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Safe HAVEN

NEWSLETTER OF THE NATIONAL COALITION FOR DRUG-FREE SCHOOL ZONES

Issue No. 3, 1994

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Responsibilities

Paul Gardner, *President*, Life Signs, Inc.

* Indicates personal, not organizational
affiliation.

Federal DFSZ Law Amended to Include Public Housing

The Violent Crime Control and Law Enforcement Act of 1994, commonly known as the Crime Bill, passed both Houses of Congress in late August, and was signed into law by President Clinton on September 13, 1994. The omnibus anti-crime package amends the drug-free school zone provision of the Controlled Substances Act, which provides for enhanced penalties for drug-related offenses

**DRUG
FREE
PUBLIC
HOUSING
ZONE**

es within 1,000 feet of school grounds, to include public housing facilities. Now, drug dealing within 1,000 feet of a "housing facility owned by a public housing authority" may result in mandatory minimum prison sentences, or up to three times the existing criminal penalties.

"This is an important breakthrough, a significant step forward in our journey toward drug-

Continued on page 4

Challenge to Weapon-Free School Zone Laws Reaches U.S. Supreme Court

The United States Supreme Court will hear in October United States v. Lopez, a case which bears directly on weapon-free school zones. The case involves a high school senior who brought a .38 calibre gun with ammunition to school to deliver to another student for use in a "gang war". The student was convicted and sentenced for violating the Federal School Yard Act of 1990, which makes it a federal offense to possess a firearm on the grounds of a school or within 1,000 feet of a school campus. The fifth Circuit Court of Appeals overturned the conviction, declaring the law unconsti-

tutional because it is cast so broadly as to exceed Congress' power under the Commerce Clause.

However, in another recent case, the U.S. Court of Appeals for the Ninth Circuit concluded that the "Gun-Free School Zone Act" is constitutional and not overly broad. The Ninth Circuit case involved the arrest of a 19-year-old who was apprehended in a California school parking lot with a .22 rifle and a sawed-off bolt-action rifle in the trunk of his car. The decision of the Fifth Circuit conflicts with that of the Ninth Circuit.

Continued on page 7

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Policy Analysis

No. 216

October 10, 1994

Routing

KIDS, GUNS, AND THE COMMERCE CLAUSE: IS THE COURT READY FOR CONSTITUTIONAL GOVERNMENT?

by Glenn Harlan Reynolds

Executive Summary

On November 8, election day, the Supreme Court will hear one of the most important and unusual cases to come before it in a long time, a case that raises fundamental questions about the power of Congress to legislate as it has for nearly 60 years. In that case, United States v. Lopez, the Court of Appeals for the Fifth Circuit struck down the 1990 Gun-Free School Zones Act, finding it beyond the power of Congress to enact. Such a finding is all but unheard of in the post-New Deal era.

As written and originally understood, the Constitution limits the federal government primarily by enumerating its powers, which the Tenth Amendment confirms by declaring that those powers not delegated to the federal government are reserved to the states or to the people. For a century and a half, the Supreme Court enforced those restraints. But with the New Deal and Roosevelt's "Court-packing" scheme, the Court retreated from its traditional role, enabling Congress to indulge an ever-expanding array of powers. Today, under the Court's boundless reading of the Commerce Clause, which gives Congress power to regulate commerce among the states, the doctrine of enumerated powers is all but dead. Yet that doctrine was meant by the Framers to be the centerpiece of the Constitution, the principal restraint on federal power.

At bottom, then, Lopez is not about gun control or even about federal-state relations but about whether the Court is ready to hold Congress to its constitutional limits. The Court should. For if the enumerated powers doctrine is in fact dead, other constitutional protections are in jeopardy as well.

Glenn Harlan Reynolds, a 1985 graduate of Yale Law School, is an associate professor at the University of Tennessee College of Law in Knoxville.

CATO
INSTITUTE

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 5, 1995

STATEMENT OF THE PRESIDENT

In my radio address last week, I asked the Attorney General to recommend what constitutional steps I could take to ensure that guns are kept away from our children's schools. The Attorney General has responded to my request and next week, I will submit legislation to Congress that will put the Gun-Free School Zones Act on firm constitutional ground. This legislation is the most straightforward option available and must be acted on immediately. I am determined to keep guns away from schools and am committed to working with the Congress to make our schools safe havens, where young people can learn and grow free from harm.

-30-30-30-



U.S. Department of Justice

Washington, D.C. 20530

May 5, 1995

MEMORANDUM FOR THE PRESIDENT

FROM: THE ATTORNEY GENERAL

SUBJECT: Recommended Strategy in Response to Lopez

You have asked me to present you with an analysis of the Supreme Court's recent decision in United States v. Lopez, No. 93-1260 (U.S. Apr. 26, 1995), and to recommend a legislative solution to the problem created by that decision.

I. ANALYSIS OF LOPEZ

Notwithstanding some views expressed in the press, Lopez is properly interpreted as a relatively narrow decision. The decision does not repudiate the Supreme Court's prior decisions upholding broad federal power to regulate the national economy and to protect the general welfare. By its own terms, the majority opinion neither overrules nor even limits the Court's previous decisions in this area. Rather, the Court conceives of its opinion merely as rejecting "the possibility of additional expansion," or "declin[ing] here to proceed any further" down the path charted by prior cases. Slip op. at 19 (emphasis added). The Department believes that Lopez can and should be construed narrowly.

The Court in Lopez identified in its long jurisprudence in this area three broad categories of activity that Congress may regulate under its commerce power (see slip op. at 9):

- I. Congress may regulate the use of the channels of interstate commerce.
- II. Congress may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat comes only from intrastate activity.
- III. Congress may regulate those activities that substantially affect interstate commerce.

Lopez was concerned only with the third category, for the Gun-Free School Zones Act is neither a regulation of the use of the channels of interstate commerce (Category I) nor a regulation of an instrumentality of interstate commerce or a thing in interstate commerce (Category II). In other words, Lopez in no way affects Congress's exercise of its commerce power in either of the first two categories. Lopez also leaves intact Congress's authority under the Commerce Clause to regulate any activity so long as the statute includes a jurisdictional element that ensures that each instance of regulated conduct has a nexus to interstate commerce. See Lopez, slip op., at 13, 19.

Within Category III -- intrastate activity that has a substantial effect on interstate commerce -- Lopez makes a distinction between commercial and noncommercial activities. The constitutional standard for both categories is whether the intrastate activity has a "substantial effect" on interstate commerce. For commercial activities, however, the Court's opinion indicates that the test is easier to satisfy; the Court is more willing to find that intrastate commercial activity (as opposed to intrastate noncommercial activity) has a sufficient impact on interstate commerce to justify congressional regulation. The Court's opinion suggests a fairly broad definition of commercial activities, under which a statute might qualify as sufficiently "commercial" even if it is only "an essential part of a larger regulation of economic activity." Id., slip op. at 12. Finally, we note that Lopez emphasized that the area of law involved in this case was traditionally a matter of state law. Id., slip op. at 15-16; see also id., slip op. at 14-17 (Kennedy, J., concurring, joined by O'Connor, J.). The Lopez analysis may apply with less force, if at all, to legislation that does not intrude on areas of traditional state concern "such as family law and direct regulation of education." Id., slip op. at 16.

II. A LEGISLATIVE SOLUTION

The simplest and most straightforward option for curing the constitutional infirmity in the Gun-Free School Zones Act would be to reintroduce the legislation with the following words added:

"It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate

commerce," Lopez, slip op. at 13, thereby bringing it within the Commerce Clause authority recognized by the Court in Lopez. This amendment would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor. Proving this element rarely presents a difficulty.

Furthermore, by also including the possibility of proving the offense through a showing that the firearm "affects interstate or foreign commerce," Congress would leave open the possibility of showing, under the facts of a particular case, that although the firearm may not have "moved in . . . interstate or foreign commerce," it nonetheless has an effect on interstate commerce. The Court recognized that one of the problems with the Gun-Free School Zones Act was that it "contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." Lopez, slip op. at 13. This proposal would provide that missing jurisdictional element.

I have attached a draft bill that would effectively reintroduce the Gun-Free School Zones Act as amended by adding the requirement that the government prove in each case that the firearm "has moved in or otherwise affects interstate or foreign commerce." At the same time, I recommend that you reiterate that states must continue to play the primary role in this area of law enforcement and that the federal Gun-Free School Zones Act should properly be viewed in most instances as a "backup" to the state systems. It is worth emphasizing the essential fact that states possess the primary authority for defining and enforcing the local criminal laws in this country and that nothing in the Gun-Free School Zones Act changes that fact.

III. DEPARTMENT OF JUSTICE ACTIVITIES

The Department is evaluating Gun-Free-School-Zones cases that will be affected by the Lopez ruling. In each instance, we intend to explore whether it is possible to try these cases under state law and to determine what assistance federal prosecutors can provide to state and local authorities in doing so.

For those cases arising in states that do not have gun-free school zones laws (or whose laws carry insufficient penalties), we shall explore alternative state and federal charges. These cases could well present the strongest argument for having a federal statute on the books, just for those occasions where the state has no sufficiently strict law to prohibit this conduct.

The Department's Office of Juvenile Justice and Delinquency Prevention is currently developing a Model Youth Handgun Code that will be ready for my review in July. This Model Code could represent an added mechanism for the Administration affirmatively to assist states in carrying out their primary responsibility to protect schools from gun violence. This strategy is entirely consistent with amending the federal Gun-Free School Zones Act, and it also fits well into the general approach of emphasizing the primacy of state law enforcement in this area.

As part of the process of developing this Model Code, the National Criminal Justice Association has compiled a preliminary listing of states that have enacted legislation prohibiting the possession of firearms in schools, on school property, or in a school zone. The Department's initial review of state statutes indicates that more than two-thirds of the states have enacted general prohibitions or restrictions that apply to juveniles with respect to possession of a firearm in or near a school, other educational or public facilities, or private facilities such as day-care centers. The Department, in cooperation with the Department of Education, is able to offer technical assistance to aid states in the development of gun-free school zone laws.

The Department's Office of Justice Programs (OJP) is working on a comprehensive, long-term plan to address juvenile firearm violence. OJP's plan makes use of the full range of research capacity in the Office's Bureau of Justice Statistics and through the grant programs administered by the Bureau of Justice Assistance. In addition, the Department's Criminal Division is working with U.S. Attorneys to address juvenile firearm violence in general and to explore what role federal statutes and prosecutions should play in this area.

LEGISLATIVE PROPOSAL

Proposed 922(q) amendment

18 U.S.C. § 922

* * * * *

(q)(1) The Congress finds and declares that --

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Judiciary Committee of the House of Representatives and Judiciary Committee of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves; even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) Congress has power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) shall not apply to the possession of a firearm --

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) which is --

(I) not loaded; and

(II) in a locked container, or a locked firearms rack which is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

(B) Subparagraph (A) shall not apply to the discharge of a firearm --

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection.

Comments

The added language -- "that has moved in or that otherwise affects interstate or foreign commerce" -- is intended clearly and unambiguously to limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," United States v. Lopez, No. 93-1260 (U.S. Apr. 26, 1995), slip op. at 13, thereby bringing it within the Commerce Clause authority recognized by the Court in Lopez. This amendment would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor. Proving this element rarely presents a difficulty.

Furthermore, by also including the possibility of proving the offense through a showing that the firearm "affects interstate or foreign commerce," Congress would leave open the possibility of showing, under the facts of a particular case, that although the firearm may not have "moved in . . . interstate or foreign commerce," it nonetheless has an effect on interstate commerce. The Court in Lopez recognized that one of the problems with the Gun-Free School Zones Act was that it "contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." Lopez, slip op. at 13. The proposed amendment would provide that missing jurisdictional element.

Courts have routinely construed an alternative formulation -- "in or affecting commerce" -- as a "jurisdictional term of art that indicates a Congressional intent to assert its full Commerce Clause power." United States v. Carter, 981 F.2d 645, 647 (2d Cir. 1992) (citing Scarborough v. United States, 431 U.S. 563, 571 (1977)), cert. denied, 113 S.Ct. 1827 (1993); see also United States v. Sanders, 35 F.3d 61, 62 (2d Cir.), cert. denied, 115 S.Ct. 497 (1994); United States v. Jones, 16 F.3d 487, 491 (2d Cir. 1994); United States v. Sherbondy, 865 F.2d 996, 999-1001 (9th Cir. 1988); United States v. Gillies, 851 F.2d 492, 493 (1st Cir.), cert. denied, 488 U.S. 857 (1988); United States v. Travisano, 724 F.2d 341, 347 (2d Cir. 1983).

There are several reasons why we are not proposing this formulation as a cure to the problem identified in Lopez. First, the meaning of "in or affecting commerce" is not apparent on its face. Even prior to Lopez, courts have been critical of this formulation. See, e.g., United States v. Bass, 404 U.S. 336, 347 (1971) (noting "Government concedes that 'the statute is not a model of logic or clarity'"); Travisano, 724 F.2d at 347 (statute "concededly not a model of clarity"). It is particularly important after Lopez for Congress to express in unambiguous terms its intent to make the nexus to interstate or foreign commerce an element of the charged offense in this statute and to require proof of that nexus in each case.

Second, the proposed language is not only clear but it also permits the same amount of flexibility as the previous formulation. The government can prove this element not only by demonstrating that the firearm moved at some time in interstate commerce but also by demonstrating that, in a particular case, the possession of that firearm affects interstate commerce. In other words, the new formulation is no less expansive in its assertion of Commerce Clause power than the old formulation.

Finally, Congress should make it clear that it does not intend to require the government to prove that a defendant had knowledge that the firearm "has moved in or otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses a firearm; the defendant need not also know that the firearm had once moved in or affected commerce. This is critically important. Congress should do whatever necessary to make its intent on this matter unambiguous.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

LRM NO: 1245

FILE NO: 825

5/8/95

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s):

TO: Legislative Liaison Officer - See Distribution below:
FROM: James JUKES *gic* (for)
Assistant Director for Legislative Reference
OMB CONTACT: Ingrid SCHROEDER 395-3883
Legislative Assistant's line (for simple responses): 395-3454
SUBJECT: JUSTICE Proposed Draft Bill: Gun-Free School Zones Amendments Act of 1995

DEADLINE: 5:30pm Monday, May 08, 1995

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

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☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet

TO THE CONGRESS OF THE UNITED STATES:

Today I am transmitting for your immediate consideration and enactment the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in United States v. Lopez.

In a 5-4 decision, the Court in Lopez held that Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified as 18 U.S.C. § 922(q). The Court found that this Act did not contain the jurisdictional element which would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of Lopez and to recommend a legislative solution to the problem created by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act, as authored by Senator Herb Kohl of Wisconsin, by adding the requirement that the government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in Lopez and thereby bring it within Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

Loves ?
In transmitting this proposal to you, I reiterate my ~~believe~~
~~position~~ that the States must continue to play the primary role
in this area of law enforcement and that the Federal Gun-Free
Schools Act should properly be viewed in most instances as a
"backup" to the State systems.

The Administration is prepared to work immediately with
Congress to enact this legislation. I urge the prompt and
favorable consideration of the Administration's legislative
proposal by the Congress.

THE WHITE HOUSE,

A BILL

Be it enacted by the Senate and House of Representative of the United States in Congress as assembled,

Section 1. SHORT TITLE.

This Act may be cited as the "Gun-Free School Zones Amendments Act of 1995".

Section 2. INTERSTATE NEXUS.

Section 922(q)(2)(A) of title 18, United States Code, is amended by inserting after "zone" the following, ", if that firearm has moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

SECTION-BY-SECTION ANALYSIS

Section 1.

Section 1 states that the short title for the Act is the "Gun-Free School Zones Amendments Act of 1995."

Section 2.

The purpose of this section is to provide the interstate nexus for the Gun-Free School Zones Act of 1990, codified as 18 U.S.C. § 922(q), for Congress' Commerce Clause authority as interpreted by the Supreme Court in United States v. Lopez.

The Lopez Court recognized that one of the problems with the Gun-Free School Zones Act was that it "contains no jurisdictional element which would ensure that the firearm possession in question affects interstate commerce." See Lopez. This section would provide that missing jurisdictional element.

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in Lopez and thereby bring it within Congress' Commerce Clause authority. This amendment would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have been "in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

This section does not require the government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm; the defendant need not also know that the firearm had once moved in or affected commerce.

that the possession otherwise

"Gun-Free School Zones Amendments Act of 1995"FACT SHEET

The President today transmitted to Congress a legislative proposal entitled the "Gun-Free School Zones Amendments Act of 1995." This legislation would provide the interstate nexus necessary to implement the Gun-Free School Zones Act of 1990 after the Supreme Court's recent decision in United States v. Lopez.

In a 5-4 decision, the Lopez Court held that Congress had exceeded its authority under the Commerce Clause in enacting the Gun-Free School Zones Act of 1990 because the statute contained no jurisdictional element to ensure that the firearm possession in question had the requisite nexus with interstate commerce.

In the wake of that decision, the President directed Attorney General Reno to present him with an analysis of the Lopez decision and to recommend a legislative solution to the problem created by that decision.

Identified

The Attorney General transmitted her analysis and recommendation to the President last Friday, and her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in Lopez and thereby bring it within Congress' Commerce Clause authority.

The Attorney General reported to the President that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have been "in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession

nonetheless has a sufficient nexus to commerce.

In transmitting this proposal to Congress, the President reiterated his position that the States must continue to play the primary role in this area of law enforcement and that the Federal Gun-Free Schools Act should properly be viewed in most instances as a "backup" to the State systems.

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 10, 1995

"Gun-Free School Zones Amendments Act of 1995"

FACT SHEET

The President has transmitted to the Congress a legislative proposal entitled the "Gun-Free School Zones Amendments Act of 1995." This legislation amends the Gun-Free School Zones Act of 1990 to meet the constitutional requirements set forth by the Supreme Court in its recent decision in *United States v. Lopez*, which struck down the 1990 Act.

In the *Lopez* case, a 5-4 decision, the Court held that the Congress had exceeded its authority under the Commerce Clause because the 1990 law failed to require that a proscribed possession of firearms have a requisite connection to interstate commerce.

In the wake of that decision, the President directed Attorney General Reno to present him with an analysis of the *Lopez* decision and to recommend a legislative solution to the problem identified by that decision.

The Attorney General transmitted her analysis and recommendation to the President on May 5, 1995, and her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to the President that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have been "in . . . commerce" before reaching their eventual possessor.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm.

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(OVER)

I am committed to doing everything in my power to make schools places where young people can be secure, where they can learn, and where parents can be confident that discipline is enforced.

I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 10, 1995.

#

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 10, 1995

TO THE CONGRESS OF THE UNITED STATES:

Today I am transmitting for your immediate consideration and passage the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in *United States v. Lopez*.

In a 5-4 decision, the Court in *Lopez* held that the Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified at 18 U.S.C. 922(q). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of *Lopez* and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

Furthermore, by also including the possibility of proving the offense by showing the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

In his message to the Congress, the President stated, "I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation."

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A BILL

To amend the Gun-Free School Zones Act of 1990 to provide the necessary nexus with interstate commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gun-Free School Zones Amendments Act of 1995".

SEC. 2. INTERSTATE NEXUS.

Section 922(q)(2)(A) of title 18, United States Code, is amended by inserting after "zone" the following: ", if that firearm has moved in or the possession of such firearm otherwise affects interstate or foreign commerce".