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## **Zivotofsky v. Kerry Brief Case: Respondent**

Table of Authorities:

United States Constitution Article 2 Section 3

The Articles of Confederation

The Federalist No.69 (Alexander Hamilton)

Statement of Archibald Macleaine in the North Carolina Ratifying Convention (July 28, 1788)

Thomas Jefferson, Opinion on the Powers of the Senate Respecting Diplomatic Appointments

1 St. George Tucker, Blackstone's Commentaries

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Pacificus No. 1 (Alexander Hamilton) (1793)

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Statement of Argument:

In the case of Menachem Binyamin Zivotofsky v. John Kerry we are arguing on the side with John Kerry. Menachem Binyamin Zivotofsky is the petitioner and John Kerry is the Respondent. We as respondents feel that recognition power goes to the president Barack Obama. He should be able to decide whether Jerusalem or Israel is put on the passports of Jerusalem people. We as respondents feel that recognition power goes to the president Barack Obama. He should be able to decide whether Jerusalem or Israel is put on the passports of Jerusalem people. If congress steps over their powers and allows change of name from "Jerusalem" to "Israel on passports, they may be putting relationships between

the U.S. and other countries at risk. Obama should have the power over what goes on passports if it going to affect the people as a whole. The president knows more on how to deal and make treaties with oversea affairs because he is commander in chief, so the congress should just stay out of it and not have a say in what goes on the passports.

Argument:

The president should be in charge of dealing with these foreign affairs and there are many reasons just why it should be the president's job, not the congresses. Since the president has recognition power it should be his responsibility to decide what happen with the foreign affairs. Recognition Power is power the President has to recognize what happens with foreign affairs and recognize foreign governments. This means the U.S. has to recognize Jerusalem is a separate place from Israel. The relationship between the power to receive ambassadors and the foreign power shows us this. Foreign power is the power that the president has to decide how we associate and how he deals with other countries. It will anger other countries and cause conflicts if Israel is put on the passport of the people from Jerusalem.

In order to understand recognition power you must be able to understand the scope. The scope of power is determining the powers of the President and Congress and the limits of each. As "commander in chief" (2.3.1) he receives ambassadors, so this shows you he should be in charge of recognition power. When he meets ambassadors and understands their country, he is already able to label and recognize them. Also, this makes him better at stopping conflicts and wars between foreign countries.

There are many so called "questions of delicacy" as to whom the recognition power should go to. One "question of delicacy" about recognition authority would be "Does recognition power go to the Executive branch or the Senate?" But it clearly shows us in the constitution it goes to the Executive branch. The constitution states, "The president shall receive ambassadors and other public ministers." This means he has more relations with foreign countries and this makes him better able to make transactions with him. Also, he knows the most about their country and where they're from. This can include how we recognize them as allies or enemies. We feel this way because congress doesn't know as much about foreign affairs as he does. Congress mainly deal with conflicts in the U.S. and the President is the one whom deals with the foreign affairs. This means they don't specialize in our foreign affairs and they shouldn't have a big role in this case because it deal with foreign affairs. The executive branches leader is the president and he is acting for the people. It was stated by Archibald Macleaine "The executive ought to make temporary appointments, as well as receive ambassadors and other public ministers." (Statement of Archibald Macleaine in the North Carolina Ratifying Convention July 28, 1788) and "The power can be vested nowhere but in the executive, because he is perpetually acting for the public" at the North Carolina Ratifying Convention (July 28, 1788). He is saying that since the president acts for the public, he is looking at the people's best interest, so he should handle affairs with foreign

countries that can affect the United States. The President needs to be able to make sure that foreign countries aren't angry with us for any reason, so they don't try to start war with us, or have conflicts with us. It also show respect to the ambassadors of other countries that the leader of our country is taking his time to receive ambassadors. When foreign countries want to get in touch with the United States they go to the President, not Congress. Since the President has a larger role in dealing with foreign affairs, he should have more power. Alexander Hamilton says, "...in the case of a Revolution of government in a foreign country, whether the new rulers are competent organs of the National Will and ought to be recognized or not" This supports that the President has power in recognizing a state as a n independent country, because he has a wider scope and is responsible for choosing ambassadors that will benefit relations with foreign countries. The President's scope is to look over foreign affairs and countries, while dealing with transactions and conflicts. Any powers over foreign affairs belong to the executive branch. Thomas Jefferson stated "The transaction of business with foreign nations is executive altogether. It belongs then to the head of that department, except as to such portions of it as are specially submitted to the Senate."(Thomas Jefferson, Opinion on the Powers of the Senate Respecting Diplomatic Appointments) He is saying that certain parts of the transaction of business with foreign nations does belong to the Senate, but only in certain cases; otherwise it belongs to the leader of the Executive branch, the president. Jefferson also said "The Senate is not supposed by the Constitution to be acquainted with the concerns of the Executive department. It was not intended that these should be communicated to them; nor can they therefore be qualified to judge of the necessity which calls for a mission to any particular place, or of the particular grade"(Thomas Jefferson, Opinion on the Powers of the Senate Respecting Diplomatic Appointments) He is saying that the Senate should have no say over what the Executive department decides or does. The president was the one who was given this role and it's his business deciding what to do with it. So, they should not be allowed to have say over the recognition power of our country and the Executive branch should have all the say.

The president has difficult decisions to make when recognizing foreign countries. It's hard for the president to decide whether to recognize the ruler of a foreign country during a revolution. William Rawle said something similar to this "The power of receiving foreign ambassadors, carries with it among other things, the right of judging in the case of a revolution in a foreign country, whether the new rulers out to be recognized." (William Rawle, A View of the Constitution of the United States, Chapter XX 1829) This shows how the president can't put Israel on Jerusalem passports, because it's unclear which country even owns Jerusalem. Too many places want to recognize Jerusalem as theirs to decide who the ruler really is. If two governments are claiming power in a nation the government in which is more for the people and more democratic should be recognized, the government which will recognize its people's needs. The President's power to receive

ambassadors is a huge part of recognition power. The president is responsible for foreign relations more than the Congress, so he should not have to follow any laws that Congress presents, because the executive department is more in charge. “But it is in respect to external relations; to transactions with foreign nations, and the events arising from them, that the president has an arduous task. Here he must chiefly act on his own independent judgement” (William Rawle, *A View of the Constitution of the United States*, Chapter XX (1829) (point 1). This means that the President doesn’t have to listen to Congress regarding foreign relations but can listen to his own opinions and act on them. Since the president knows more about the foreign affairs and relations than congress, he should do what he knows would be best for both countries and his department. Since the President has recognition power and is responsible for being involved in foreign relations, Congress is stepping over their allowed powers and boundaries and into the President’s powers, making it unconstitutional. . When he receives ambassadors it gives him a feel of how to recognize and label their countries government. An example of this can be what happened to George Bush in 2002. In 2002, George Bush issued a “signing statement” where he protested a law saying it “interferes it the President’s constitutional authority to conduct the Nation’s foreign affairs and to supervise the... executive branch.” I feel he is correct in saying this because he has the right to decide whether Israel or Jerusalem is put on a passport and I feel the law interfered with this. The law made it so the Secretary of State must list the birthplace of a U.S. citizen born in Jerusalem as “Israel on his passport. When a new law was put into effect this changed. Jerusalem now gets put on these passports instead of Israel. The lower court’s eventually ruled with the president. They both feel that only the president has power to recognize foreign countries and governments. The law has effect on both sides. Either Jerusalem will be mad at the United States or all the countries whom want to claim Jerusalem will be mad.

Conclusion:

Recognition Power allows the President to have power to recognize self-states as independent from the countries they belong in. This is what Jerusalem is in Israel. Even though their location is in the country Israel, they have independent governing, therefore have different relations with the U.S. The Congress is trying to interfere and allow US citizens born in Jerusalem to have Israel written on their passports however this may interfere with the Presidents job to maintain friendly relations with other countries involved with Jerusalem. Since there are problems with who’s ruling Jerusalem, the US Congress shouldn’t be the ones to determine who think it should be. This is just causing a large variety of problems for the future, whether they can see them or not. The Supreme Court needs to decide what’s best for the people and in this case we feel it would be them siding with John Kerry. According to the constitution the president does have recognition power. When it comes to foreign affairs he should make the decisions, except for a few rare cases. Both lower courts and the respondent feel that the president has recognition power and the

right to recognize countries and governments. If the law was changed and Jerusalem is no longer to be put on the passports. Then, there is no question about it, Jerusalem should be put on the passports. It will only start conflict and make countries mad. We feel it is unconstitutional to not let the president decide because it states in our constitution many things that show us he should have the recognition power. Also, if we decide to put Israel on passports some other countries may feel betrayed and may want to break treaties. We feel the court should rule for the Respondent John Kerry and the president's duty to the recognition power.

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