was following the guidelines, a review was required by law. When Alaska granted a permit to allow a generator to be built with low NO_x technology, the EPA argued, it did not use the best technology available for controlling air pollution.

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 state power in this issue? Against state power?
3. Which government—national or state—do you think has the power to regulate air pollution in Alaska?