

Wicomico High School Petitioner Mairin and Jacob

Mairin Jabagat

Jacob Bizzarri

Petitioner Brief

Table of Cited Authorities:

The U.S. Constitution

William Rawle, a View of the Constitution of the United States, Chapter XX (1829)

Foreign Relations Authorization Act Fiscal Year 2003

Israel at the UN: A history of Bias and Progress September 2012

Statement on signing the Foreign Relations Authorization Act, fiscal year 2003 (George Bush)

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

Statement of Argument:

Under the influence and aide of the Secretary of State, no President in the last century has associated any foreign nation or government as having authority of the city of Jerusalem, even though it's located within the country of Israel. Due to this "policy" any person born in Jerusalem and is U.S. Citizen with an American passport is required to record their birthplace as Jerusalem, not Israel, because of the President's recognition of the city. But in 2002, a law issued by Congress stated that with consent from Jerusalem born citizens and their guardians, the Secretary of State can acknowledge Israel as their birthplace on their passport. As the Petitioner we believe:

The President's recognition power is susceptible to change from various laws/ policies permitted to and initiated by Congress.

The President's recognition power isn't classified for only the Executive but incorporates the aide of Congress or the other branches in one or more aspects.

The President's recognition power is susceptible to defeat in certain periods of civil debate rendering the Executive to become independent and allow Congress the chance of acknowledging foreign nations themselves.

The scope of the recognition power is to recognize the stability of a state and to confirm its existence through economic, military, diplomatic, and by any other means to ensure the state's territory is recognized formally.

Zivotofsky has full authority over his son and thus shall have true authority over his son's rightful birthplace- is this really needed?

Argument

Two branches of government are in control of foreign policy: the legislative and the executive, but who holds the power, by the written Constitution, to recognize foreign nations? The U.S. Constitution entitles “[The President] shall have Power, by and with the Advice and Consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [.]” as stated in Article II Section 2, Clause 2. This clearly describes the joint partnership between the President and Congress when dealing with foreign matters. The President does not have the ultimate power over foreign relations without the influence or the aide of Congress. A treaty is a formally ratified agreement between countries, territories, etc. With Congress confirming a treaty it creates a diplomatic relation (also tied with the confirmation of an ambassador). Thus gives the legislative branch the power to *officially* sign off on diplomatic measure. In order to take any lawful action for other foreign states, Congress has to pass a law/bill and to do so; they have to recognize a status for that state. The power of recognition reigns from appointing, to assigning, and receiving ambassadors, because we are allowing foreign diplomats to represent their nation out of respect in the sense that they would further build and establish bonds within the global community. By confirming ambassadors the federal legislative is forming recognition of US establishment in the foreign state and recognizing the territory as a reasonable status. Therefore confirming treaties and ambassadors gives Congress the official recognition of a foreign community.

According to William Rawle, A View of the Constitution of the United States, Chapter XX (1829) “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. 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 ought to be recognized [sic]. 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”. During revolutionary periods, the Executive is vulnerable and must make rash judgement calls. By doing this Congress gains some leisure in which they may choose to take authority into their own hands. Thus Congress is able to recognize small communities and their governments if they deem it appropriate.

When acknowledging foreign nations and understanding the President's power of recognition, it's important to realize that the Executive isn't independently operating within the government, but interdependent with Congress in more than one aspect of this process. The President is defined as the enforcer of the laws created by the federal legislative,

which by the words of the Constitution states in Article II Section 3, "he shall take Care that the Laws be faithfully executed," the Take Care Clause. In the case of original intent it is well understood that the Framers wanted the President to fully execute the laws made by Congress to ensure they're being implemented correctly. In order to regulate foreign trade, money, declaring war and punishing foreign offences against the nation; the President has to wait on Congress before implementing such actions, as these are powers given to the legislative branch.

The President's power of recognition is susceptible to change depending on whether it coincides with the laws and policies initiated by Congress. This doesn't mean Congress is trying to overrule and control the executive branch, their intention is to assist and guide the President's actions. According to Statement of Archibald Maclaine in the North Carolina Ratifying Convention (July 28, 1788) "Therefore the executive ought to make temporary appointments, as well as receive ambassadors and other public ministers. This power can vested nowhere but in the executive, because he is perpetually acting for the public; for, though the Senate is to advise him in the appointment of officers." Congress is guiding the Executive through the appointments, taking the Executive's power of recognition and enabling Congress to influence and incorporate their judgement call. Thus implied that the Foreign Relations Authorization act is deemed constitutional for the act is only assisting the President's recognition power.

Everything the President does ties back to Congress' official approval whether it's domestic or foreign. Congress can set guidelines to the President for his powers to ensure that the law is being followed. Therefore subjecting to the matter that the Foreign Relations Authorization Act (2002) is unconstitutional isn't all true. Congress is allowed to create laws that provide a guideline for the executive branch relating to foreign affairs as the President doesn't have the full power by the means of checks and balances. The federal legislative has the official say in actions of the President and thus confirmed/concluded in the recent argument can give orders to the President to recognize Jerusalem as the capital of Israel based on the appointed ambassador of Israel, the Israeli law and the fact that the President appointed an ambassador to Israel confirming their relationship with the US. If the President felt that the law went against his/her power then he/she should've vetoed it (referring to former president George Bush) The Chief Executive's powers are not infringed just simply checked and guided. The FRA law is simply giving order to the President to make sure he is giving the right recognition to the city. Congress and the President have to work together (not happening by recent means of divided government) in order to create foreign policy stated by the former president, George Bush who passed the bill to become a law. A President who knew the bill questioned his recognition powers as Chief Executive during the time supported the bill and its diplomatic measures stated in his "Statement of signing the Foreign Relations Authorization Act, fiscal year 2003". Meaning to say that a former president supported the law and hoped to have the legislative and the executive work

together to perform such actions of foreign policy in the Foreign Relations Authorization Act.

By Israeli law, Jerusalem is the unified capital of Israel, not a city-state, and holds Israel's government. Therefore there is no diplomatic relation, no embassy, and no ambassador to confirm that Jerusalem is its own territory except for the decision to make the city a *corpus separatum* (established by the United Nations in 1947 for the separation of Jewish and Arabs). In 1967, Israel annexed Jerusalem to its state and later made it its capital, but several nations, including the United States, still won't recognize East Jerusalem as unoccupied territory therefore prohibiting Israel to settle in the area. The US was at the held meeting when the United Nations voted to call the Israeli law "null and void" (no legal affect), but the US never casted a ballot for or against the law. Therefore confirming Israel's authority over Jerusalem and thus concluding that the part of the law in the Foreign Relations Authorization Act section 214 is not unconstitutional for the Israeli law proves the Israeli authority over the city. Congress is guiding the executive to recognize Israel accordingly to its laws and to form better relations with the territory.

Conclusion:

To briefly summarize, the President's recognition power is subjected to laws created by Congress. The Federal Legislative has the power to officially recognize foreign nations and the Foreign Relations Authorization Act is not unconstitutional. Backing up with evidence from Article II Section 2 (president and senate confirm treaties), Article II Section 3 (president and the senate confirm ambassadors), Article I Section 8 (Congress powers), and the Take Care Clause supports why Congress can create laws to guide the President and the Executive Branch's recognition powers. His powers are not relevant to Zivotofsky's question to whether his son is eligible to have his passport state his birthplace as Israel. It is only the President's intervention to enforce the law. By Constitutional evidence and interpretation, Zivotofsky should have the right to change his son's birthplace to Israel and the recognition power to foreign nations is the federal legislatures official duty. By stating this Congress has official recognition and may cooperate with the executive to carry out any foreign diplomacy. From the Foreign Relations Authorization act, it is understood that the request for a change in birthplace from a non-natural born citizen does not impede the President's limited powers, it is beyond the choice of the president therefore he shall enforce it as it is the law.