

Brief in Favor of the Petitioner in the case of Zivotofsky v. Kerry – James Woods and Joseph Castaldo

Table of Cited Authorities:

The Articles of Confederation

The Federalist No.69

William Rawle, A View of the Constitution of the United States

Joseph Story, Commentaries on the Constitution of the United States

Statement of Argument:

In the question of whether or not the President’s recognition power is subject to control by Congress, the answer is most definitely yes. This position is based on the core principles of the United States and the original framework of the Constitution outlined in both the Articles of Confederation, the Federalist Papers, and also the Constitution itself. While it does make sense why the Executive branch is very cautious in the case to defend against political reparations of localized countries, the power to overrule the Executive branch lies with Congress. The petitioner should have the ability to change the location listed on his son’s birth certificate from “Jerusalem” to “Israel” based on the majority of the recognition power vested in Congress. This change would set a precedent for future cases and lead to possible unrest, but even so, the location in the government in which the power is mainly located remains the Legislative branch. In terms of possible negative reception, it is better therefore that the decision be laid on a larger body of discerning minds rather than a small group or individual that may feel a much larger kickback than a large voting body. This protects the diplomacy of the Executive and the recognition power of the Legislative branch as well. Perhaps most importantly here, the power resting in the hands of more than just a small group brings back into the picture the fundamentalist ideal of equal and balanced separation of power. This is very prudent and important to the case.

Argument:

It’s in understanding that the President of the United States should be able to hold a power that is not limited to by other members of the government, specifically Congress. It is also in understanding that if the president is technically the “boss” of the United, or the

“workplace”, then he should have the finally say and lead decisions within the government. But as seen throughout history, absolute power can and has lead to corruption throughout the Executive branch. This is why the checks and balances system, that was implemented by the founding fathers through the Constitution, is vital to the government. It’s purpose is to limit the power of the three branches of government so that neither branch hold too much power. It’s elementary knowledge that the Legislative branches duty is to make the law, the judicial branch is suppose to interpret the laws, which leaves the Executive branch to enforce the laws that have been made by legislation and interpreted by the judicial. If a group of people hold a majority of the decisional power rather than one person, than the possibility of corruption is less likely. Therefore it is paramount that the Congressional scope of power overrules the Executive’s power in relation to the acknowledgment of foreign power or foreign citizens. Based on the statutes of the Federalist No.69, the President holds power to recognize foreign power out of “dignity” rather than of authority.

In this specific case, where the petitioner would prefer his sons passport to say Israel rather than jerusalem, the Executive branch wants to keep it the way it is do to the fact that they declared the city insoverignable. Congress is agreeing with the petitioner in the idea that he has the right to name the correct birth place of his son. Executive branch argues that the city was decided a neutral sovereign state due to the Christian, Muslim, and Jewish religions were both born in that city. Therefore leading to the city to be under no control of any specific country or organization. Its in our beliefs that the family should be able to choose how their sons birth place is represented on his passport.

In the case, it is a necessity to observe historical context for similar situations. In the past, around the founding time of the United States, the Articles of Confederation were developed as the framework of laws and guidelines for the country. As decided in these documents, Legislation had the ultimate decision on the way that sovereignty was determined and also controlled the diplomacy with other countries, but had the president as the figurehead to deal with these dignitaries. As with the Articles of Confederation, the Constitution reinforced this basic principle and also stated that Congress had the ultimate control over the determined sovereignty of other states. The president’s recognition of power was under control or at least guidelines of the whole of Congress and as such, it is not reasonable to assume that anything has changed in this category between the establishment and ratification of the Constitution in 1787. Though many interpretations of the Constitution have been written and published, the great majority of these interpretations state that although the president does have some power, which of course is true do to the balance of power, that the majority of the power is held by the active Legislature. Congress can decide whether to consider a state sovereign or not in the eyes of the United States. In the essence of preserving foreign relations, the president should be involved with the establishment of sovereignty, but assuming that this places direct control

of the process in the hands of the Executive is a grand misconception. The duty of the Executive branch is to monitor the execution of the laws and ensure they are being followed, not to establish or interpret laws as they see fit. Interpretation is the strict responsibility of the Judicial branch and the establishment of laws is the strict responsibility of the Legislative branch. The law in question in the case that is often overlooked in relation to the deeper, conceptual issues in the case, clearly states that under voluntary choice of the individual or their legal guardian, the birth certificate of said individual can be modified to state the birth state of the individual as “Israel” rather than “Jerusalem.” The law was passed by Congress and ratified by the Executive branch and is now contested on its Constitutional bounds. The Constitutional bounds are not due to the illegality of the law, but rather the truth in whether Congress or the Executives have the power outlined in the law that is clearly assigned to Congress based on the text of the law. This is how the power should be assigned and how it has been assigned for the vast majority of the history of the United States by those that were in part responsible for the development of the country.

The checks and balances system of the United States is very important to maintaining the natural order of the country and preventing any one branch of the government from making a power grab. The basis of the Constitution is to keep the United States inside of its shell of equality and freedom. In the case, the Legislative branch is using its given power of recognized sovereignty to provide support for the law that was developed and ratified by the whole of the government already. The situation is almost redundant given the fact that the issue was already passed through the system and resulted in the passing of the law that is now in question. Once again, the power of the Executive branch is defined within the Federalist No.69 as “a matter of dignity rather than authority” in terms of receiving foreign ambassadors and recognizing sovereignty. The power of Congress is where the recognition lies. The decision of whether or not to allow the petitioner’s son to reestablish his birthplace as Israel rather than Jerusalem ultimately rests with Congress, even if the Executives do have a say in the matter. Based on the direct wording of the Constitution, and also the law in question, the Petitioner is in the right and Congress has the authority to permit the changes to his birth certificate.

In the case, it is a necessity to observe the possible repercussions for changing the petitioner’s son’s birth certificate. It may seem to be a minimal impacting event, however it sets an incredible precedent for future cases. The issue in question however, does not have any bearing on whether or not the repercussions will appear. It merely is whether or not the Constitutional control of recognition power lies in the hands mainly of Congress or the Executive Branch. The delicate mutual agreements that the United States holds in the Middle East may be destabilized by the case, however, this would not be the result of power being held by Congress rather than the Executives. Assuming that the President is the one

who holds recognition power, which he is not, the issues with the Middle East would occur regardless of with whom the power rests. This being the case, this counter-argument is rendered invalid even if the strength is vested in the Executive Branch. In addition, based on Joseph Story's "Commentaries on the Constitution of the United States," Congress is responsible for recognizing sovereignty of other states and is responsible for the outcomes. This places the major recognition power in the hands of Congress and only slight sway in the case in the hands of the Executive branch. The issue is relatively simple along these terms given that the Executives are responsible for diplomatic action as a result of the Legislative branch's decisions, just as it is regarding any number of other choices regarding foreign policy and relations with other states. If Congress voted to remain Isolationist as they had been in the past, then the Executives would be responsible for carrying out the foreign policies involved with this decision. As such, this being simply another foreign policy decision, it becomes clear that the determining body should be in the hands of Congress.

Conclusively, through the contention that have been stated above it is clear that the presidents recognition of power would not be diminished by allowing the decision of the petitioner to have his sons birth place properly represented. It's evident that through the checks and balances that the congress hold the right to determine a state's sovereignty through the eyes of the United States, and that the president holds an opinion but not the final decision in deceleration of sovereignty, as proven by William Rawle's perception of the Constitution of the United States. It is also incontestable that according to the Federalist No.69 "that a matter of dignity rather than authority" that the president's power to have a say is inherently for his dignity as the "most powerful man in the world" rather than for is actual sum of power. The Articles of confederation strengthen the contentions that have so been stated. According to the articles, much like Rawle's Interpretation, it was stated that congress held the power to decide to recognize a state as a sovereign state, as well as the control over diplomacy. It also stated that president was relevant to diplomacy on the fact that he was solely used as a communicator between congress and the foreign relationships. Not to make sole decisions. In a simpler argument, the individual, or the parent/guardian holds the right to change the stated birth place of their child on their birth certificates, which would allow the same for the documented birth place on their passport. Therefore it is irrefutable, that the petitioner and his family should be able to hold the right to change his sons birth place. Not only his right, but also the recognition that the president hold little to no decisional power over deciding the sovereignty of a state, and that all that power lies within the congressional power. The question in the case of whether or not recognition power rests in the hands of the Legislative branch or in the hands of the Executive branch, the answer is clear. Just as it had been historically and as affirmed by the writings of many governmental analysts responsible for the development of the United States, it is important

that recognition power of foreign states and receiving ambassadors rests mainly in the hands of Congress.

© 2021 The Harlan Institute. All rights reserved.