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 KENNEDY, with whom JUSTICE O'CONNOR joins, concurring.

The history of the judicial struggle to interpret the Commerce Clause during the transition from the economic system the Founders knew to the single, national market still emergent in our own era counsels great restraint before the Court determines that the Clause is insufficient to support an exercise of the national power. That history gives me some pause about today's decision, but I join the Court's opinion with these observations on what I conceive to be its necessary though limited holding.

Chief Justice Marshall announced that the national authority reaches "that commerce which concerns more States than one" and that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons* v. *Ogden*, 9 Wheat. 1, 194, 196 (1824). His statements can be understood now as an early and authoritative recognition that the Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. The progression of our Commerce Clause cases from *Gibbons* to the present was not marked, however, by a coherent or consistent course of interpretation; for neither the course of technological advance nor the foundational principles for the jurisprudence itself were self-evident to the courts that sought to resolve contemporary disputes by enduring principles.

Furthermore, for almost a century after the adoption of the Constitution, the Court's Commerce Clause decisions did not concern the authority of Congress to legislate. Rather, the Court faced the related but quite distinct question of the authority of the States to regulate matters that would be within the commerce power had Congress chosen to act. The simple fact was that in the early years of the Republic, Congress seldom perceived the necessity to exercise its power in circumstances where its authority would be called into question. The Court's initial task, therefore, was to elaborate the theories that would permit the States to act where Congress had not done so. Not the least part of the problem was the unresolved question whether the congressional power was exclusive, a question reserved by Chief Justice Marshall in *Gibbons* v. *Ogden*, *supra*, at 209–210.

At the midpoint of the 19th century, the Court embraced the principle that the States and the National Government both have authority to regulate certain matters absent the congressional determination to displace local law or the necessity for the Court to invalidate local law because of the dormant national power. *Cooley* v. *Board of Wardens of Port of Philadelphia*, 12 How. 299, 318–321 (1852). But the utility of that solution was not at once apparent, see generally F. Frankfurter, The Commerce Clause under Marshall, Taney and Waite (1937) (hereinafter Frankfurter), and difficulties of application persisted, see *Leisy* v. *Hardin*, 135 U. S. 100, 122–125 (1890).

One approach the Court used to inquire into the lawfulness of state authority was to draw content-based or subject-matter distinctions, thus defining by semantic or formalistic categories those activities that were commerce and those that were not. For instance, in deciding that a State could prohibit the in-state manufacture of liquor intended for out-of-state shipment, it distinguished between manufacture

and commerce. "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactur[e] and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different." *Kidd* v. *Pearson*, 128 U. S. 1, 20 (1888). Though that approach likely would not have survived even if confined to the question of a State's authority to enact legislation, it was not at all propitious when applied to the quite different question of what subjects were within the reach of the national power when Congress chose to exercise it.

This became evident when the Court began to confront federal economic regulation enacted in response to the rapid industrial development in the late 19th century. Thus, it relied upon the manufacture-commerce dichotomy in *United States* v. *E. C. Knight Co.*, 156 U. S. 1 (1895), where a manufacturers' combination controlling some 98% of the Nation's domestic sugar refining capacity was held to be outside the reach of the Sherman Act. Conspiracies to control manufacture, agriculture, mining, production, wages, or prices, the Court explained, had too "indirect" an effect on interstate commerce. *Id.*, at 16. And in *Adair* v. *United States*, 208 U. S. 161 (1908), the Court rejected the view that the commerce power might extend to activities that, although local in the sense of having originated within a single state, nevertheless had a practical effect on interstate commercial activity. The Court concluded that there was not a "legal or logical connection . . . between an employé's membership in a labor organization and the carrying on of interstate commerce," *id.*, at 178, and struck down a federal statute forbidding the discharge of an employee because of his membership in a labor organization. See also *The Employers' Liability Cases,* 207 U. S.

463, 497 (1908) (invalidating statute creating negligence action against common carriers for personal injuries of employees sustained in the course of employment, because the statute "regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce").

Even before the Court committed itself to sustaining federal legislation on broad principles of economic practicality, it found it necessary to depart from these decisions. The Court disavowed *E. C. Knight*'s reliance on the manufacturing-commerce distinction in *Standard Oil Co. of New Jersey* v. *United States*, 221 U. S. 1, 68–69 (1911), declaring that approach "unsound." The Court likewise rejected the rationale of *Adair* when it decided, in *Texas & New Orleans R. Co.* v. *Railway Clerks*, 281 U. S. 548, 570–571 (1930), that Congress had the power to regulate matters pertaining to the organization of railroad workers.

In another line of cases, the Court addressed Congress' efforts to impede local activities it considered undesirable by prohibiting the interstate movement of some essential element. In the *Lottery Case*, 188 U. S. 321 (1903), the Court rejected the argument that Congress lacked power to prohibit the interstate movement of lottery tickets because it had power only to regulate, not to prohibit. See also *Hipolite Egg Co.* v. *United States*, 220 U. S. 45 (1911); *Hoke* v. *United States*, 227 U. S. 308 (1913). In *Hammer* v. *Dagenhart*, 247 U. S. 251 (1918), however, the Court insisted that the power to regulate commerce "is directly the contrary of the assumed right to forbid commerce from moving," *id.*, at 269–270, and struck down a prohibition on the interstate transportation of goods manufactured in violation of child labor laws.

Even while it was experiencing difficulties in finding satisfactory principles in these cases, the Court was pursuing a more sustainable and practical approach

in other lines of decisions, particularly those involving the regulation of railroad rates. In the *Minnesota Rate Cases*, 230 U. S. 352 (1913), the Court upheld a state rate order, but observed that Congress might be empowered to regulate in this area if "by reason of the interblending of the interstate and intrastate operations of interstate carriers" the regulation of interstate rates could not be maintained without restrictions on "intrastate rates which substantially affect the former." *Id.*, at 432–433. And in the *Shreveport Rate Cases*, 234 U. S. 342 (1914), the Court upheld an ICC order fixing railroad rates with the explanation that congressional authority, "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." *Id.*, at 351.

Even the most confined interpretation of "commerce" would embrace transportation between the States, so the rate cases posed much less difficulty for the Court than cases involving manufacture or production. Nevertheless, the Court's recognition of the importance of a practical conception of the commerce power was not altogether confined to the rate cases. In *Swift & Co.* v. *United States*, 196 U. S. 375 (1905), the Court upheld the application of federal antitrust law to a combination of meat dealers that occurred in one State but that restrained trade in cattle "sent for sale from a place in one State, with the expectation that they will end their transit . . . in another." *Id.*, at 398. The Court explained that "commerce among the States is not a technical legal conception, but a

practical one, drawn from the course of business." *Id.*, at 398. Chief Justice Taft followed the same approach in upholding federal regulation of stockyards in *Stafford* v. *Wallace*, 258 U. S. 495 (1922). Speaking for the Court, he rejected a "nice and technical inquiry," *id.*, at 519, when the local transactions at issue could not "be separated from the movement to which they contribute," *id.*, at 516.

Reluctance of the Court to adopt that approach in all of its cases caused inconsistencies in doctrine to persist, however. In addressing New Deal legislation the Court resuscitated the abandoned abstract distinction between direct and indirect effects on interstate commerce. See *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 309 (1936) (Act regulating price of coal and wages and hours for miners held to have only "secondary and indirect" effect on interstate commerce); *Railroad Retirement Bd.* v. *Alton R. Co.*, 295 U. S. 330, 368 (1935) (compulsory retirement and pension plan for railroad carrier employees too "remote from any regulation of commerce as such"); *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 548 (1935) (wage and hour law provision of National Industrial Recovery Act had "no direct relation to interstate commerce").

The case that seems to mark the Court's definitive commitment to the practical conception of the commerce power is *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937), where the Court sustained labor laws that applied to manufacturing facilities, making no real attempt to distinguish *Carter*, *supra*, and *Schechter*, *supra*. 301 U. S., at 40–41. The deference given to Congress has since been confirmed. *United States* v. *Darby*, 312 U. S. 100, 116–117 (1941), overruled *Hammer* v. *Dagenhart*, *supra*. And in *Wickard* v. *Filburn*, 317 U. S. 111 (1942), the Court disapproved *E. C. Knight* and the entire line of direct-indirect and manufacture-production cases, explaining that "broader

interpretations of the Commerce Clause [were] destined to supersede the earlier ones," *id.*, at 122, and "whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution," *id.*, at 123, n. 24. Later examples of the exercise of federal power where commercial transactions were the subject of regulation include *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241 (1964), *Katzenbach* v. *McClung*, 379 U. S. 294 (1964), and *Perez* v. *United States*, 402 U. S. 146 (1971). These and like authorities are within the fair ambit of the Court's practical conception of commercial regulation and are not called in question by our decision today.

The history of our Commerce Clause decisions contains at least two lessons of relevance to this case. The first, as stated at the outset, is the imprecision of content-based boundaries used without more to define the limits of the Commerce Clause. The second, related to the first but of even greater consequence, is that the Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point. *Stare decisis* operates with great force in counseling us not to call in question the essential principles now in place respecting the congressional power to regulate transactions of a commercial nature. That fundamental restraint on our power forecloses us from reverting to an understanding of commerce that would serve only an 18th-century economy, dependent then upon production and trading practices that had changed but little over the preceding centuries; it also mandates against returning to the time when congressional authority to regulate undoubted commercial activities was limited by a judicial determination that those matters had an

insufficient connection to an interstate system. Congress can regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy.

In referring to the whole subject of the federal and state balance, we said this just three Terms ago:

> "This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses: first, because the Framers would not have conceived that any government would conduct such activities; and second, because the Framers would not have believed that the Federal Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role." *New York* v. *United States*, 505 U. S. ___, ___ (1992) (slip op., at 9–10) (emphasis omitted).

It does not follow, however, that in every instance the Court lacks the authority and responsibility to review congressional attempts to alter the federal balance. This case requires us to consider our place in the design of the Government and to appreciate the significance of federalism in the whole structure of the Constitution.

Of the various structural elements in the Constitution, separation of powers, checks and balances, judicial review, and federalism, only concerning the last does there seem to be much uncertainty respecting the existence, and the content, of standards that allow the judiciary to play a significant role in maintaining the design contemplated by the Framers. Although the resolution of specific cases has proved difficult, we have derived from the Constitution workable standards to assist in

preserving separation of powers and checks and balances. See, *e.g.*, *Prize Cases*, 2 Black 635 (1863); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579 (1952); *United States* v. *Nixon*, 418 U. S. 683 (1974); *Buckley* v. *Valeo*, 424 U. S. 1 (1976); *INS* v. *Chadha*, 462 U. S. 919 (1983); *Bowsher* v. *Synar*, 478 U. S. 714 (1986); *Plaut* v. *Spendthrift Farm*, ___ U. S. ___ (1995). These standards are by now well accepted. Judicial review is also established beyond question, *Marbury* v. *Madison*, 1 Cranch 137 (1803), and though we may differ when applying its principles, see, *e.g.*, *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U. S. ___ (1992), its legitimacy is undoubted. Our role in preserving the federal balance seems more tenuous.

There is irony in this, because of the four structural elements in the Constitution just mentioned, federalism was the unique contribution of the Framers to political science and political theory. See Friendly, Federalism: A Forward, 86 Yale L. J. 1019 (1977); G. Wood, The Creation of the American Republic, 1776–1787, pp. 524–532, 564 (1969). Though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one. "In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." The Federalist No. 51, p. 323 (C. Rossiter ed. 1961) (J. Madison). See also *Gregory* v. *Ashcroft*, 501 U. S. 452, 458–459 (1991) ("Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a

healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front. . . . In the tension between federal and state power lies the promise of liberty"); *New York* v. *United States*, *supra*, at ___ (slip op., at 34) ("[T]he Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: `Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power'") (quoting *Coleman* v. *Thompson*, 501 U. S. 722, 759 (1991) (Blackmun, J., dissenting)).

The theory that two governments accord more liberty than one requires for its realization two distinct and discernable lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. If, as Madison expected, the federal and state governments are to control each other, see The Federalist No. 51, and hold each other in check by competing for the affections of the people, see The Federalist No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function. "Federalism serves to assign political responsibility, not to obscure it." *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 636 (1992). Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory. See *New York* v. *United States*, *supra*, at ___; *FERC* v. *Mississippi*, 456 U. S. 742, 787 (1982) (O'CONNOR, J., concurring in judgment in part and dissenting in part). The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the

remote central power.

To be sure, one conclusion that could be drawn from The Federalist Papers is that the balance between national and state power is entrusted in its entirety to the political process. Madison's observation that "the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due," The Federalist No. 46, p. 295 (C. Rossiter ed. 1961), can be interpreted to say that the essence of responsibility for a shift in power from the State to the Federal Government rests upon a political judgment, though he added assurance that "the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered," *ibid*. Whatever the judicial role, it is axiomatic that Congress does have substantial discretion and control over the federal balance.

For these reasons, it would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance. In the Webster-Hayne Debates, see The Great Speeches and Orations of Daniel Webster 227–272 (E. Whipple ed. 1879), and the debates over the Civil Rights Acts, see Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st Sess., pts. 1–3 (1963), some Congresses have accepted responsibility to confront the great questions of the proper federal balance in terms of lasting consequences for the constitutional design. The political branches of the Government must fulfill this grave constitutional obligation if democratic liberty and the federalism that secures it are to endure.

At the same time, the absence of structural mechanisms to require those officials to undertake this principled task, and the momentary political conve-

nience often attendant upon their failure to do so, argue against a complete renunciation of the judicial role. Although it is the obligation of all officers of the Government to respect the constitutional design, see *Public Citizen* v. *Department of Justice*, 491 U. S. 440, 466 (1989); *Rostker* v. *Goldberg*, 453 U. S. 57, 64 (1981), the federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom for us to admit inability to intervene when one or the other level of Government has tipped the scales too far.

In the past this Court has participated in maintaining the federal balance through judicial exposition of doctrines such as abstention, see, *e.g.*, *Younger* v. *Harris*, 401 U. S. 37 (1971); *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U. S. 496 (1941); *Burford* v. *Sun Oil Co.*, 319 U. S. 315 (1943), the rules for determining the primacy of state law, see, *e.g.*, *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), the doctrine of adequate and independent state grounds, see, *e.g.*, *Murdock* v. *City of Memphis*, 87 U. S. 590 (1875); *Michigan* v. *Long*, 463 U. S. 1032 (1983), the whole jurisprudence of pre-emption, see, *e.g.*, *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218 (1947); *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. ___ (1992), and many of the rules governing our habeas jurisprudence, see, *e.g.*, *Coleman* v. *Thompson*, *supra*; *McCleskey* v. *Zant*, 499 U. S. 467 (1991); *Teague* v. *Lane*, 489 U. S. 288 (1989); *Rose* v. *Lundy*, 455 U. S. 509 (1982); *Wainwright* v. *Sykes*, 433 U. S. 72 (1977).

Our ability to preserve this principle under the Commerce Clause has presented a much greater challenge. See *supra*, at 1–7. "This clause has throughout the Court's history been the chief source of its adjudications regarding federalism," and "no other body of opinions affords a fairer or more revealing test of judicial qualities." Frankfurter 66–67. But as the branch whose distinctive duty it is to

declare "what the law is," *Marbury* v. *Madison*, 1 Cranch, at 177, we are often called upon to resolve questions of constitutional law not susceptible to the mechanical application of bright and clear lines. The substantial element of political judgment in Commerce Clause matters leaves our institutional capacity to intervene more in doubt than when we decide cases, for instance, under the Bill of Rights even though clear and bright lines are often absent in the latter class of disputes. See *County of Allegheny* v. *American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U. S. 573, 630 (1989) (O'CONNOR, J., concurring in part and concurring in judgment) ("We cannot avoid the obligation to draw lines, often close and difficult lines" in adjudicating constitutional rights). But our cases do not teach that we have no role at all in determining the meaning of the Commerce Clause.

Our position in enforcing the dormant Commerce Clause is instructive. The Court's doctrinal approach in that area has likewise "taken some turns." *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. ___, ___ (1995) (slip op., at 4). Yet in contrast to the prevailing skepticism that surrounds our ability to give meaning to the explicit text of the Commerce Clause, there is widespread acceptance of our authority to enforce the dormant Commerce Clause, which we have but inferred from the constitutional structure as a limitation on the power of the States. One element of our dormant Commerce Clause jurisprudence has been the principle that the States may not impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses. See *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority*, 476 U. S. 573, 579 (1986) (citing *Pike* v. *Bruce Church, Inc.*, 397 U. S. 137, 142 (1970)). Distinguishing between regulations that do place an undue burden on

interstate commerce and regulations that do not depends upon delicate judgments. True, if we invalidate a state law, Congress can in effect overturn our judgment, whereas in a case announcing that Congress has transgressed its authority, the decision is more consequential, for its stands unless Congress can revise its law to demonstrate its commercial character. This difference no doubt informs the circumspection with which we invalidate an Act of Congress, but it does not mitigate our duty to recognize meaningful limits on the commerce power of Congress.

The statute before us upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, and our intervention is required. As the CHIEF JUSTICE explains, unlike the earlier cases to come before the Court here neither the actors nor their conduct have a commercial character, and neither the purposes nor the design of the statute have an evident commercial nexus. See *ante*, at 10–12. The statute makes the simple possession of a gun within 1,000 feet of the grounds of the school a criminal offense. In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far. If Congress attempts that extension, then at the least we must inquire whether the exercise of national power seeks to intrude upon an area of traditional state concern.

An interference of these dimensions occurs here, for it is well established that education is a traditional concern of the States. *Milliken* v. *Bradley*, 418 U. S. 717, 741–742 (1974); *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968). The proximity to schools, including of course schools owned and operated by the States or their subdivisions, is the very premise for making the conduct criminal. In these circumstances, we have a particular duty to insure that the federal-state

balance is not destroyed. Cf. *Rice*, *supra*, at 230 ("[W]e start with the assumption that the historic police powers of the States" are not displaced by a federal statute "unless that was the clear and manifest purpose of Congress"); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 146 (1963).

While it is doubtful that any State, or indeed any reasonable person, would argue that it is wise policy to allow students to carry guns on school premises, considerable disagreement exists about how best to accomplish that goal. In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear. See *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 49–50 (1973); *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting)).

If a State or municipality determines that harsh criminal sanctions are necessary and wise to deter students from carrying guns on school premises, the reserved powers of the States are sufficient to enact those measures. Indeed, over 40 States already have criminal laws outlawing the possession of firearms on or near school grounds. See, *e.g.*, Alaska Stat. Ann. §§11.61.195(a)(2)(A), 11.61.220(a)(4)(A) (Supp. 1994); Cal. Penal Code Ann. §626.9 (West Supp. 1994); Mass. Gen. Laws §269:10(j) (1992); N. J. Stat. Ann. §2C:39–5(e) (West Supp. 1994); Va. Code Ann. §18.2–308.1 (1988); Wis. Stat. §948.605 (1991–1992).

Other, more practicable means to rid the schools of guns may be thought by the citizens of some States to be preferable for the safety and welfare of the schools those States are charged with maintaining. See Brief for National Conference of State Legislatures et al., as *Amici Curiae* 26–30 (injection of federal officials into local problems causes friction and diminishes political accountability of state and

local governments). These might include inducements to inform on violators where the information leads to arrests or confiscation of the guns, see C. Lima, Schools May Launch Weapons Hot Line, L. A. Times, Jan. 13, 1995, part B, p. 1, col. 5; Reward for Tips on Guns in Tucson Schools, The Arizona Republic, Jan. 7, 1995, p. B2; programs to encourage the voluntary surrender of guns with some provision for amnesty, see A. Zaidan, Akron Rallies to Save Youths, The Plain Dealer, Mar. 2, 1995, p. 1B; M. Swift, Legislators Consider Plan to Get Guns Off Streets, Hartford Courant, Apr. 29, 1992, p. A4; penalties imposed on parents or guardians for failure to supervise the child, see, *e.g.*, Okla. Stat., Tit. 21, §858 (Supp. 1995) (fining parents who allow students to possess firearm at school); Tenn. Code Ann. §39–17–1312 (Supp. 1992) (misdemeanor for parents to allow student to possess firearm at school); Straight Shooter: Gov. Casey's Reasonable Plan to Control Assault Weapons, Pittsburgh Post-Gazette, Mar. 14, 1994, p. B2 (proposed bill); E. Bailey, Anti-Crime Measures Top Legislators' Agenda, L. A. Times, Mar. 7, 1994, part B, p. 1, col. 2 (same); G. Krupa, New Gun-Control Plans Could Tighten Local Law, The Boston Globe, June 20, 1993, p. 29; laws providing for suspension or expulsion of gun-toting students, see, *e.g.*, Ala. Code §16–1–24.1 (Supp. 1994); Ind. Code §20–8.1–5–4(b)(1)(D) (1993); Ky. Rev. Stat. Ann. §158.150(1)(a) (Michie 1992); Wash. Rev. Code §9.41.280 (1994), or programs for expulsion with assignment to special facilities, see J. Martin, Legislators Poised to Take Harsher Stand on Guns in Schools, The Seattle Times, Feb. 1, 1995, p. B1 (automatic-year-long expulsion for students with guns and intense semester-long reentry program).

The statute now before us forecloses the States from experimenting and exercising their own judgment in an area to which States lay claim by right of history and expertise, and it does so by regulating

an activity beyond the realm of commerce in the ordinary and usual sense of that term. The tendency of this statute to displace state regulation in areas of traditional state concern is evident from its territorial operation. There are over 100,000 elementary and secondary schools in the United States. See U. S. Dept. of Education, National Center for Education Statistics, Digest of Education Statistics 73, 104 (NCES 94–115, 1994) (Tables 63, 94). Each of these now has an invisible federal zone extending 1,000 feet beyond the (often irregular) boundaries of the school property. In some communities no doubt it would be difficult to navigate without infringing on those zones. Yet throughout these areas, school officials would find their own programs for the prohibition of guns in danger of displacement by the federal authority unless the State chooses to enact a parallel rule.

This is not a case where the etiquette of federalism has been violated by a formal command from the National Government directing the State to enact a certain policy, cf. *New York* v. *United States*, 505 U. S. ___ (1992), or to organize its governmental functions in a certain way, cf. *FERC* v. *Mississippi*, 456 U. S., at 781 (O'CONNOR, J., concurring in judgment in part and dissenting in part). While the intrusion on state sovereignty may not be as severe in this instance as in some of our recent Tenth Amendment cases, the intrusion is nonetheless significant. Absent a stronger connection or identification with commercial concerns that are central to the Commerce Clause, that interference contradicts the federal balance the Framers designed and that this Court is obliged to enforce.

For these reasons, I join in the opinion and judgment of the Court.