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STATEMENT OF NATHAN LEWIN ON ZIVOTOFSKY v. SECRETARY OF STATE DECISION

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Today's Court of Appeals decision permits the State Department to continue its misguided policy of denying to American citizens born in Jerusalem the right that Congress gave them in 2002 – to declare on their passports that they were born in Israel. Federal government agencies have recognized in official documents and statements to the media that Jerusalem is in Israel. The State Department's passport policy remains an isolated holdout, denying what is universally acknowledged, to the detriment of a right that a duly enacted law gives to American citizens.

Today's majority and concurring decisions acknowledge that the constitutional issue presented by this case is significant and calls for resolution by the Supreme Court. When the case was first on the Supreme Court's docket in 2011, the Court, on its own, asked the parties to brief and argue the constitutional question. After the legal issues were fully briefed and argued orally, the Supreme Court sent the case back to the Court of Appeals with the Chief Justice's observation, after he summarized the historical arguments on both sides, "To say that Zivotofsky's claim presents issues the Judiciary is competent to resolve is not to say that reaching a decision in this case is simple."

This difficult case is now almost one decade old. We initiated it less than one year after our client was born. We will continue to press his claim in the Supreme Court and trust that the Court will agree to hear and decide the important questions presented. We hope that before Menachem Binyamin Zivotofsky's Bar Mitzvah he will be able to bear a passport that recognizes his birthplace as "Israel."