

Zivotofsky v. Kerry – Brief in Support of Petitioner, Elkins High School

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Table of Cited Authorities:

The Constitution

The Federalist No. 10

A View of the Constitution of United States, Chapter XX

Blackstone’s Commentaries

The Federalist No. 69

Haig v. Agee

Zivotofsky v. Clinton

Foreign Relations Authorization Act, Section 214

US Foreign policy with Jerusalem

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Statement of Argument:

The petitioner Mr. Menachem Binyamin Zivotofsky and his family have been denied the rights as citizens of the United States to list “Israel” as the country of their son’s personal passport. Secretary of State John Kerry unconstitutionally denied them this right as it is expressed in the *Foreign Relations Authorization Act* passed in 2002 stating that upon the request of an American citizen born in Jerusalem can label their passport country as “Israel.” In this case, Congress possesses the right to overrule the Executive Branch. As it is found in the Federalist papers number 10, former United States President James Madison states when dealing with a group of citizens with beliefs contrary to the rights of others that can harm our homeland, the people need to form a strong republic. This simply means that Congress should have the exclusive power over the Executive Branch in dealing with foreign affairs. This can include finding shared power between the Executive Branch and Congress, as well as the consistency of ruling on future cases.

Argument:

According to Article I, §8, Cl. 11 of *The Constitution*, “The Congress shall have the Power to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.” A scenario would be when there is a foreign nation issue that can

spark a war with the U.S, and if it is not handled properly, Congress shall have the power to declare a decision against that foreign nation. Article I, §8, Cl. 3, “The Congress shall have the Power to regulate Commerce with foreign nations.” Both are stating that Congress has the power to make laws concerning foreign nations. This gives the power to Congress to make decisions concerning passports instead of the Executive Branch.

In the case *Menachem Binyamin Zivotofsky v. John Kerry*, Secretary of State, John Kerry denied the request to put on Menachem’s birth certificate “Israel” as the country. In the *Federalist papers No. 10*, James Madison states that to guard against “factions,” or groups of citizens, with interests contrary to the rights of others or the interests of the whole community, we need a strong republic. This states that he thinks Congress should have the power to protect our homeland against any citizen that could harm our country. In this case, Congress should have the power to choose whether or not to write “Israel” as the country, not the Executive Branch, because it has the chance of harming our homeland. William Rawle’s take on *A View of the Constitution of the United States*, Chapter XX states that, “the Legislature indeed possesses a superior power, and may declare its dissent from the executive recognition or refusal, but until that sense is declared, the act of the executive is binding.” He is stating that Congress has the superior say over the Executive branch when it comes to making a decision. It also states, “the power of Congress on this subject cannot be controlled; they may, if they think proper, acknowledge a small and helpless community, though with a certainty of drawing a war upon our country; but greater circumspection is required from the President, who, not having the constitutional power to declare war, ought ever to abstain from a measure likely to produce it.” William Rawle is stating that Congress has superior power over the Executive Branch to declare dissent with the President if they need to, and in such a case as the one in question, Congress should have the power over the Executive Branch to choose whether or not to have the country listed as “Israel.”

In the *Federalist papers No. 69* Alexander Hamilton states that, “The President is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the Legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.” He is stating that the President has the power to receive ambassadors but this is more for a show than actually having authority. In the *Zivotofsky* case, the President went over his authority and denied the right that the child has under the 2002 law that Congress passed. The law states that the Secretary of State should, upon the request of citizens born in Jerusalem or their legal guardians, list the place of birth as “Israel” on their passport. He is clearly breaking a law when he denied the parents the right to put “Israel” as the country of birth

on their son's passport.

In the “St. George Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*, Appendix Note D” St. George Tucker explains that, “the President has the right to appoint ambassadors from foreign nations, requiring that ambassadors should be sent from one to another, the appointment of such ministers, is by our Constitution vested in the same departments of government as the treaty making power; the exclusive right of nomination being vested in the President; the Senate in this case, as in other cases of appointment in which they have any concurrence, having simply the right of approving, or of rejecting, if they think proper; but they cannot propose any other person in the room of him whom they may reject; they may prevent the appointment of an agent in whom they have not a proper degree of confidence, but they cannot substitute a more fit one in his stead.” It is stating that Congress has the overall power to override the Executive Branch because they have the final say of approval and can reject if they don't think the agent fits. In the case *Zivotofsky v. John Kerry*, Congress should have the overall power to override the President.

Mr. Zivotofsky clearly states that he believes his son's passport should read “Israel” on the area where it states country. Secretary of State, John Kerry, believes that the child's passport should read “Jerusalem” for the country. In the Foreign Relations Authorization Act, Section 214 it reads that, “a citizen has the right to place “Israel” as country on the passport.” Congress passed this Act and when a bill is passed by Congress and signed by the President it is supposed to be applied and enforced.

Zivotofsky v. Clinton was perhaps the first move taken in the courtroom. This case would later fall into the realm of *Zivotofsky v. Kerry*. However, *Zivotofsky v. Clinton*, a policy was passed that a legal citizen born in Jerusalem has the option to list their country as “Israel” on their personal passport. This solely pertained to citizens born in the area of Jerusalem. When the bill arrived to President George W. Bush he was of the belief that the policy would disrupt the way he dealt with the recognition of dealing with foreign countries.

The United States' approach to foreign relations with Jerusalem and Israel is very methodical. For a number of years now there has been ongoing fighting between the Israelis and the Palestinians on regards to sovereignty over the Holy Land. With regards to foreign relations, Harry Truman once said, “We continue to support, within the framework of the United Nations, the internationalization of Jerusalem and the protection of the holy places in Palestine.” The United States of America has great respect for the Holy Land, one reason being it shows Christianity which is a very prevalent religion in the U.S. The entire world is well aware of the unrest in this area as well as the practice of three different religions

occurring. President Lyndon B. Johnson once said, “There must be adequate recognition of the special interest of the three great religions in the holy places of Jerusalem. On this principle he assumes that before any unilateral action is taken on the status of Jerusalem there will be appropriate consultation with religious leaders and others who are deeply concerned.” Both of these statements said by previous presidents demonstrate the way of action we take when interacting with the area. If extra precaution is not taken, millions can become even more enraged and then we will have a massive problem on our hands. However, simply stating on a passport that a United States citizens country is “Israel” does not possess the capability to cause this kind of havoc.

In the case *Haig v. Agee* in 1981 there was great debate on whether a passport should be revoked. The petitioner Phillip Agee, an American citizen, was a CIA agent living outside of the United States who leaked information about fellow agents. The Secretary of State holding office at the time revoked his passport which disabled him from being able to enter the United States. Agee later sued and it was found that it was wrong for the passport to have been revoked. This relates very well to the *Zivotofsky v. Kerry* case because, like Phillip Agee, the Zivotofsky’s are all three citizens of the United States of America. If the Secretary of State is considering blatantly revoking the passport, this would be unlawful. Something to also add, Congress in the year 2002 passed the *Foreign Relations Authorization Act* stating that the Secretary of State has to list Israel on the country portion of the passport to a citizen born in Jerusalem presenting the request. There should be no debate about this topic if the government would fully stand behind and enforce the laws that Congress and the President pass. The Executive Branch is clearly not doing its designated job. This law was passed by Congress; therefore, it should be enforced. Mr. Zivotofsky could clearly present his case with this being emphasized as the main point in his argument. The government of the United States of America is shifting away from the moral and ethical standards in which this country for many of years has held closely to, these standards being inscribed in the *U.S. Constitution*. The President’s recognition power pertains to the laws that are passed and put into action by Congress. Therefore, the President and the Executive Branch need to recognize the Law passed in 2002 and put it into immediate action.

Conclusion:

History shows that Menachem Binyamin Zivotofsky’s rights were violated. *The Constitution* clearly states that Congress shares the recognition power when it comes to foreign relations. James Madison in the *Federalist Papers Number 10* states that we need to have a strong republic when it comes to guarding against groups of citizens with interests contrary to the rights of other citizens. If it could bring harm to our homeland, which the citizens could, Congress overpowers the Executive Branch. In the case *Menachem Binyamin Zivotofsky v. John Kerry, Secretary of State*, the Executive Branch clearly goes over Congress and denies the parent’s rights to put Israel as the place of birth on the son’s

birth certificate. Please take into consideration that a little boy's rights were denied and that having Congress, which consists of 535 people, would make a better judgment than the privileged few associated with the Executive Branch.

The petitioner, Mr. Zivotofsky clearly has enough hard evidence to back up what he is stating and therefore should be ruled in favor by the Supreme Court in this case. It needs to be ruled in favor not only for this case, but as a model for future cases. Going directly back to the *Foreign Relation Authorization Act* Congress passed in 2002 about a citizen born in Jerusalem being able to label a passport country as "Israel", in this lays the proof of the credibility of the petitioner's view. Our government needs to follow through with what the President and Congress decided in 2002, this act needs to be activated. The United States values this treasured area and closely follows the religion of Christianity which originated here, as well as respects the other two prevalent religions being practiced in the area. Mr. Zivotofsky's case needs to be ruled in favor by Congress, not only for his son and his family, but for future hard working natives of Jerusalem wishing to enter the United States of America.

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