



U. S. Department of Justice  
Office of the Solicitor General

*The Solicitor General*

*Washington, D.C. 20530*

June 1, 1995

Michael Davidson, Esquire  
Senate Legal Counsel  
642 Hart Building  
Washington, D.C. 20510

Re: United States v. George J. Smith, No. CR 95-N-  
019-W (N.D. Ala. May 1, 1995)

Dear Mr. Davidson:

I am writing to notify you that I have determined not to appeal the decision of the district court in the above-referenced case. Although the applicability of 2 U.S.C. 288k(b) is unclear in this particular instance, I thought it best to make you aware of this matter.

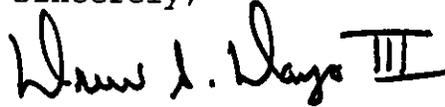
In this case, the defendant was charged with a violation of the Gun-Free Schools Zones Act, 18 U.S.C. 922(q), based on his discharge of a firearm in a public high school on January 12, 1995. On April 26, 1995, the Supreme Court held that Section 922(q) was unconstitutional because it exceeded Congress' authority under the Commerce Clause. United States v. Lopez, 115 S. Ct. 1624 (1995). The present case arose after Congress had amended Section 922(q), on September 13, 1994, to include findings regarding the effects of firearm possession in and around schools upon interstate and foreign commerce. See Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796. Those findings were not at issue in Lopez. See 115 S. Ct. at 1632 n.4. The district court in this case held that Section 922(q), as amended to include the findings, was "indistinguishable" from the provision struck down in Lopez.

A protective notice of appeal was filed on May 4, 1995. Unless we hear further from you, we will instruct the United States

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Attorney to dismiss the appeal on July 1, 1995. Please do not hesitate to contact me if you have any questions. With best wishes.

Sincerely,

A handwritten signature in black ink that reads "Drew S. Days III". The signature is written in a cursive style with a prominent "D" and "S".

Drew S. Days, III  
Solicitor General

cc: Cheryl Lau, Esquire  
General Counsel to the Clerk  
219 Cannon House Office Building  
Washington, D.C. 20515