

IN BRIEF

NEWSLETTER | SPRING 2023



PIONEER
PUBLIC INTEREST
LAW CENTER



*The Honorable Frank J. Bailey
President
U.S. Bankruptcy Judge (ret.)*

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A Name to Match Our Mission

We have decided to adopt a new name and logo. We will be known as the **Pioneer Public Interest Law Center** or **PPILC**. Why the change? Our experience in our first few months of operation is that our original name, PioneerLegal, was sometimes confusing to the public and, more importantly, the courts. Some thought PioneerLegal was a for-profit law firm. We are a public interest law firm, and we do not accept legal fees from our clients. Instead, we initiate and support litigation with the intent to influence public policy. Our new name clearly communicates to courts and the public what we are and what we do.

Success Stories

PioneerLegal successfully protects the right of a senior citizen to be heard at a select board hearing in Southborough, Massachusetts

Last fall, PioneerLegal filed an *amicus* brief urging the Massachusetts Supreme Judicial Court to hold that “civility codes” meant to govern the public’s participation at town meetings constitute viewpoint discrimination and, therefore, violate the sacrosanct right to free political expression enshrined in Articles I6 and I9 of the state’s Constitution. In its landmark decision on March 7, the SJC did just that. The scholarly opinion has sent shock waves through municipal government circles and has received national attention. PioneerLegal is delighted that our high court has made it absolutely clear that our democratic form of government was founded upon, and still depends upon, our right to freely criticize our leaders, and to seek redress of our grievances, without fear of retribution or unreasonable governmental restraints.

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PioneerLegal succeeds in stopping the Massachusetts Department of Revenue from retroactively applying a tax and abandoning a rule upon which businesses had relied for years

In 2018, in the *Wayfair* case, the U.S. Supreme Court ruled that a state could, consistent with the Commerce Clause, require a company that engages in online retail sales to file a sales tax return and to collect the tax, *provided* the company has a “substantial nexus” with the state, even if it has no physical presence in the state. The Supreme Court thereby abandoned the rule that required a physical presence and left it to the states to define “substantial nexus.”

The Massachusetts Department of Revenue (DOR) sent a tax bill to U.S. Auto Parts, an out-of-state retailer, for a period *before* the *Wayfair* case was even issued. PioneerLegal submitted an *amicus* brief and argued that the application of *Wayfair* retroactively was impermissible, and the state’s SJC agreed. Importantly, the ruling in this case will apply in other instances where the DOR seeks to expand tax liabilities retroactively, an invidious technique that we have seen in other contexts.

Certiorari granted in equity theft appeal to the U.S. Supreme Court

PioneerLegal filed an *amicus* brief in support of a homeowner’s petition for the high court to hear her appeal from a federal court. Of the 7,500 requests for certiorari this term only 60 have been granted, but this is one of them. The Court will hear oral arguments on April 26 in the case of *Tyler v. Hennepin County, Minnesota*. If successful, the practice of municipalities taking taxpayers’ entire equity in tax foreclosure cases will be deemed unconstitutional.

Massachusetts Supreme Court agrees with PioneerLegal that Commissioner of Revenue cannot change tax rules after 60+ years

Since the 1950s, the Commonwealth has encouraged private development of blighted real estate by offering a tax break to developers willing to take the risk of investment in dilapidated property, also called “121A property.” So, when the Commissioner changed the rules a few years ago and started sending developers capital gains tax bills, property owners took their challenge to the tax court. When that effort failed, they appealed and PioneerLegal filed an *amicus* brief highlighting the current critical housing shortage and the desperate need for private investment. The SJC agreed with PioneerLegal, cited our arguments, and reversed the tax court.



Federal judge declines to permit the eviction of a homeowner so that a state actor can “steal” her equity in her home

The Massachusetts Chief U.S. Bankruptcy Court Judge, Elizabeth Katz, agreed with PioneerLegal and turned back the efforts of a private, Boston-based firm, Tallage-Davis, to evict Nancy Rodriguez from her home in Worcester. Tallage sought to take advantage of a much-maligned Massachusetts statute that permits municipalities and private investors to take a homeowner’s property and all their equity for failure to pay real estate taxes, even when the taxes due are a fraction of the value of the property. This process even applies to small business owners.

PioneerLegal in the News

Interview by Boston public radio



Article in

**EPOCH
TIMES**

Article in Worcester

**TELEGRAM
& GAZETTE**

Article in

**The
Boston
Globe**

Recent Events



“Reasonable Minds Can Differ”: Major Cases Now Before the U.S. Supreme Court

On March 1, 2023, PioneerLegal teamed with the Federal Bar Association and the Social Law Library to present a robust discussion of several major cases before the U.S. Supreme Court this term. Professors Jessica Silbey and Gary Lawson of the Boston University School of Law provided insights about cases involving a wide range of issues that are critical to American law and society. The program was well attended both in person and via livestream. PioneerLegal plans to offer this important and entertaining program as an annual event. We thank professors Silbey and Lawson for lending their keen intelligence and wit to our event.

A recording of the program is available online at <https://pioneerlegal.org/37109-2/> or on YouTube: https://www.youtube.com/watch?v=sfnokAuVm_Q&t=735s

Meet Our New Board Members



Stephen B. Darr
*Managing Director with
Huron Consulting Group*

For more than 35 years, Stephen B. Darr has provided financial consulting and fiduciary services to business organizations, including many that had been experiencing significant financial and operating difficulties. His industry experience includes healthcare, pharmaceuticals, telecommunications, networking, banking, law and professional services firms, energy, automotive, real estate/construction, mortgages/derivatives, and manufacturing and distribution.

Stephen's experience includes financial advisory engagements involving several significant reorganization cases; litigation and forensic support, where he has testified in federal court proceedings throughout the Northeast; and federal and state fiduciary appointments, most significantly as Chapter 11 trustee for TelexFree LLC et al., which was a worldwide Ponzi scheme with approximately two million victims holding 11 million user accounts. Darr holds a Bachelor of Science in Business Administration from Boston College and a Master's in Business Administration from the University of Chicago. He is a Certified Public Accountant and holds several registrations with FINRA, along with several other certifications.

Lena Goldberg
*Independent Director
BlackRock Multi-Asset Funds*



A Harvard Law School alum, Lena started her legal career as an Associate at Skadden, Arps, Slate, Meagher & Flom and later was a member of the Management Committee at the law firm of Sullivan & Worcester. She then served as Executive Vice President and General Counsel Advisor to the FMR Corp./Fidelity Investments, where she has served on multiple internal advisory boards for Fidelity's subsidiaries. Her most recent professional experience includes serving as a senior lecturer at Harvard Law School, from where she retired in 2021.

Lena currently serves as the Independent Director for the BlackRock Multi-Asset Funds and on the Board of Greek Modern Kitchen LLC. Apart from her professional accomplishments, she also has experience serving on several boards of major organizations across New England. Lena's board service includes the Boston Bar Foundation, the New England Legal Foundation, D.A.R.E. Family Services, and on the advisory board of the Museum of Fine Arts, among many other foundations.

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PioneerLegal Intern

Dan Steiner, a law student at Western New England School of Law in Springfield, Massachusetts, is PioneerLegal's spring 2023 intern. "I am incredibly grateful for my time at PioneerLegal," says Dan. "Learning real world research and writing skills, coupled with the expertise of incredibly knowledgeable attorneys, has been invaluable."

Upcoming PioneerLegal Events

Rule of Law and Democracy Program

This program will feature Justice Robert Cordy (retired), formerly of the state's Supreme Judicial Court and now a member of our board of directors, who is widely regarded for his commitment to building a fair and independent judiciary throughout the world, including in formerly authoritarian countries. His work most recently has focused on Ukraine. In 2021, Judge Cordy was appointed to the Ethics Council of Ukraine. The group is composed of six members charged with reviewing the integrity of the current members—and applicants for appointment to—Ukraine's highest judicial governance body, the High Council of Justice. Ukrainian President Volodymyr Zelenskyy announced the establishment of the Ethics Council in June 2021 as part of a judicial reform strategy that was enacted to create a restarted legal system after several accusations of corruption among judges. On June 15, 2023, PioneerLegal will present a discussion with Judge Cordy about the work of the Ethics Council and the future of the judiciary in Ukraine.

Government Transparency Forum

PioneerLegal plans to assemble journalists from local written and broadcast media to share information about the problems they have in accessing public information in Massachusetts. The forum will meet regularly to discuss options for improving access to the state government.

Ongoing Cases

Let high school virtual school students play sports!

In a critical school choice case, PioneerLegal is challenging the categorical exclusion of the Commonwealth's virtual school students from sports programs in their home district schools. The motive of the Massachusetts Interscholastic Athletic Association (MIAA) for discriminating against this one class of particularly vulnerable public school students is its displeasure with the Commonwealth's public school funding formula, which transfers a portion of the taxpayers' allocation for each student to the virtual school when students transfer, in a way similar to how public charter schools are funded. The court will decide whether interfering with what the MIAA calls a "crucial component" of the constitutionally guaranteed right to a free public school education—namely the right not to be categorically excluded from participation in interscholastic, high school athletics—violates the due process and equal protection provisions of the Massachusetts Constitution.

Do not make property ownership less affordable for new Americans

In a case pending at the Massachusetts SJC, the court will decide whether to greatly expand premises liability so that property owners will face much higher insurance rates. In this case, an immigrant woman from Vietnam owned a small shopping center in a high-crime area. She operated a successful nail salon and purchased the center to protect her business. When there was an execution murder outside a bar operated by one of her tenants, she was sued on an almost strict liability theory. PioneerLegal filed an *amicus* brief highlighting the unfair, disparate impact that a decision expanding premises liability for crimes committed by third parties might have on immigrant entrepreneurs and property owners who play an important role in neighborhood revitalization in Massachusetts.

Massachusetts Anti-Aid Amendment challenge

We are still lining up a few more private school students to serve as plaintiff class representatives in a case challenging the Massachusetts Constitution's restrictions on access to special education services by private school students. Massachusetts law provides an individual entitlement to special education for all resident "school-aged children with disabilities" including private school students. However, Massachusetts regulations

provide that services must be delivered at a public or neutral site due to the state "anti-aid amendment." This has severely impacted private school students with disabilities and greatly inhibited access to state and locally funded special education services. Under precedent established in recent U.S. Supreme Court cases, we will argue that, as applied to private religious school students, these laws unreasonably interfere with First Amendment free exercise rights and parents' rights to direct the education of their children.

PioneerLegal seeks to require schools to teach our kids basic civics

In 1993, the state passed the Massachusetts Education Reform Act (MERA), which requires teaching and testing civics as a graduation requirement. However, state education authorities have never followed through. By failing to establish a history/civics test as part of the Massachusetts Comprehensive Assessment System (MCAS) tests required for high school graduation, the state has failed to follow the law. We have served the Department of Elementary and Secondary Education with a public records request seeking documents evidencing any efforts to implement the 1993 law's civics education provisions. With those documents in hand, we plan to seek enforcement of MERA's civics education provisions.

PioneerLegal seeks turnover of arbitration award from the MBTA

The MBTA is in crisis. The evening news each day reports that the T is running behind schedule, not to mention the shutdown of certain lines in reaction to injuries to passengers. In August 2022, the T had a win—an arbitration award over Local 589, Amalgamated Transit Union (Local 589) that impacts obligations to fund pensions for approximately 5,000 participants in the MBTA Retirement Fund. Even though the union sued to challenge the award in court, the T refused to make the award public, which would have exposed it to public scrutiny and comment. PioneerLegal sued the T to require it to comply with the state's public records law. The court has been slow in ruling in the case, but PioneerLegal is pushing with all vigor to get the award so that Pioneer Institute and others can gauge its fiscal impact.

What's on Deck for PioneerLegal?

State constitutional challenge to legislative and executive exemptions from Massachusetts public records laws

According to Forbes Magazine, Massachusetts is the least transparent state government in the U.S. See Patrick Gleason, "In Massachusetts, Once A Leader In Government Transparency, Key Votes Are Hidden From The Public," *Forbes*, Jan. 12, 2022. PioneerLegal seeks to change that story with a constitutional challenge to the legislative and executive exemptions from the public records and open meeting laws. The state Constitution is replete with references to the right of the people to hold lawmakers to "constant observance" and to allow the public to give instructions to the legislators. Those rights are being abridged by the

current situation. It is time to place Massachusetts at the top of the list of most transparent state governments. Indeed, Massachusetts was the first state to install a gallery in the State House chambers just so that the citizens could bear witness to lawmaking activities.

Equity-taking class action in Massachusetts

PioneerLegal expects to file a class action lawsuit in Massachusetts seeking damages on behalf of property owners who have unconstitutionally been denied due process and just compensation for the taking of all the equity in their property, and/or who have been subject to excessive fines, in connection with the tax takings of their property. Several nationally known plaintiffs' class action law firms will be our co-counsels in this case.