



REPORT FROM THE PRESIDENT & PIONEERLEGAL NEWS



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

PioneerLegal challenged the refusal by Massachusetts to allow students enrolled in public virtual schools to participate in sports in their home districts. The state had allowed such participation for years, but the entity that controls high school sports for the state changed its position in May 2022. Students in state virtual schools are often those that were bullied or have anxiety disorders. The case involves at least 55 potential student athletes and is now pending in state court and class action certification is sought.

PioneerLegal condemns “equity theft” whereby municipalities, including in New England, foreclose on real estate tax liens and then pocket the homeowner’s equity in the property that can exceed the taxes due by tens of thousands of dollars. In a brief filed with the U.S. Supreme Court, PioneerLegal urged the Court to find that laws that permit municipalities to take a homeowner’s equity, often people that are unwell or aged, are unconstitutional.

PioneerLegal weighs in against Mass DOR overreach. PioneerLegal filed an amicus brief with the SJC arguing that the Commissioner’s imposition of a capital gains tax disincentivizes private investment in blighted property that would add needed affordable housing. Moreover, the Commissioner’s imposition of a capital gains tax is directly contrary to the plain statutory language promising tax break for private redevelopment of vacant and dilapidated property.

PioneerLegal urges the Massachusetts Supreme Judicial Court to rein in the Commissioner of Revenue from applying questionable regulations retroactively. An online seller of auto parts from California was shocked to learn that because it used computer “cookies” when offering products in the state it was required to file sales tax returns and to submit those taxes to the DOR. The constitutionality of the so-called “cookie nexus” will arise in future cases, but in this case the Commissioner took an aggressive position that allowed him to apply a new regulation retroactively. Such a position can easily be abused in the future.

SPOTLIGHT ON OUR CO-COUNSEL PARTNERS. Sullivan (Virtual School cases and the Cookie Nexus case), INSTITUTE for JUSTICE (The anti-aid amendment work), PACIFIC LEGAL FOUNDATION (Equity Theft Cases), Morgan Lewis.

PRESS RELEASE PUBLIC INTEREST LAW FIRM SUES TO ALLOW VIRTUAL SCHOOL STUDENTS TO PARTICIPATE IN HIGH SCHOOL SPORTS PIONEERLEGAL. Image of a soccer goal.

PioneerLegal defends the right a senior citizen to be heard at a select board meeting in Southborough, MA.

Where are free speech rights more sacrosanct than at a town meeting? Louise Barron, a senior citizen and long-time resident of Southborough, stood up during the open comment period and raised her concerns about the town budget and the town’s documented abysmal record on Open Meeting Law compliance. But she was abruptly silenced by the chairman, who relied on a newly adopted rule prohibiting “rude, personal, inappropriate, or slanderous” speech. Louise’s comments before being shut off were none of these — they were, however, uncomfortable for the chairman to hear.

PioneerLegal sues to gain access to MBTA arbitrator’s decision. In the wake of the dismal safety and operations record of the MBTA in recent months, the MBTA won a critical arbitration case regarding pension rights against the union. The union and MBTA have refused to permit access to the opinion, which interferes with the public’s right to comment on the validity of the appeal. PioneerLegal argues a refusal to disclose the opinion on which the union has appealed is a violation of law.





## A FEW EXAMPLES OF **WHAT'S ON OUR DOCKET**

### **Civics Education in Massachusetts**

**Schools.** In 2018, Governor Baker signed the Bill to Promote Civic Education for students in our schools. The bill is focused on requiring some civics education at all grade levels and a more intensive engagement at the eighth-grade level. It was to promote student abilities to understand and analyze a variety of perspectives and to help students understand the interaction of federal, state, and local governments. The Massachusetts Department of Elementary and Secondary Education directed that schools begin implementing the History and Social Science Curriculum Framework and student-led civics projects in 2019–2020, and that student-led civics projects be fully implemented in all schools by 2020–2021. PioneerLegal is testing the implementation of the bill and exploring whether litigation might be required to ensure that critical civics education is hitting the classroom.



### **Cutting the Red Tape.**

Massachusetts and Boston in particular have been identified as among the least friendly places in the US to start a small business. Permits, licenses, inspections, and other barriers are both time-consuming and expensive, leading many entrepreneurs to just give up. There is also evidence that during

the Covid-19 shutdown this situation has worsened. PL is working to identify a litigation or advocacy solution.

**Public Records and the Legislature.** Massachusetts is among the few states exempts the legislature from the application of the public records and open meetings laws. We at PL believe the state constitution preserves the right of citizens to be informed about the legislative process. We are exploring whether there is a litigation challenge that might open the legislative process to public inspection. We seek to let the sunshine in!

**If you are interested in getting involved in any of these initiatives, please give us a call or send me an email at [frank.bailey@gmail.com](mailto:frank.bailey@gmail.com)!**

## **UPCOMING EVENTS**

*Details to Follow*

WINTER  
2023

**“Reasonable  
Minds Can Differ”**

Please join us for a lively discussion of the Supreme Court 2022–23 Term with Constitutional Law Professors Gary Lawson and Jessica Silbey.

SPRING  
2023

**“Building a Judicial  
Branch for Ukraine”**

PL Board Member Justice Robert Cordy (ret.) has been consulting with emerging democracies all over the world for years. His focus recently has been on the Judicial Branch in Ukraine, work that he began before the war. Come this Spring to hear Justice Cordy describe his work and you will appreciate the need to protect Ukraine.

## **MEET THE PIONEERLEGAL STAFF**



### **SELENA FITANIDES**

Selena's training as a litigator in prestigious law firms and her extensive experience with Massachusetts charter schools, make her a perfect fit for PioneerLegal. After graduating from Yale with honors, she attended Stanford Law School, participated on the law review, clerked for a federal judge, practiced public interest law at the ACLU, and did a stint in “big law” in Philadelphia and Boston.



### **JOHN LALIBERTE**

John has been a litigator at a prestigious Boston boutique firm for over 30 years where he has also served as the firm's general counsel. John decided that he wanted to join our mission at PioneerLegal in order to do what he hoped to do when he went to law school: engage in impact litigation.



## MORE ON OUR CASE WORK

**Frank Bailey Appears on Pioneer's HUBWONK podcast.** On November 16, 2022, Frank Bailey was a guest on HUBWONK, hosted by Joe Selvaggi, to discuss PioneerLegal's efforts to have the U.S. Supreme Court reverse the practice in certain states, including Massachusetts, permitting municipalities to take the entire value of a property to settle a relatively small tax debt. Bailey noted that PioneerLegal has filed "friend of the court" briefs in two Supreme Court cases that are pending this term.



**Institute for Justice's Michael Bindas on the SCOTUS Oral Arguments.** This week on "The Learning Curve," co-hosts Gerard Robinson and Cara Candal talk with Michael Bindas, a senior attorney with the Institute for Justice, who represents the lead plaintiffs in the U.S. Supreme Court case, *Carson v. Makin*.



## IN THE NEWS

### The Boston Globe

The Globe's Michael Silverman reported on August 24, 2022, that PioneerLegal had filed suit to protect the rights of virtual school kids to play sports in the towns where their parents pay taxes.



WGBH Boston public radio reported that the PioneerLegal was seeking to enjoin the state from precluding virtual school students from playing on high school sports teams as they had in the past.



PioneerLegal President Frank Bailey and co-counsel Nick O'Donnell (Sullivan Law) appeared as guests on Dan Rea's NightSide program on WBZ NewsRadio 1030 to discuss the state refusal to allow virtual school students to play sports.



Mark Ockerbloom of Boston 25WFXT television reported on PioneerLegal's efforts to seek judicial review of the state's decision to ban virtual school kids from playing sports on their local high school teams.

## FOCUS ON THE INTERNS

PioneerLegal is working hard to plant its flag in the law school community as a "go to" public interest law firm. And we have attracted a bright and dedicated group of law school interns that have brought creativity to their work. Frank Bailey reports that "The best part of serving as a federal judge was the opportunity to work with law clerks and interns that are just launching their legal careers. Their enthusiasm served as a constant inspiration to me. I plan to continue that process at PioneerLegal."



### Erin Wylie

is a second-year law student pursuing her JD degree at Suffolk University School of Law. Prior to attending law school, Erin graduated magna cum laude from the University of Massachusetts Amherst with a double major in political science and legal studies, a minor in sociology, and a certificate in criminal justice. She spent the summer of 2022 as an intern at PioneerLegal, and was overjoyed to continue the internship into the fall.

*"Interning at PioneerLegal has allowed me to gain substantive legal research and writing experience while learning from extremely experienced and knowledgeable attorneys."*



### ETTY Singer

is a first-generation student pursuing a JD degree at Boston University School of Law, class of 2024. Before attending law school, ETTY graduated cum laude from Smith College. In summer 2022, ETTY interned at the U.S. District Court of Massachusetts with the Honorable Judge Denise Casper. In addition to interning at PioneerLegal, she is a staff editor for the American Journal of Law and Medicine and a student attorney at the Boston University Criminal Law Clinic.

*"I am grateful to PioneerLegal for allowing me to contribute to their incredible work. PioneerLegal has given me an invaluable experiential learning and legal research experience."*