



State, The (Columbia, SC)

1995-04-27

Section: METRO/REGION

Edition: FINAL

Page: A1

**FEDERAL SCHOOL GUN BAN VOIDED
COURT SAYS CONGRESS OVERSTEPPED POWERS**
*LISA GREENE, Staff Writer. Aaron Epstein of the
Knight-Ridder Washington Bureau contributed to this report.*

The federal government doesn't have the authority to ban guns from schools, the U.S. Supreme Court ruled Wednesday in a case that could sharply limit federal power over other areas.

Most states, including South Carolina, already have laws banning guns in schools, so students who carry them can still be prosecuted. But the ruling dealt a major blow to U.S. Attorney Pete Strom's campaign to use federal tools against school violence in South Carolina.

In a broader sense, the 5-4 ruling on a Texas case was a milestone. It signaled a conservative retreat from the court's longtime willingness to endorse Congress' expanding authority to regulate activities under its constitutional power to control interstate commerce. The last time the court overturned a federal law on similar grounds was 1936.

The ruling placed a cloud over the authority of Congress to legislate in areas traditionally reserved to the states -- especially education, local crime and such family law issues as marriage, divorce, child custody and adoption.

As such, it was a victory for state governments, gun owners and conservatives, who have long sought a halt to the growing commerce power of Congress.

Lawyers said other federal laws, such as carjacking and environmental crime statutes, could be curtailed.

"The court is saying, 'You've got to leave certain matters up to the states,'" said Columbia defense lawyer **Jack Swerling**. "For the court to tell Congress they've exceeded their authority is very significant. . . . It's as rare as a hen's tooth."

Three S.C. students have been convicted under the 1990 gun law, including Floyd Brown, who also is charged in the 1994 shooting death of another student at Eau Claire High School.

Swerling, Brown's lawyer, said he expects Brown's gun conviction will be overturned when the U.S. 4th Circuit Court of Appeals considers the case. Brown still faces a murder charge in state court.

But Strom said he's not giving up. He said the facts in Brown's case are different from those in the Texas case decided Wednesday.

"We're not ready to concede," he said.

Local prosecutors in South Carolina welcomed federal help in school gun cases because the federal system works faster and hands out stiffer penalties. Brown was sentenced to five years in federal prison. He is not eligible for parole, as he would be in state court.

Strom said he'll continue to fight school crime. For example, he said, federal officials will help state investigators trace guns found in schools.

But he still was disappointed.

"There's nothing that affects our commerce more than the safety of our children," he said.

The Gun-Free School Zones Act of 1990 made it a federal crime to possess a firearm within 1,000 feet of a public, private or parochial school.

Sen. Herb Kohl, D-Wis. and the law's sponsor, said he was "astonished that the Supreme Court has said that Congress cannot protect our children from guns."

The decision also disturbed Clinton administration officials, gun-control advocates, public school leaders, police organizations and others who favored the federal gun law.

The court rejected the Clinton administration's argument that gun possession near schools may result in violent crime and, in turn, harm the national economy.

Writing for the majority, Chief Justice William H. Rehnquist said guns in schools have nothing to do with commerce.

"The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce," he wrote.

To uphold the law, Rehnquist wrote, the court would have to "pile inference upon inference" and ultimately could "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." But the court was sharply divided, issuing six different opinions on the case.

Stephen G. Breyer, the court's newest justice, led the four dissenters in accusing the majority of ignoring numerous studies showing that "the problem of guns in and around schools is widespread and extremely serious."

"Why, then, is it not . . . obvious . . . that a widespread, serious and substantial physical threat to teaching and learning also substantially threatens the commerce to which that teaching and learning is inextricably tied?" asked Breyer.

The case before the court began in 1992 when Alfonso Lopez, then a 12th-grader, was charged with violating Texas and federal laws for carrying a concealed handgun to a San Antonio high school. Lopez said he was to be paid \$40 for delivering the gun for use in a "gang

war."

State charges were dismissed and Lopez was sentenced to six months in prison for the federal violation. On appeal, though, a federal circuit court said Congress lacked power to enact the law.

Gun ban overturned

The U.S. Supreme Court struck down a federal law banning gun possession near schools.

The decision: In its 5-4 ruling, the court said the states -- not Congress -- have the authority to enact such criminal laws. South Carolina and most other states have laws banning guns in schools.

What it means: The decision could spur challenges to other U.S. laws.



Visit other Real Cities sites

[News](#) | [Business](#) | [Sports](#) | [Entertainment](#) | [Living](#) | [Shop Local](#) | [Classifieds](#) | [Jobs](#) | [Cars](#) | [Real Estate](#)

[About TheState.com](#) | [About the Real Cities Network](#) | [About the McClatchy Company](#)
[Terms of Use](#) | [Privacy Policy](#) | [Copyright](#)