

The *Litigator*

Judges Label Illegal Immigrant "Resident"

COUNTY SHOULD NOT PAY MEDICAL BILLS

A decision by the Idaho Supreme Court that a man illegally in the United States is a "resident" and entitled to have his medical care paid by an Idaho county drew a petition from the county asking the Court to rehear the case. MSLF has applied to file a friend of the court brief in support of the county to argue that federal law has preempted Idaho law as to who may qualify for "public benefits" and what situations qualify as an "emergency medical condition" for which treatment may be given to illegal immigrants.

If accepted, MSLF's brief will argue that Congress, with its enactment of the Personal Responsibility and Work Opportunity Reconciliation

Act in 1996, barred state and local governments from providing "public benefits" to illegal immigrants; however, care could be provided for an "emergency medical condition." Thus, MSLF will argue, the Idaho Supreme Court may not interpret state law in a manner that circumvents the desire of Congress to discourage people from entering the United States illegally in order to receive the free services the Nation provides its indigent citizens. To do so renders that law unconstitutional under the Supremacy Clause of the Constitution.

In 2005, Javier Ortega Sandoval entered the United States illegally from his home in Mexico and came to Boise, Idaho. On March 22, 2006, while working for Eagle Landscape Contractors, he

suffered a stroke. He was taken to Saint Alphonsus Regional Medical Center, Inc., an Idaho nonprofit corporation, where he was hospitalized for nearly two months and incurred medical bills in excess of \$187,000. Unable to pay the hospital bills, he applied for medical indigent assistance from Ada County. After a lengthy investigation and two hearings, the Board of County Commissioners of Ada County denied the application, concluding that Sandoval was not a resident of Idaho

because he was an illegal immigrant. An Idaho state court upheld Ada County's determination.

On June 16, 2008, the Supreme Court for the State of Idaho reversed, holding that Sandoval was a "resident" of Ada

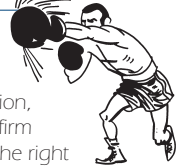
County. The Court rejected the holding of the Ada County Board that Sandoval was not a resident of the County because he is a resident of Mexico with no proof of legal status to remain in the United States; in fact, his presence in the United States must be temporary because he is subject to deportation under federal law. The Court held that Sandoval's status as an illegal immigrant is irrelevant: "The concept of residency does not distinguish between citizens and those who have entered this country illegally." Concluded the Court, "since Sandoval testified that he had lived in Boise for more than thirty days and intended to remain in Idaho while working to support his wife and children in Mexico, he meets the statutory definition of resident. . . ."



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One judge dissented, objecting vigorously to "the majority's opinion that a person's illegal status in the United States is irrelevant." In his view, the facts, as determined by the Ada County Board, demonstrate Sandoval was in Idaho "only for temporary purposes." The dissent objected, as well, to the Court's holding "that a person can be a resident of a place in which he has no legal right to be." Declared the judge, "If a person has no legal right to be in Ada County and would presumably be removed as soon as the Immigration Service catches up with him, his tenure here can be nothing more than temporary. . . . To me, his status here was analogous to a fugitive from justice on the run from the law."

For years, MSLF has been defending the ability of state and local governments, their citizens, and taxpayers to free themselves from the burden imposed on them as a result of out-of-control illegal immigration. This case will continue that effort.

SUPREME COURT CONFUSES TRIBAL LAW

The U.S. Supreme Court ruled that a South Dakota American Indian tribe had no authority to try a bank that had entered into a contractual relationship, as to the sale of land, with tribal members. The Court declined, however, to address the question urged on it by MSLF: whether the Nation's tribal courts have civil jurisdiction to apply tribal common law to non-Indians when non-Indians enter into consensual business dealings with American Indians. MSLF argued that tribal common law is "amorphous, nebulous, and anecdotal and, as far as non-Indians are concerned, is unwritten, unknown, and unpredictable." The narrow ruling will yield only confusion.

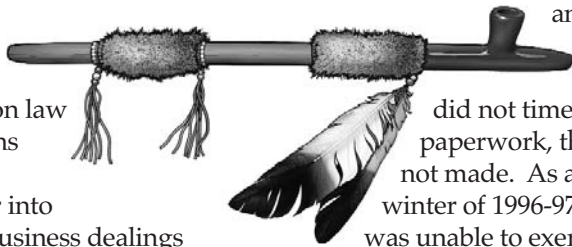
The case began when tribal members sued the Plains Commerce Bank in the Cheyenne River Sioux Tribal Court, alleging discrimination. A jury ruled against the Bank; later, a tribal appeals court, applying "traditional Lakota notions of justice, fair play, and decency to others," upheld the ruling.

Plains Commerce Bank made loans to the Long Family Land & Cattle Company, Inc., which is 51 percent owned by some members of the Cheyenne River Sioux Tribe in South Dakota. Collateral consisted of 2,230 acres of allotted fee land within the

reservation. After the Long Company defaulted on its loans and gave title to the land to the Bank, the Long Company and the Bank negotiated for the Long Company to repurchase the land and agreed that the Long Company would have a two-year lease with an option to purchase and the Bank would provide an operating loan.

Because the Bureau of Indian Affairs (BIA) did not timely complete required paperwork, the operating loan was not made. As a result of the harsh winter of 1996-97, the Long Company was unable to exercise its option. The Bank then sold the property to non-tribal members.

The tribal appellate court upheld the ruling against the Bank holding that the tribal code gives tribal courts jurisdiction over tort claims and that Supreme Court precedent permitted the exercise of such jurisdiction over a non-Indian bank because the Bank had formed a consensual relationship with members of the Tribe and because the Bank's conduct implicated the Tribe's economic security. The Bank filed a lawsuit challenging tribal jurisdiction in South Dakota federal district court; however, that court ruled for the Long Company. On June 26, 2007, the U.S. Court of Appeals for the Eighth Circuit affirmed. On January 4, 2008, the Supreme Court granted *certiorari*; the case was argued on April 14, 2008.



GUN RIGHTS RULES

In comments filed recently, MSLF welcomed a proposal by the National Park Service (NPS) to adopt regulations to bring its policies regarding weapons within units of the National Park System in accordance with those of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM). Arguing that the proposal is consistent with the Constitution's commitment to the concept of federalism and the Constitution's protection of the right of citizens to protect themselves and their families and to defend against tyranny, MSLF urged final adoption. In addition, noted MSLF, most parks are in the American West where the Second Amendment is regarded as inviolate and essential to public safety. In fact, in the American West, States have gone further in protecting the right "to keep and bear arms" and to engage in self defense than has the U.S. Constitution.

Since 1966, unlike the USFS and the BLM, the NPS has barred the possession and carrying of weapons upon the lands that it manages. In December 2007, 51 U.S. senators, led by U.S. Senator Mike Crapo (R-ID), wrote to the Secretary of the Interior urging him to amend this firearm regulation by adopting each State's own firearms laws as the default rule in national parks. In response, on April 30, 2008, the NPS issued proposed rules to "mirror" State laws on guns in parks.

STATE MAY NOT BAR FEE LAND HUNTING

Montana's ban on the hunting of big game on private property inside an Indian reservation is unconstitutional, the U.S. Court of Appeals for the Ninth Circuit was told in briefs now submitted. Randy Roberts of Billings claims that, because Montana's regulations provide that only tribal members may hunt on those lands and tribal membership is limited to those having proper blood quantum, the rules violate the Constitution's equal protection guarantee. In a February 2007 ruling, a Montana federal district court rejected

that argument using a 1974 Supreme Court decision upholding Congress's ability to pass laws favoring American Indians. That ruling is in doubt as a result of a 1995 Supreme Court ruling.

Randy Roberts has the right to use 1,500 acres of deeded property within the exterior boundaries of the Crow Indian Reservation in Montana; however, he has not hunted big game on the property in over 35 years because he is prohibited from doing so by the Montana regulations. He filed his lawsuit in November 2005.

KEEP READING!

The Litigator, MSLF's quarterly newsletter, is the indispensable tool for staying informed regarding the latest in MSLF's precedent-setting, nationally-significant, public-interest litigation. *The Litigator* is mailed on the first of February, May, August, and November. **Ensure that you keep receiving *The Litigator* by contributing \$25 annually.**

MSLF Goal: \$1 Million to Grow to \$10 Million in 5 Years!

ENDOWMENT ENSURES "ETERNAL VIGILANCE" IN U.S. COURTS

After three decades of fighting historic, nationally-significant, precedent-setting legal battles, MSLF has learned one thing: the fight for constitutional liberties and the rule of law is one that never ends and never will end. America's Founding Fathers knew it well; those who love liberty have learned it, often the hard way, that is, by being forced to defend their rights in court.

To ensure that MSLF will be "eternal[ly] vigilan[t]" and to coincide with MSLF's Thirtieth Anniversary, MSLF announced a plan to increase its endowment from its current \$1 million to \$10 million within the next five years. MSLF's endowment was established by Lou and Lydia Sheffels of Wilbur, Washington, to ensure that, when historic battles come, such as MSLF's famed *Adarand Constructors* victories, MSLF will be ready. In short, MSLF's Endowment seeks to ensure what MSLF has always said about itself, which is that it is, "In the Courts for Good!"

In the words of President Reagan, who once wrote glowingly of MSLF's battle for freedom: "[F]reedom is not the property of one generation; it's the obligation of this and every generation. It's our duty to protect it and expand it and pass it undiminished to those still unborn."

Already, scores of Americans who share MSLF's commitment to constitutional liberties and the rule of law have sought to ensure a legacy of eternal vigilance. You can join with them. The decision is yours. Your gift will not only ensure MSLF's ability to be there for other Americans besieged by out-of-control bureaucrats and their teams of powerful lawyers and liberal groups; your gift will also inspire others to join with you. By doing so, you will preserve freedom for future generations to achieve what the Founding Fathers intended when they wrote in the Constitution's Preamble: "*We the People of the United States, in Order to...secure the Blessing of Liberty to ourselves and our Posterity....*"

You can be a part of the revolution that began with the Declaration of Independence and, after decades of lying fallow, was reborn in the Reagan Revolution, a revolution that remains at the core of the conservative movement in America, most surprisingly, among millions of America's young people who were born after President Reagan left office. By doing so, you will be in control, not government bureaucrats and their lawyers; moreover, you can save 55 percent or more in estate taxes. Your contribution to MSLF's Endowment Fund will be an investment in America's future, a future in which MSLF will be in the courts defending constitutional liberties and the rule of law. It is up to you. Please act today.

A FEW WELL-CHOSEN WORDS

You can ensure a legacy of eternal vigilance with these words in your will: "I [name], of [city, state, ZIP] give, devise, and bequeath to Mountain States Legal Foundation (MSLF) (tax identification number 84-0736725) 2596 South Lewis Way, Lakewood, Colorado, 80227

[written dollar amount or percentage of the estate or description of the property] to continue its mission to protect and preserve individual liberty, the right to own and use property, limited and ethical government and the free enterprise system."

This is not legal advice; however, MSLF will help you locate an attorney near you to draft or update your will.

MSLF'S WEB PAGE Click "Planned Giving"

The screenshot shows the MSLF website with a navigation menu including Mission, Legal Cases, The Litigator, Support MSLF, and Planned Giving. The main content area features sections like "Opportunity is Knocking: Your IRA is the Key", "Three Key Documents Everyone Should Own", "Consider the Honor Ours", "Reflections of Your Giving Image", and "Q & A: Creating a Better Will".

YOU CAN ENSURE A LEGACY OF ETERNAL VIGILANCE!

Name _____
 Address _____
 City _____ State _____ Zip _____
 Home Phone _____ Work Phone _____ E-Mail _____

- Please send me information on making a legacy gift.
- I have included MSLF in my estate plans. Please include me in MSLF's Legacy Society.
- I want to include MSLF in my estate plans. Please include me in MSLF's Legacy Society.
- Call me at (____) _____ - _____ Monday to Friday from _____.m. to _____.m.
 Saturday and/or Sunday from _____.m. to _____.m.
 to discuss the various options available to me to join MSLF's Legacy Society.

I am interested in receiving FREE information about (check all that apply to you):

- Will/Living Trust
- Life Insurance
- Charitable Gift Annuity
- Charitable Remainder Trust
- IRA or other Retirement Plan
- Other: _____

Mountain States Legal Foundation (MSLF) Is A Nonprofit, Public-Interest Legal Center, Certified As A 501(c)(3) Organization Since Its Founding in 1977.

Therefore, Your Generous Contributions to MSLF Are Tax Deductible!

MSLF CANNOT REST; ITS ROLE ESSENTIAL TO REMAINING FREE

In 2008, MSLF will have been going to court for 31 years, fighting to compel compliance with the commands of the Constitution and federal law to ensure that America remains a nation of laws. At no time during these three decades has the need for MSLF to go to court on behalf of those who could not afford legal representation been lessened. In fact, as the federal bureaucracy has grown and as federal laws have become more far-reaching and intrusive, MSLF's caseload has increased dramatically. That is obvious from a review of the scores of MSLF cases.

Your Support Is Vital

If there is one lesson MSLF has learned over the past 31 years, it is that, regardless of which party occupies the White House or controls Congress, the threat to liberty remains and MSLF must be ready, willing, and able to go to court to defend freedom. As Thomas Jefferson once said, "Eternal vigilance is the price of liberty." One of the prices that must be paid for MSLF to remain vigilant is the price that tens of thousands of Americans pay annually by making their tax-deductible contributions to MSLF and its litigation.

The support of MSLF by tens of thousands of Americans committed to freedom could not be more important. Your support will ensure that MSLF remains IN THE COURTS FOR GOOD!

- Fact** MSLF receives no government funds (except when it wins in court and the judge orders the federal government to pay attorneys' fees and expenses).
- Fact** MSLF's sole source of support is the tax-deductible contributions of those who support its aggressive litigation program.
- Fact** MSLF is a nonprofit, public interest I.R.C. 501(c)(3) corporation, which makes the contributions it receives tax deductible.
- Fact** MSLF is committed to the vision of the Founding Fathers: individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system.
- Fact** MSLF's commitment to the Constitution ensures that America remains a nation of laws and not of men and that the rich liberty legacy of this nation continues.
- Fact** MSLF does only one thing: it goes to court in defense of the Constitution, strict adherence to the laws of the land, and those who cannot afford to hire legal counsel to protect their rights.
- Fact** Only YOU can ensure that MSLF may continue its vital work.

Problem ➤ Federal, state, and local taxes take an ever-increasing share of one's income.

Solution ➤ Gift giving decreases taxes while advancing charitable goals.

Reason ➤ At a time when many mechanisms for legally lowering taxes have been eliminated, the opportunities for reducing taxes by planned charitable giving have been increased!

The Means ➤ **Income Tax** – Each year a person may deduct as much as 50 percent of his or her adjusted gross income (AGI) for gifts of cash to a qualified charity; that limit is only 30 percent for gifts of appreciated property.

Estate Tax – A person who died in 2007 is entitled to an exclusion of up to \$1,000,000; however, estates in excess of that amount may deduct charitable gifts, by will or trust. Because federal estate taxes over \$1,000,000 range from 37 percent to 50 percent, for every charitable gift of \$1,000, the estate saves up to \$500 in taxes. Please consult your tax adviser.

Stock Transfer Information ➤ Contributions of stock can be made electronically to MSLF's brokerage account DTC 0164. When transferring stock, indicate acct. #7080-3528, Charles Schwab & Co., 518 17th St., Suite 100; Denver, CO 80202. (Richard Wulforst 303-260-5908; 303-260-5917). **Please notify MSLF BEFORE making the transfer; there is no way to identify a stock donor without prior notification.**

Yes! I want to help MSLF in its brave fight to ensure the guarantees of the U.S. Constitution and to preserve the rule of law throughout the land!

- Enclosed is a tax-deductible contribution of \$25. Please keep sending me *The Litigator!*
- Enclosed is a tax-deductible contribution of \$ _____ to help MSLF in its courtroom battles.
- Enclosed is a tax-deductible contribution of \$ _____ for MSLF's Endowment Fund.
- PLEASE send me information on planned giving.

Name _____

Street _____

City _____ State _____ Zip _____

Day Phone (_____) _____ E-mail Address _____

MSLF HONORS ITS "LEGACY SOCIETY" MEMBERS AT JUNE GALA

At the June meeting of its Board of Directors and Board of Litigation, MSLF honored its Legacy Society members who ensure MSLF's courageous, decades-old defense of liberty and the rule of law by providing for MSLF in their estate plans.

From its first days in 1977, MSLF has sought to be "eternally vigilant" in its defense of constitutional liberties and the rule of law. MSLF is known and regarded highly for its strong commitment to the vision of America's Founders, including: individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system. As a result, over the decades of MSLF's existence, many of its most dedicated supporters have made provisions to leave a legacy to MSLF and therefore to the defense of freedom: Lou and Lydia Sheffels, Horace H. "Shorty" Koessler, Nile and Dennis Gerbaz, William Griffith, and Paul W. Berger, to name but a few. These supporters are forever in the pantheon of MSLF heroes for freedom!

At the ceremony at MSLF's national headquarters, a modest but very professional building that MSLF owns outright, MSLF Directors, Board of Litigation members, Emeriti and many friends attended the unveiling of the Legacy Society plaque honoring its MSLF members. In doing so, MSLF recognized all that it has accomplished and all it has yet to do.



Chairman Pete Botting presents a Legacy Society tabletop award.



William Perry Pendley, President & Chief Legal Officer, and Chairman Pete Botting "unveil" the Legacy Society Plaque.



Board of Litigation Chairman Mike Montero, Mrs. Jack Blomstrom and Director Jack Blomstrom



Director Conley Smith and Mrs. Carolyn Smith



Board of Litigation member Stewart Wilson; Directors Pete Ellison & Jack Blomstrom



Managing Attorney Steve Lechner & Senior Attorney J. Scott Detamore



Board of Litigation member Pat Sullivan & Chairman and Mrs. Pete Botting

All photographs by Joel Spector, Esq.

NOTABLE



QUOTES

"Your reputation in fighting for freedom and individual rights is inspirational to us all."

Kenneth L. Khachigian
San Clemente, California

"Continue the outstanding work and I'll help when I can."

Dale K. Bungee
Dearborn, Michigan

"[T]hank you for all your help through the years making the west a better place to do business."

David Klym
Dickinson, North Dakota

"[Plyler v. Doe, 457 U.S. 202 (1982)] needs to be revisited by our Supreme Court. Keep writing about this issue. You have the power. I apparently do not!"

Lisa A. Plunkett
Waterford, Michigan

"Thank you for standing up for the rights of private citizens. Yes, it is time that the eligibility of illegal aliens for 'free' resources be reviewed by the Supreme Court, and the power regarding such matters be returned to the appropriate legislative branches of government, state and federal."

James H. Porter
Castle Rock, Colorado

"[W]e have a global terrorist movement insulated within a global political project insulated within a severely self-segregating religion whose adherents are the fastest-growing demographic in the developed world."

Mark Steyn
America Alone (Regnery 2006)

LEGAL



ACTION

- On behalf of the Kansas Farm Bureau and two landowners, MSLF notified the U.S. Fish and Wildlife Service (FWS) of a planned lawsuit challenging the FWS's release of protected Black Footed Ferrets on private property.
- The U.S. Court of Appeals for the Tenth Circuit may not review and reverse a ruling of a Colorado state court, MSLF advised a three judge panel, citing a U.S. Supreme Court ruling directly on point.
- A Montana landowner with property inside Glacier National Park had his case heard by the U.S. Court of Appeals for the Ninth Circuit. MSLF attorney Ronald W. Opsahl urged the panel to bar the National Park Service from denying the man access to his property.
- The U.S. Supreme Court, consistent with a friend of the court brief filed by MSLF, upheld an Indiana law requiring voters to provide an official form of identification. The ruling was 6-3.
- A Wyoming man whose land was seized by the U.S. Forest Service for use as a federal trail appealed the decision by a Wyoming federal district court that the Forest Service had not abandoned its interest in the land.
- A Washington, D.C. federal district court dismissed a lawsuit by the Young America's Foundation to compel Secretary of Defense Robert Gates to enforce the Solomon Amendment against the University of California Santa Cruz (UCSC), where military recruiters were unable to appear for three years.
- MSLF filed comments opposing demands by environmental groups that the Greater Sage-Grouse be given Endangered Species Act protection throughout the West.
- MSLF entered a lawsuit on behalf of a Muslim who fears that his life is in jeopardy because he denounced violence in the name of Islam; clerics have asserted publicly that he is "a traitor to Islam."
- MSLF urged the U.S. Supreme Court to review a ruling by the Ninth Circuit that a mining operation may not go forward even though its actions will result in cleaner water than currently exists at the mine site.
- A South Dakota family filed a claim with the federal government demanding that it pay for the actions of the U.S. Forest Service in bulldozing and destroying 11 mining shafts that accessed the family's valuable claims.
- On behalf of miners from Montana who were barred from developing their multi-million dollar property, MSLF asked the U.S. Supreme Court to review a ruling by the Ninth Circuit that Montana may not be sued for the "taking" of "private property" without "just compensation."
- The U.S. Supreme Court agreed to hear a case involving a world-class mine in Alaska. The Ninth Circuit ruled that federal permits given the mine violate federal law. MSLF, in a friend of the court brief, said the Ninth Circuit rewrote the law.
- Despite a friend of the court brief from former Senator Al Simpson and Representative Lamar Smith, the Supreme Court declined to hear a case asking if citizens can enforce an immigration law.

SUPREME COURT SIDES WITH MSLF: UPHOLDS 2ND AMENDMENT

In one of the most important decisions of the U.S. Supreme Court in the term completed in late June 2008, the Court ruled 5-4 that the Constitution's Second Amendment protects an individual right—not tied to membership in a militia—and a fundamental liberty! The ruling was consistent with MSLF's friend of the court brief, which argued that the right "to keep and bear arms" ensured that American citizens could defend themselves and their loved ones from danger and their country from tyranny.

MSLF argued, on behalf of members in the American West, that the Second Amendment is viewed by westerners not only as an individual and fundamental right but also as inviolate. MSLF argued that, following the terrorist attack on the United States on September 11, 2001, the need for individual citizens "to keep and bear arms" has never been more important.

Since 1975, the District of Columbia has had one of the Nation's most stringent gun control laws under which private citizens may not keep weapons in their homes to provide effectively for their own self defense. Dick Anthony Heller, a District of Columbia special police officer permitted

to carry a handgun while on duty but barred from keeping a gun in his home for self-defense, sought a permit to do so. When his application was denied, he sued claiming that the laws violated the Second Amendment.

Mr. Heller's lawsuit was dismissed by the district court; however, in March 2007, the U.S. Court of Appeals for the District of Columbia reversed. In November 2007, the Supreme Court agreed to decide whether the Constitution protects, as the Court of Appeals ruled, an individual right to keep and bear firearms unrelated to militia operations. Oral arguments were held on March 18, 2008.

According to MSLF's brief, in the West, the virtues of individualism, independence, self-sufficiency, and self-governance yield, not only a strong distrust of government, but also a citizenry that is the bedrock of America's gun culture. Their State constitutions go further as to their right to "keep and bear arms"; their laws include "make my day," "castle doctrine," and "stand your ground" provisions; and their supreme courts interpret broadly the right of self-defense outside the home. MSLF argued that this expansive view of the Second Amendment is consistent with that held by the Nation's Founding Fathers.



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