

# IN BRIEF

NEWSLETTER | SUMMER 2023



PIONEER  
PUBLIC INTEREST  
LAW CENTER



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

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## President's Message

Pioneer Public Interest Law Center (Pioneer Law Center) has turned one year old. We launched as an operating law firm on June 2, 2022. In the brief time since then, we have had important successes, both in and out of court. We have offered engaging and well-attended programs on matters of intense interest to the legal and wider communities. We have been interviewed on broadcast news and in the written press. We have testified before a Massachusetts joint legislative committee and have lectured to bar associations. But with all of that, we are just getting started. Please read on to see what we have done this quarter, and what we have in the works.

## Success Stories

### *Pioneer Law Center claws documents from the Massachusetts Department of Public Health*

For well over a year, public health researchers have been trying to get officials from the Massachusetts Department of Public Health (DPH) to comply with a duly served public records request seeking information on the categories of those who got sick and who died during the COVID-19 pandemic. Only with such information can public policy investigators determine what happened, gauge the efficacy of DPH's efforts during the pandemic, and help ensure that future pandemics are handled more effectively.

Lawyers from Pioneer Law Center threatened suit under the public records law. The stonewalling finally ended, resulting in thousands of pages of responsive documents being released by DPH. As a result, researchers can make informed, specific recommendations on handling future pandemics, improving public health, and minimizing economic losses. More generally, the effort illustrates how legal pressure can help ensure government accountability.

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### **Pioneer Law Center persuades U.S. Supreme Court to end equity theft in the United States**



Pioneer Law Center filed a brief in support of a homeowner’s petition for the high court to end the process where municipalities or private tax lien buyers foreclose on a homeowner’s property and take all the equity, even the amount that exceeds what the homeowner owes in taxes. The Court on May 25 issued a unanimous opinion in the case of *Tyler v. Hennepin County, Minnesota et al.* The Court ruled that municipalities taking taxpayers’ entire equity in tax foreclosure cases is an uncompensated taking and thus unconstitutional. In an opinion authored by Chief Justice Roberts, the Court stated that a taxpayer “must render unto Caesar what is Caesar’s, but no more.” Justices Neil Gorsuch and Ketanji Brown Jackson also thought the practice was an unreasonable penalty under the Eighth Amendment, but the full bench left that legal question for another day.

The *Tyler v. Hennepin County* victory is important to homeowners, but it also matters to the owners of small businesses, for whom the loss of their business property can often make it difficult or impossible for their business to survive.

### **Pioneer Law Center’s threatened litigation thwarts unauthorized regulatory action**

Pioneer Law Center, together with the New England Legal Foundation and the law firm of Sidley Austin, LLP, represented residents of Dartmouth, Massachusetts after the Department of Environmental Protection announced the amendments to the state’s Title 5 septic regulations that would burden those residents with overly broad regulations. We were able to conclude that the DEP had adopted the regulations in violation of its own rulemaking protocols.

After meeting with Dartmouth residents and assembling the legal team to litigate, we learned that the DEP planned to adopt amended regulations effective July 7, but omitting the overly broad language that had been contained in earlier drafts. According to some of the professionals among our clients, the DEP’s problematic language was dropped following the disclosure of our involvement. For now, residents of southeastern Massachusetts are under no immediate obligation to implement upgrades to their septic systems. South coast residents would have standing in the event — which seems inevitable — that their region is added to the affected area.

### **Pioneer Law Center obtains critical records from the EOHHS**

Pioneer Institute’s Life Sciences Initiative sought records from the Executive Office of Health and Human Services relating to the methodology employed to determine the rebate and discount on drug products pursuant to G.L. c. 118E, § 12A. Despite repeated requests and payment of the requested document fees, EOHHS had not produced any documents. Pioneer Law Center filed a demand to the state Supervisor of Records. On July 21, 2023, the records supervisor agreed and ordered EOHHS to comply with the request, turning back all objections.

## **Pioneer Law Center in the News**



### **Recent Events**



#### **Justice Robert Cordy on Judicial Reform in Ukraine**

On June 15, 2023, Pioneer Law Center hosted a program featuring our board member, Associate Justice Robert Cordy, Massachusetts Supreme Judicial Court (ret.). In June 2021, the Ukrainian government announced the creation of the Ukrainian Judicial Ethics Council, charged with creating an impartial, fair, and honest judiciary in Ukraine. Justice Cordy was appointed by Ukraine to serve on the Council. The Council worked through the end of the pandemic and then the early stages of Russia’s invasion of Ukraine to complete its work. Bohdan Vitvitsky, a JD and PhD from Columbia University, ably served as moderator of this program.

## Meet the Interns



### **Caroline Granitur**

Caroline is a rising second year law student at Duke University School of Law.

“I am so grateful for the opportunity to work with so many great legal professionals associated with Pioneer Law Center throughout my summer internship. I was able to work on a variety of interesting legal topics, but mainly focused on determining to what extent Massachusetts is in compliance with the Supreme Court’s requirements for the regulation of occupational licenses. My summer internship has allowed me to practice my research and writing skills, but even more impactful has been the way the work I have been involved with has opened my eyes to the importance of the work being done at public interest law centers.”

### **Ian Lutz**

Ian is a rising second year law student at Suffolk University School of Law.



“I started with the Pioneer Law Center in mid-June and very quickly came to understand how lucky I am to have the opportunity to further my legal career here. The intimacy of their small but formidable inside legal team has given me a front-row seat in exciting case work. Attending strategic meetings with the Law

Center staff and co-counsel has been eye-opening. What a chance to work side by side with experienced and skilled attorneys! I am so proud to be contributing to the Law Center’s equity takings cases, with both substantive legal and factual research. The experience I am gaining while working with such excellent attorneys will prove invaluable to my development as an attorney.”

### **Sean LaLiberte**

Sean is a rising second year law student at the Sturm College of Law at the University of Denver.



“My work this summer is dedicated to assembling a syllabus of materials in support of a suit that would compel Massachusetts to honor its obligations to teach and test civics in public schools. Working with state education cases, statutes, and constitutional provisions from across the country, the syllabus considers whether the Massachusetts Constitution and relevant provisions from the Massachusetts Education Reform Act of 1993 entitle the Commonwealth’s students to a minimum quantum of civics education necessary to participate effectively in civic life. Working with the Pioneer Law Center attorneys has been a privilege. I’m grateful for the chance to learn firsthand from some incredibly knowledgeable and experienced attorneys. The Law Center staff and the outside co-counsel are invested in having a positive impact on our society. It is a powerful opportunity to share in that work.”

## **Pioneer Public Interest Law Center Board of Directors**

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## **New Board Member**

### **Bill McQuillan Boylston Properties**

Bill McQuillan is the founding principal of Boylston Properties, where he has dedicated 45 years to developing real estate, principally in Greater Boston. With Bill’s vision and leadership, Boylston Properties has brought distinctive real estate to the region; including the entire Arsenal Yards development, its Blvd & Bond apartment community, and its life science campus, which includes 200 Arsenal Yards Blvd., 100 Forge, and 500 Forge, as well as CityPlace/State Transportation Building, Fenway Triangle Trilogy, Marriott Residence Inn/Fenway, Wellesley Gateway (corporate HQ for Harvard Pilgrim Health Care), LINX, Marriott Residence Inn/Watertown, the Hilton Onyx Boston Downtown, and the Hampton Inn & Suites Watertown. Today, Bill focuses on cultivating partnerships, financing, and overseeing the design aspect of all Boylston Properties projects. Bill has served on the Huntington Theatre’s Board of Trustees since 1998, previously serving as its president. Bill grew up in Needham, MA and is a graduate of Babson College where he served on the Board of Trustees of his alma mater for 10 years and chaired the Physical Facilities Committee. He and his wife, Linda, have two grown children and currently reside in the South End with their dog Sprout.

## Current Cases

### *Discovery begins in virtual high school sports case*

Discovery has started in a critical school choice case in which Pioneer Law Center is challenging the categorical exclusion of Commonwealth Virtual School students from sports programs in their home district schools.

The Massachusetts Interscholastic Athletic Association (MIAA) considers participation in high school athletics to be a “crucial component” of the state’s constitutionally guaranteed right to a free public school education. Yet MIAA is excluding our plaintiffs — who are educated under the Commonwealth Virtual School law — from participating in interscholastic, high school athletics. We believe MIAA’s action violates the due process and equal protection provisions of the Massachusetts Constitution.

### *Pioneer Law Center seeks ruling in favor of immigrant entrepreneurs and small business owners*

In March we filed an amicus brief in support of a Vietnamese immigrant who took her savings from operating a nail salon in Randolph and purchased the small commercial building in which her business is located. After a revenge killing occurred outside of her tenant’s nightclub, the victim’s family sued her, arguing that a commercial landlord’s duty to prevent reasonably foreseeable criminal acts by third parties encompasses a duty to learn of criminal acts that occurred prior to the landlord’s purchase of the property. In our brief, we brought to the SJC’s attention the negative public policy implications of the appellant’s proposal to extend premises liability in this manner. Such a rule would unfairly impact immigrant entrepreneurs, who are often unsophisticated buyers of commercial real estate in crime-ridden neighborhoods. Imposing a duty to conduct “criminal background checks” on commercial properties would increase the cost of buying and would likely raise premises liability insurance rates in high-crime areas, thus depressing commercial real estate values and sales in these neighborhoods. Such a change in the law would further disincentivize owning property in high-crime neighborhoods by potentially holding property owners liable for the criminal behavior that is prevalent in many low-income communities, and over which they have no control. If immigrant entrepreneurs and others are less likely to invest in commercial real estate in high-crime areas, this will limit economic opportunities in the Commonwealth.



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### *Anti-Aid Amendment case*

In early September we will file a case in federal court with the Institute for Justice challenging the Commonwealth’s unconstitutional restrictions on private school students’ access to state-funded special education services.

One of our plaintiffs is a child who is entitled under Massachusetts law to receive special education services, but whose access to those crucial services is being restricted because the child attends a Catholic school. The other plaintiff is an autistic child who would like to attend a Catholic school but who cannot do so under existing state regulations. Those regulations currently require that state-funded services be delivered at a public or “neutral” site; however, the child’s disability requires that he receive special education services throughout the day within his classroom.

The Commonwealth’s unreasonable interpretation of the Massachusetts Constitution’s “Anti-Aid Amendment” 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 seek to enjoin enforcement of the current regulations on the ground that they unreasonably interfere with our clients’ First Amendment free exercise rights and their parents’ rights to direct the education of their children.

### *Pioneer Law Center prepares suit to require schools to teach our kids basic civics*

Thirty years ago, Massachusetts passed the Massachusetts Education Reform Act, among the provisions of which is a requirement that the state teach civics and make passage of a U.S. History and civics standardized test a graduation requirement.

In 2009, state education officials suspended development and implementation of the testing requirement, and for the last 14 years the state has not followed the requirements of MERA. We all see what happens when people are not equipped to exercise their rights and duties of citizenship. Jurors appear at the courthouse not knowing that the courts are a separate, coequal, and independent branch of government. Fewer citizens exercise the right to vote. Our civil discourse is weakened.

But how can we expect voters to understand their duties if the state does not enforce duly enacted laws mandating the teaching and testing of U.S. history and civics? This summer we have worked hard to gather the necessary background information to initiate an action to require the state to finally roll out a required civics program for kids and implement a history/civics test as part of the Massachusetts Comprehensive Assessment System (MCAS) tests.

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# Three actions to end home equity takings abuse

## ***Pioneer Law Center is fighting on behalf of a Worcester homeowner***

Nancy Rodriguez owned her house for over 20 years, paid off her mortgage, but fell behind on her taxes when she became ill. Her home was assessed at over \$220,000, and she owed only \$3,700 in taxes when Worcester sold the tax lien to a private company that specializes in obtaining windfall profits from homeowners. Together with Greater Boston Legal Services and Morgan Lewis, we are seeking to get Nancy her equity back through an approach not yet seen in the First Circuit.

## ***Settlement discussions are underway for an alpaca farmer who lost his farm in Bolton***

In *DiPietro v. Town of Bolton* we are working with the Pacific Legal Foundation to challenge the constitutionality of the taking of Alan DiPietro's alpaca farm in Bolton to satisfy overdue real estate taxes and fines imposed by the town. This is another equity theft case following along the lines of *Tyler v. Hennepin County*. With the Supreme Court's *Tyler* ruling unanimously in favor of the taxpayer, we have recently commenced settlement discussions with the town of Bolton in the hopes of resolving the dispute without further litigation.



## ***Planning to recover lost equity***

We are studying a statewide collective action to recover compensation for property owners whose equity was taken when municipalities foreclosed on their properties for nonpayment of real estate taxes. The U.S. Supreme Court's unanimous ruling in *Tyler v. Hennepin County Minnesota et al.* was that cities and towns violate the Fifth Amendment's just compensation clause when they seize properties worth more than the debts owed to the municipalities and do not return the surplus value to the former owners.

For decades, Massachusetts cities and towns have been doing just that, creating terrible hardship for some of our most vulnerable elderly and unwell residents, many of whom did not even receive notice of the foreclosure actions until it was too late.

## **What's on Deck for Pioneer Law Center?**

### ***State constitutional challenge to legislative and executive exemptions to the Massachusetts public records law***

According to Forbes Magazine, Massachusetts is the least-transparent state government in the U.S. (Patrick Gleason, *In Massachusetts, Once a Leader in Government Transparency, Key Votes Are Hidden From the Public*, Forbes, Jan. 12, 2022). Pioneer Law Center seeks to change that story with a constitutional challenge to the legislative and executive exemptions to the public records and open meetings 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.

### ***Speaking engagements by Pioneer Law Center***

At the ABA Business Law Section's webinar on July 24, 2023, Frank Bailey moderated a panel discussion on the bankruptcy implications of *Tyler v. Hennepin County*.

The ABI *Seaside Chat* in Newport, Rhode Island featured Frank Bailey concerning the work of Pioneer Law Center in amending Chapter 60 of the Massachusetts General Laws.

### ***Visits to the Massachusetts State House***

**Testimony at the Massachusetts Legislature.** On June 22, 2023, Frank Bailey testified at a session of the Joint Committee of Revenue at the Massachusetts State House. Frank also submitted extensive written comments. The hearings were on statutory amendments to tax lien law to ensure that taxpayers are fairly treated.

**Meeting to work on reforms aimed at protecting the rights of virtual school students.** On May 12, 2023, Frank Bailey, Selena Fitanides, and Jamie Gass of Pioneer Institute met with legislative leaders to spearhead legislation to protect the rights of virtual school students to play sports and other activities in the districts where their parents pay taxes.