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**STATEMENT OF LEWIN & LEWIN ON THE DECISION IN
*ZIVOTOFSKY v. KERRY***

We are, of course, disappointed that after 12 years of litigation to enforce a law that Congress enacted by an almost unanimous vote, a majority of the Supreme Court has approved the Executive Branch's refusal to enforce the National Legislature's expressed directive that Jerusalem be recognized as being in Israel. The majority opinion is exceedingly limited. Justice Kennedy acknowledges that "the subject is quite narrow: The Executive's exclusive power extends no further than his formal recognition determination." Congress' broad powers to deal with foreign policy remain extensive and virtually unlimited.

The dissenting opinions of the Chief Justice and Justice Scalia (joined by Justice Alito) are absolutely compelling. Justice Scalia notes that there is universal agreement "on the real-world fact that Israel controls the city of Jerusalem," and calls the majority's decision "blatantly gerrymandered to the facts of this case" and unsupported by any "consistent or coherent theory."

This decision highlights the central fallacy that has affected the attitude of Presidents and their State Departments since 1948, when the State of Israel was established and included the western portion of Jerusalem, and since the time, 48 years ago, when Israel, defending itself against attack by Jordan, took possession of the entire City of Jerusalem. Presidents have been permitted by American public opinion to maintain, as American foreign policy, the absurd position that no country is sovereign over Jerusalem, and that no part of the City, including the western portion of Jerusalem, is in Israel. The time has come for Presidents and candidates for that lofty office to recognize and promise not only to move the United States Embassy from Tel Aviv to Jerusalem but to officially acknowledge, as American policy, what Congress (including former Secretary of State Hillary Clinton) declared when they enacted a law in 2002 directing that U.S. passports show "Israel" as the country of birth of American citizens born in Jerusalem.

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