

Wicomico High School Katie and Jung: Respondents

Katie Beach and Jung Oh
Respondent Brief

Table of Cited Authorities

Foreign Relations Act of 2002

Constitution of the United States, Articles 1 §8, Article 2 §2 and §3

Articles of Confederation Article 9

The Federalist Papers No. 69 (Alexander Hamilton)

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

The War Powers Act of 1973

[www.founders.archives.org](http://wwwFOUNDERS.archives.org) Enclosure; [Proclamation by George Washington], [April 1793]

Statement of Argument

Zivotofsky v. Kerry concerns the recognition power that is only the president's. Foreign Relations Act of 2002 stating that the Secretary of State had to allow a citizen born in Jerusalem to change his/her birth place to Israel; this law is unconstitutional. It infringes upon the president's recognition law, his power to recognize a state or regime as a government and country. Congress did not have the right to put requirements on a right that is only the president's. Stated by Alexander Hamilton in Federalist Papers No. 69, "[it is] more a matter of dignity than of authority", Hamilton is explaining that only the president should work with foreign nations due to him being the head of the government. The power of recognition is not the president's because of knowledge or authority, but because he is the symbol of the United States and is responsible for keeping relations with foreign governments. Article 2 §3 states "[The President] shall receive Ambassadors and other public Ministers", giving him the right to pick a country he believes should have an Ambassador. He has to recognize the country and decide the country's eligibility. That is part of his recognition power given by the constitution. Congress cannot eradicate those powers. To protect the Constitution and uphold the Founding Fathers' view of foreign relations and the rights they gave Congress and the President, the decision by the court of appeals should stay.

Argument

Zivotofsky v. Kerry is a case setting a precedent about the recognition power and the fact that Congress cannot infringe upon how the president decides to use his power or not to use his power altogether. “The transaction of business with foreign nations is Executive altogether” stated by Thomas Jefferson in Opinion on the Powers of the Senate Respecting Diplomatic Appointments. The president and the president alone has the power to recognize a country and whether or not the United States recognizes territories as belonging to them or if the entities are separate; in this case the United States believes they are separate, Jerusalem is not part of Israel. Zivotofsky’s petition for his son’s birth place to be “Israel” and not “Jerusalem” is dependent on the president’s discretion, not an unconstitutional law passed by Congress.

The president is granted recognition power in the Constitution, specifically Article 2. Article 2 §2 Cl. 2 states “[The President] shall have Power, by and with Advice and Consent of the Senate, to make Treaties...he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [.]” it is states in the constitution that the president can recognize a country or not, he has the power to choose what countries to make treaties with, what the treaties are one, and if they are even thought of; not Congress. Congress has the role to “Advice and Consent” not create and start. With the president’s power he has the right to grant Menachem’s birth place to be “Israel” and he has chosen not to; his discretion. Obama has chosen this path of not recognizing “Jerusalem” as “Israel” because in saying so would be detrimental to the United States’ relationship in the Middle East. With many other countries wanting “Jerusalem” to be their territory, Obama decided to not put “Jerusalem” with Israel and jeopardize the relationships in the Middle East involving the United States and beginning another war. Kerry is following the orders of the president in not granting Zivotofsky’s petition.

The power of recognition is exclusive to the president. In the wise words of Alexander Hamilton, “[it is] more a matter of dignity than of authority”, meaning the president has the power due to it being a job for the head of the government to deal with other countries. The implications would be too great if the burden fell on the legislature. The time it takes for Congress to get any legislation passed or approve on an appointment would be too great in a worldly manner. Congress has too many minds and opinions to have the task of recognizing and solidifying relations with foreign nations.

The petitioner would argue that Congress and the president share the recognition power because both have different powers when foreign countries are involved. Article 1 §8 Cl. 3 “The Congress shall have the Power to regulate commerce with foreign nations.” This power that Congress was given in the Constitution, is not the recognition power, but is strictly a power that lets them deal with trade and getting goods from other countries, not recognizing a state as a country. Dealing with trade does not automatically mean that the United States sees it as a government, though the United States cannot trade with

unrecognized states. Being in trade route with them does not have to be the primary reason for recognition.

The president has the power of the treaty; the president is the one in ultimate control. He decides the country and topic; not Congress. Article 2 §2 Cl. 2 states that “[The President] shall have power..., to make treaties, provided two thirds of the Senators present concur”. Senators have the authority to turn down or concur with a treaty, but the only way one can be considered is if it starts with the president. Senators alone cannot create and vote upon a treaty, because it is not their power. If Senators have the power to write and vote upon the same treaty, it would violate all the steps the Founders took to make sure powers were separate and shared between the branches. For the recognition power, this same principle applies. If the Senate can write laws to restrict the president’s power, then how could they recognize states? They cannot, because it is the president’s power so Senate does not have them all. Separating the powers is one of the main initiatives of the Constitution and it shall be followed.

Congress passed the Foreign Relations Act in 2002, giving them the right to make the Secretary of State follow their guidelines for citizens born in “Jerusalem” and want their papers to say “Israel. To write a law that gave them a power is not constitutional. Giving a power to your own branch is not following the Founder’s views for America’s future. Before the Constitution the Articles of Confederation failed to separate powers and let the branches have power, but it stated “The United States in Congress assembled, shall have the sole and exclusive right and power...of sending and receiving ambassadors.” As history proved itself, the Articles did not fit the needs of the United States, so going back to their practices is not the way to expand and secure relations with foreign countries. Going back would mean that all the countries the presidents have recognized would have to be recognized all again and cause more conflict than needed. To have a whole body deal with a sensitive topic puts stress and restrains on more than is needed, Congress is not always in session and could not come to session for a conflict. That further proves one person, a person the country trusts to have the knowledge to make those decisions should continue to make them.

The War Powers Act of 1973 enables the president and Congress to have separate and unequal foreign policy powers. The president is allowed to send troops to whatever foreign country, but needs to have a legitimate reason to do so. Congress then steps in and can later decide to send the troops back. However, it is the president’s decision that comes first and his decision that affects what Congress can do about the situation. Again, the president needs to take action in trying to implement foreign policy before Congress is allowed to act upon the decision(s).

In October 1962, American spy plane U-2 discovered that the Soviet Union was working on a missile project. After meeting with his advisors, John F. Kennedy decided to place a quarantine around Cuba, and wanted to remove all the Soviets’ military supplies before the

situation got any more dangerous. President John F. Kennedy and Soviet leader Nikita Khrushchev came to a compromise that both sides disliked the idea of a nuclear war so the Soviets promised to destroy the weapon sites if the U.S. promised not to invade Cuba, removing nuclear missiles from Turkey 25 years later. During the Cuban Missile Crisis, Congress barely had a say in any of Kennedy's successful foreign policy decisions, especially because Congress has foreign powers mostly relating to war, like declaring one. Because the U.S. and the Soviet Union were only on the verge of war, Congress could not take significant actions such that the crisis was affected by them. Declaring a war and preventing a war are decisions made by actions taken by the president. The president's actions in the situation were to avoid a nuclear war, not to start one. Therefore, Congress could not take action during the crisis. The recognition power comes before a war. Furthermore, Congress does not have the power because it is out of their foreign powers given by the Constitution. The petitioner's view on the law is that Congress has the power to restrain and constrict the president's recognition power. When Washington first recognized a country, Congress did not restrict or burden him with precautions or restrains. America has had over 200 years to recognize and work with foreign nations with the president as the head, changing the way the system was set up would cause more problems than good. Furthermore, this issue would lead to more laws from Congress being used to push the president in their direction not necessarily the correct direction for the country. The United States has survived countless conflicts and wars with the recognition power bring for the president. Having him at the forefront picking has served foreign relations well; making decisions is not up to anyone else but him.

Zivotofsky's petition for his son to have "Israel" as his birthplace would lead to the United States recognizing "Israel" having "Jerusalem", which is not the view America would like to portray to the rest of the Middle East. The pressure and tension I the Middle East would worsen and the United States is trying to get out of the Middle East, not get in another conflict with another country. Implication of this case are far more serious than Congress having the power to infringe upon the President's power of recognition.

The scope of this power is broad, affecting Congress, the President, the Secretary of State, and the citizens born in Jerusalem. The decision initially belongs to the president, because he is empowered as the head of the country, whether it is constitutionally implied or not. Sharing this power would be detrimental to the authority of the president.

To continue and uphold the Constitution's principles and powers given to the legislative and executive branches of government the respondent's views follow, those of the Founders should be upheld.

Conclusion

In the case of "Menachem Binyamin Zivotofsky v. John Kerry (Secretary of State), the facts lead to the respondent's side. The power of recognition is the problem at hand. Congress

cannot infringe upon that power. Having a law to restrict that power is unconstitutional and should not be followed, which is what the president and secretary have concluded. Zivotofsky's petition for his son was made because he was caring and trying to help his son, but it is not how the United States should respond to the case.

The recognition power belongs to the president from the Constitution and should be upheld by the Supreme Court. Congress has power with foreign nations but recognizing them is not one of those powers. Their right is to approve ambassadors and treaties, deal with trade, and declare war. Nowhere does it give them the power to identify a land as a state or country.

Conflicts in the Middle East have been a topic with the United States since 2001, but following a law given to the president is not in the best interest of the United States. Following the past and continuing practices is how the U.S should continue, not in a time when The U.S. was trying to target the Middle East.

The Supreme Court has the job to uphold and interpret the Constitution. That is with siding with the respondent and following the Founders views.

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