

IN BRIEF

NEWSLETTER | FALL | WINTER 2024



President's Message

As we reflect on 2024 here at Pioneer Law, we can't help but think of all that has happened in the media, world events and the law. College campuses were in chaos in the spring. Free speech rights were pitted against students' rights to access their campus facilities, often at times when they were facing high-stakes academic assessments. Against this backdrop, the Pioneer Law Center offered its first Denniston Rule of Law Lecture on October 17, 2024. A sellout crowd of friends and supporters heard former U.S. Solicitor General Paul Clement deliver a riveting talk about the intersection of constitutional freedoms.

This fall, we filed briefs in five courts on issues ranging from the constitutionality of drug pricing legislation to the power of the Massachusetts Attorney General to require that municipalities follow the law. We also continued our fight to ensure that people who fall behind on their municipal taxes pay no more than the amount owed rather than lose all their hard-earned equity to the taxing authority.

As we close the year, we are exploring remedies for students who have lost the right to a high-quality education in our public schools and the right of the Commonwealth to mandate that municipal construction projects exclude non-union companies from even bidding for the work. These are critical fights, and we hope that you consider supporting us in the new year.



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



INNAUGURAL DENNISTON LECTURE



PHOTO GALLERY

VIDEO

IN THE NEWS AND COMMUNITY

- Pioneer Law President Frank Bailey is preparing materials for an educational program in January 2025 for the U.S. District Court in Massachusetts that will bring over 100 young and new lawyers to the court to interact with the judges.
 - Pioneer Law Center was the focus of an article on Law 360 called *Better, Faster, Stranger: What Attys Think of OurAI Future* by Chris Villani. The article featured Pioneer Law Center's artificial intelligence program offered this past summer.
 - Massachusetts Lawyers Weekly featured the Law Center in an article about the amicus brief filed in the case of *Attorney General v. Milton*, a critical case on housing growth in Massachusetts.
- Jim Stergios and Frank Bailey met with Chris Carlozzi of the National Fed. of Independent Business, a national association of small businesses, to discuss areas of common interest. Frank followed up on this meeting and met with Patrick Moran, the NFIB's national counsel in Washington.

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SAVE THE DATE

**Reasonable Minds Can Differ:
A Review of the Major Cases**

Monday, March 3
Boston, MA

We are pleased to invite you to save the date for Pioneer Public Interest Law Center's third annual **Reasonable Minds Can Differ: A Review of Major Cases**. Professor Kent Greenfield of Boston College Law School and Professor Renée Landers of Suffolk University Law School will present a comprehensive analysis of the cases before the Supreme Court this term.

(617) 877-9511

IN THE NEWS AND COMMUNITY



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Frank Bailey at the October 28 symposium.

- Frank Bailey spoke to Boston University Law School law students at a symposium on October 28 regarding opportunities to work in public interest law.
- Frank Bailey moderated a panel on the issue of equity theft in Massachusetts, and the legislation passed in July for the Pacific Legal Foundation. The panelists included lawyers from Morgan Lewis, Greenberg Traurig and GBLS.
- In October 2024, Frank Bailey served on a panel at the Annual Rhode Island Bar Association Judicial Conference.
- Frank Bailey gave the keynote speech at the Real Estate Bar Association Annual Meeting on November 2, 2024, focusing his remarks on the need for Civics Education in our schools.



The Rhode Island Bar Association Judicial Conference.

- On November 7, 2024, Frank Bailey spoke at the Central New York Bar Association Annual Meeting in Cooperstown, New York.

COURT CHRONICLES

METCO and Boston Charter Students Get Closer to Participation in BPS Sundays Program



Pioneer Law filed a lawsuit against the City of Boston and Boston Public Schools after they repeatedly failed to produce documents requested under the Massachusetts Public Records Law regarding the “BPS Sundays Program” program, BPS students are permitted free access to certain area museums and attractions on Sunday, including the Boston Aquarium. Despite repeated requests for information under the Massachusetts Public Records Law and an appeal to the Records Supervisor, BPS failed to produce **any** records.

Following the initiation of the action, BPS and the City of Boston produced records which confirmed that METCO students and Boston Charter Students were not allowed to visit the museums

for free. Faced with a certain adverse order, BPS capitulated and produced the requested records. The Law Center was also reimbursed for costs and attorney’s fees, and will follow up with further investigation regarding the financial structure of the BPS Museums Program.

Suffolk County D.A. Must Turn Over Gun Charge Documents Against New England Patriots Player To Journalist Represented by Pioneer Law

Pioneer Law Center successfully represented an investigative journalist who submitted several public records requests to the Suffolk County District Attorneys’ Office after criminal gun charges were dropped against a member of the New England Patriots. After filing an appeal with the Public Records Supervisor, commencement of an action in Suffolk Superior Court and negotiations with the DA’s office, the Suffolk DA ultimately produced the requested documents. While the subject matter of the records litigation may not have revealed any wrongdoing by law enforcement personnel, the action was a success because the Law Center successfully held the Suffolk DA’s Office accountable for its obligations to timely and completely comply with its obligations under the Massachusetts Public Records Law.

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Pioneer Law Center successfully challenged the constitutionality of the Massachusetts Tax Lien statutory scheme possibly ending "equity theft."

Update: Law Center Helps Homeowners Recover Equity After Mass. Tax Lien Law Amendment Court Victory

In a major victory in the Massachusetts Superior Court, Pioneer Law Center and its co-counsel secured a ruling that the Massachusetts tax lien statute violates both the state and federal constitutions when municipalities and private lien buyers use it to seize all a taxpayer's equity, rather than only the taxes and fees owed.

Ashley Mills, 25, inherited her family home in Springfield, Massachusetts from her grandfather. The single mother suffers from a serious hearing deficit. When she inherited the family home there were tax arrearages that her family had a difficult time curing. Pioneer Law Center and Greater Boston Legal Services brought a unique action directly in the state Supreme Judicial Court seeking a ruling on the viability of the tax lien law. The SJC directed the case to the Superior Court for an initial ruling and that court, in a well-reasoned opinion, agreed that the current law cannot be applied to "steal" generational wealth from taxpayers and their families. Recognizing the excellence of the Superior Court judgement against it, the City of Springfield declined to appeal, resulting in an entry of a final judgment.

After the win in Springfield, the Law Center re-directed its efforts to the legislature. With input from Pioneer Law Center, Greater Boston Legal Services and others, the Massachusetts Legislature recently amended the Massachusetts Real Estate Tax Lien Law which included a multi-year look back period under which homeowners that have lost their homes to a tax foreclosure have the ability to seek a return of their home equity. The Law Center has been approached by several struggling homeowners about the new state procedures and is rolling out a cost-effective

program that will provide homeowners with much needed representation and allow them to retain most of their home equity instead of the equity going towards attorney's fees or other litigation costs.

In a new litigation, the Law Center is challenging the Massachusetts DOR position that the interest rate rollback from 16% to 8% in the new law is only prospective, resulting in continuing injury to Massachusetts homeowners.

Pioneer Law Center Files Amicus Brief in Association to Preserve and Protect Local Livelihoods et al. v. Charles Sidman and Town of Bar Harbor

At a November 8, 2022, Town Meeting, the voters of Bar Harbor, Maine approved a citizen's initiative amendment (the "Ordinance") that prohibits the disembarkation from cruise ships of more than 1,000 persons per day. As approved, the Ordinance penalizes private pier owners if they receive disembarking persons from cruise vessels beyond a total of 1,000 persons on a single calendar day. Penalties range from \$100 to \$5,000 per person in excess of the 1,000-person daily limit.

The plaintiffs/appellants, local pier owners, merchants, pilots and tender operators whose businesses were threatened by the



Ordinance's disembarkation limit filed suit against the Town seeking declaratory and injunctive relief in federal court. They claimed that the Ordinance violated the Constitution's Supremacy, Commerce, and Due Process Clauses. After trial, the district court entered judgment for the Town on all but one of the constitutional challenges. It is notable that at trial, the Chief of Police and the Harbor Master testified that there were no public safety problems from cruise ship visits. In fact, all public safety officials testified that the town could handle the cruise ship visitors safely.



The Ordinance will have an economic impact beyond Maine. Indeed, it will impact Boston based travel and tourism. Boston is a port where passengers embark for trips up the East Coast to Montreal and Bar Harbor, with Acadia nearby, is considered a marquee destination. If the Ordinance is allowed to stand, prospective passengers are less likely to book trips originating and Boston and thereby negatively impact the hospitality industry in Boston and other communities.

The Law Center's brief focused on the negative economic impact of the Ordinance. The case will be argued on January 8, 2025. Stay tuned.



Pioneer Law Center Supports Mass AG on the MBTA Communities Act

This matter involves the recently enacted MBTA Communities Act. The Legislature enacted the MCA in 2021 to help address the supply and cost of housing in Massachusetts. The MCA requires that every municipality in the MBTA's service area to redistrict to produce additional affordable housing near transportation hubs. Most of eastern Massachusetts and much of central Massachusetts falls within the definition of "MBTA community. Shortly after the enactment of the MCA and accompanying guidelines issued by the Executive Office of Housing and Livable Communities ("EOHLC"), the Milton Select Board directed Milton's Director of Planning and Community to prepare an interim compliance action plan required by the EOHLC guidelines. The Milton Planning Board submitted an action plan to the Select Board, which voted to approve it for submission to EOHLC. Over the next several months, Milton's Planning Board prepared models of potential high-density districts and draft language for a zoning ordinance. Deliberations between the Planning and Select Boards continued throughout the fall of 2023. Ultimately, the Select Board voted to submit a proposed MCA compliant zoning bylaw to Milton's representative town meeting, which approved it. However, registered voters in Milton successfully petitioned to

put the proposed bylaw to a popular vote. In February 2024, Milton voters rejected the proposed bylaw by a margin of 54% to 46%.

On February 27, 2024, the Attorney General filed a complaint with the Massachusetts Supreme Judicial Court seeking declaratory and injunctive relief against Milton and effectively seeking an order requiring that Milton submit a zoning bylaw consistent with the MCA. The Town has answered and filed a counterclaim seeking declaratory relief against the Attorney General and EOHLC.

The central issue before the SJC is whether the Attorney General has the authority to bring an action against Milton. Milton has argued that the MCA does not authorize the Attorney General to commence the current action. Milton contends that the statute contemplates that if municipalities do not comply with the MCA, the sole remedy is that they will lose certain funding from the state and/or MBTA. To counter Milton's argument, the Attorney General has argued that in instances where a statute is enacted for a broad public purpose, the Attorney General has the right and obligation to bring an action to compel compliance with the statute.

The Attorney General approached the Law Center and requested that we submit an amicus brief in support of the Attorney General. The Law Center joined with Associated Industries of Massachusetts and the Greater Boston Chamber of Commerce and submitted a limited brief emphasizing that the MCA was enacted by the Legislature for a public necessity – affordable workforce housing in and around public transportation the absence of which has and will negatively impact the competitiveness of the Massachusetts business community.



ON THE DOCKET



Pioneer Law Center and the Institute for Justice Launch Constitutional Challenge To Regulation That Bars Children From Needs Services

The Institute for Justice and the Law Center have launched a challenge to a Massachusetts regulation that effectively bars certain children from receiving special education services financed with state and local funds just because those children choose to attend private schools. Ariella and David Hellman, along with Josh Harrison and Miriam Segura-Harrison, two sets of parents with children who have special needs, argue in the federal lawsuit that this regulation is not only unfair to children with special needs, but also unconstitutional.

The lawsuit stems from a Massachusetts law guaranteeing that all students are entitled to special education services, no matter which schools they attend. These services run the gamut from simple learning exercises to intensive hands-on personal interaction with behavioral therapists. The services are critical

for children because they help them overcome their learning challenges. Yet even though Massachusetts law entitles all children to the services, a Massachusetts regulation makes access to services practically unobtainable for children whose parents have enrolled them in private schools.

That is because Massachusetts regulators have imposed an irrational—and unconstitutional—restriction on special needs students whose parents enrolled them in private school. The restriction? These students can receive services at sites the state deems “neutral,” but not the private schools they attend. The matter is now pending in the federal court. The Commonwealth has sought dismissal of the case, which we have opposed.

Massachusetts legislature among the least transparent state legislatures in America. PLC will take action if Question 1 Not Enforced.

Voters in November overwhelmingly supported a petition that empowers the state Auditor, currently Diana DiZoglio, to audit the state legislature. DiZoglio’s efforts to audit the legislature met with a brick wall, necessitating the petition. After the adoption of the petition, DiZoglio renewed her efforts to ensure that the legislature comply with her audit request. Again, she hit a brick wall. Legislative leaders have raised multiple roadblocks to cooperation with the audit, including separation of powers objections, ripeness arguments and administrative challenges. Our research supports the conclusion that the legislature must, as a matter of constitutional mandate, comply with the will of the people as expressed on the petition.



Next to be heard...

- Governor Healey recently signed an economic development bill that authorizes Project Labor Agreements in municipal construction contracts. Public projects that include a PLA restrict all bidding to union shops which in turn reduces the competitiveness of the bid process and results in increased costs to taxpayers. More than 82% of the Massachusetts workforce do not affiliate with a union. Little more needs to be said. And PLAs are particularly bad for minority contractors. We are exploring a challenge to the new law based on discriminatory impact and other grounds.
- Question 2 on the Massachusetts November ballot was approved. Question 2, which was sponsored by the Massachusetts Teachers Association, eliminates the statewide MCAS examination as a graduation requirement. That means that each school district can now decide the terms the standards for assessing student achievement. The governor, the secretary of education and virtually all government leaders opposed Question 2. The state supreme court has established that an “adequate” education is a constitutional right in Massachusetts. We think that Question 2 abridges that right and fails our children. More to come on this key issue.