Washington, D.C. - Earlier today, the Louis D. Brandeis Center for Human Rights Under Law (LDB), a national civil rights organization, presented the U.S. Supreme Court with an amicus curiae brief in support of Menachem Binyamin Zivotofsky, the petitioner in the so-called Jerusalem passport case, *Zivotofsky v. Secretary of State*.

LDB, joined by several of the nation's leading legal and foreign affairs scholars, defended the legality of the statute permitting persons born in Jerusalem to specify that their nation of birth is "Israel." LDB is concerned, as it explained to the Court, that "the discussion of matters pertaining to Israel often invokes double standards and unduly tortured logic that would uniquely disfavor the Jewish national homeland, and thus negatively impact the status and personal security of Jews the world over."

LDB President Kenneth L. Marcus commented, "It is both astonishing and infuriating that federal litigation is required to convince the U.S. Department of State to recognize the quintessentially obvious fact that Jerusalem is in Israel. We are pleased to provide the U.S. Supreme Court with sound guidance prepared by two powerhouse attorneys, and we are gratified that several of the nation's most highly regarded legal and foreign affairs scholars are joining our brief."

LDB argued to the Court that this case "lends itself to a much simpler resolution than would a true dispute between the President and Congress regarding the powers to recognize the legal status of states and foreign sovereigns. The dispute over Jerusalem's legal status is but one of many territorial disputes posing challenges for American foreign policy. While the political branches may disagree about the extent to which either might exercise the power of legal recognition, it cannot seriously be questioned that Congress's authority to acknowledge, process and related to simple facts regarding foreign territory-disputed or not-is a function necessary and proper to the exercise of its assigned powers."

The LDB brief is important for its sophisticated explanation of the so-called "recognition power," drawing upon a wide range of legal sources and scholarship. The LDB brief was prepared by appellate litigator Alan Gura, Esq., a member of LDB's Legal Advisory Board, and Eugene Kontorovich, Professor of Law at the Northwestern University School of Law.

Several leading legal and international affairs scholars joined LDB's brief, including:

Erwin Chemerinsky, Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, University of California, Irvine School of Law

John C. Eastman, Henry Salvatori Professor of Law & Community Service, and former Dean, Chapman University Dale E. Fowler School of Law

Eugene Kontorovich, Professor of Law, Northwestern University School of Law

David B. Kopel, Adjunct Professor of Advanced Constitutional Law, University of Denver Sturm College of Law
ABOUT THE CASE

The case, Zivotofsky v. Secretary of State involves the right of a Jerusalem-born American citizen to self-identify as born in "Israel" on a U.S. passport and birth certificate. In 2002, Congress passed a law that directed the Secretary of State to record the birthplace of Americans born in Jerusalem as "Israel" on the passports and birth certificates of citizens who so request. Since the law's enactment, the Executive Branch has stubbornly refused to enforce it, claiming that to do so would infringe on the President's authority to "recognize foreign sovereigns." LDB President Kenneth L. Marcus commented, "the State Department should have permitted citizens to self-identify in this manner without congressional urging, but it is especially disturbing that the State Department has resisted doing so even in the face of an explicit directive from Congress."

Petitioner Zivotofsky was born on October 2002 at Shaare Zedek hospital. His parents invoked the then-new statute and requested that their son's place of birth be listed as "Israel." The State Department refused to do so, claiming that Congress' law was unconstitutional, and listed his place of birth as "Jerusalem." Zivotofsky then sued in September 2003 to compel the State Department to comply with the law.

Alyza and Nathan Lewin, both of Lewin & Lewin and members of LDB's Legal Advisory Board, very ably represent the petitioner. Two years ago, the U.S. Supreme Court agreed, by a vote of 8-1, that the D.C. Circuit was obligated to rule on whether Congress' law is valid, rejecting the State Department's argument that our lawsuit raised a "political question" that the courts should not address.
ABOUT ALAN GURA, ESQ.

Alan Gura's practice focuses primarily on appellate litigation and constitutional law. Alan has argued cases before the United States Supreme Court, nine federal courts of appeals, and many federal district courts. In 2013, the National Law Journal named Alan Gura among the 100 Most Influential Lawyers in America. In 2009, Legal Times named Alan Gura one of Washington's Top 40 Lawyers Under 40 and a Champion of Justice. Alan is an adjunct professor of law at the Georgetown University Law Center, starting with the Spring, 2015 semester.

Prior to founding his firm, Gura & Possessky, Alan served as a Deputy Attorney General for the State of California, as Counsel to the United States Senate Judiciary Committee and as a litigation associate for the Washington offices of Sidley Austin. Alan began his career clerking for U.S. District Judge Terrence Boyle, in the Eastern District of North Carolina. He is an active member in good standing of the Virginia, California, and District of Columbia bars.

ABOUT EUGENE KONTOROVICH

Professor Kontorovich's research spans the fields of constitutional law, international law, and law and economics. He has authored a series of papers that extend "transaction cost" analysis from private law to constitutional law. Prof. Kontorovich is also a leading expert on maritime piracy, universal jurisdiction and international criminal law. His scholarship has been relied on in important foreign relations cases in the federal courts, and historic piracy cases in the U.S. and abroad. He is working on a book, Justice at Sea: Piracy and the Limits of International Criminal Law, under contract with Harvard University Press. Prof. Kontorovich has also written and lectured extensively about the legal aspects of the Israel-Arab conflict.

He went to college and law school at the University of Chicago, where he also taught for two years as a visiting professor. After law school, he clerked for Judge Richard Posner on the United State Court of Appeals for the Seventh Circuit. Before going to Northwestern, he was a professor at George Mason University Law School. During the previous academic year, Prof. Kontorovich was honored with the Bator Award, given by the Federalist Society to leading professors under 40, as well as with a resident membership at Institute for Advanced Study in Princeton.

See the brief here.