

# IN BRIEF

NEWSLETTER | SUMMER 2024



PIONEER  
PUBLIC INTEREST  
LAW CENTER



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

---

185 Devonshire Street

---

Suite 1101

---

Boston, MA 02110

---

617-819-1010

---

[pioneerlegal.org](http://pioneerlegal.org)

---

[Facebook.com/PioneerLegalBoston](https://Facebook.com/PioneerLegalBoston)

---

[Twitter.com/Boston\\_Pioneer](https://Twitter.com/Boston_Pioneer)

---



## President's Message

Recently I received a call from an elderly homeowner in western Massachusetts, I will call her Margaret, who is facing foreclosure of her family home. Margaret is two years behind on her real estate tax payments because she had to stop working when she developed multiple sclerosis. The town wants her lakefront home in what has now become a high-end community of second homes. She is willing to sell and pay the town, but they are pressuring her, and she is afraid that she will lose her family's hundreds of thousands of dollars of equity in the home. After I heard the details, I told Margaret that we have assembled a team to address her type of case, that we will get her a lawyer to stop the foreclosure, and we will save her equity and get the town paid. Hearing me, Margaret started to cry softly and told me that she was about to have her first good night's sleep in months.

This is what government overreach looks like. Thanks to our donors and our law firm partners we can stop government abuse both systemically and for individual citizens like Margaret. I hope this Summer 2024 edition of *In Brief* finds you well. Please read on to see what we are doing at Pioneer Law Center and how you can help.

A handwritten signature in black ink that reads "Frank J. Bailey".

*Frank J. Bailey, President  
Pioneer Public Interest Law Center*

## Success Stories

***Pioneer Law Center chalks up major win at U.S. Supreme Court challenging the Dodd-Frank Act's denial of fundamental rights to those facing challenges by administrative agencies.***

As reported in In Brief last summer, George Jarquesy established two hedge funds managing \$24 million in assets from over 100 investors. The Securities Exchange

## Success Stories

Commission (SEC) brought fraud claims against Jarkesy in a so-called “in-house” proceeding. After an evidentiary hearing by an administrative law judge (ALJ), Jarkesy was found guilty of securities fraud and fined more than \$1 million. Jarkesy was also banned from participating in the securities industry. The Commission affirmed the fraud findings and rejected several constitutional arguments. On appeal, in a divided opinion, the Court of Appeals for the Fifth Circuit reversed, finding multiple constitutional violations. In particular, the Fifth Circuit found that the statutory scheme that empowered the SEC to adjudicate claims before an ALJ violated Jarkesy’s Seventh Amendment right to a jury trial as well as other constitutional rights.

Pioneer Law Center, together with King & Spaulding, LLC, filed a brief in the Supreme Court in support of Jarkesy, stating people in the investment industry should be entitled to adjudicate claims against them before a federal judge. Under current law, the SEC (and many other agencies) can limit those charged with fraud to a hearing before an ALJ employed by the SEC, with appeals to the SEC itself.

Allowing the Commission to adjudicate its own prosecutions violates constitutional requirements. To begin with, the SEC is quite literally on the same side as the prosecution. Worst of all, the tribunal (the ALJ) is employed by the SEC. This creates an actual and apparent conflict of interest. These aspects of the Dodd-Frank Act were stricken and the constitutional rights of those charged with fraud have been restored. This decision will no doubt have far-reaching effects in other administrative proceedings and may well apply in state proceedings as well.

the Suffolk Superior Court in Boston directed production of the vast majority of those records. Pioneer Attorney John LaLiberte, who handled the case remarked, “BPS cannot shove reports of violence under the rug. No learning can occur when children do not feel safe in the school building. We owe more to our children.”



### *Pioneer Law Center successfully challenged the constitutionality of the Massachusetts Tax Lien statutory scheme possibly ending “equity theft.”*

In a significant win in the Massachusetts Superior Court, Pioneer Law Center and its co-counsel secured a ruling that the Massachusetts tax lien statute violates the state and federal constitutions when municipalities and private lien buyers use it to take ALL of a taxpayer’s equity, not just the taxes and fees owed. Ashley Mills inherited her family home in Springfield, Massachusetts from her grandfather. Ashley is 25 years old, a single mother to a two-year-old child and is employed by the U.S. Postal Service. Ashley also suffers from a serious hearing deficit. When she inherited the family home there were tax arrears that her family had a difficult time curing.

When we met Ashley, she was facing a hearing at which Springfield was about to foreclose on her right to redeem the home even though only about \$20,000 in taxes was due and the home was worth over \$250,000. The concern was that if Springfield took the home under existing law, it had no requirement, and perhaps no ability, to pay Ashley the value of the property in excess of the tax arrearage. Given that the Massachusetts Legislature has not amended the tax lien statute to bring it into line with *Tyler v. Hennepin County*, a recent ruling in which the U.S. Supreme Court struck such a law in Minnesota, and no state court had addressed the constitutionality of the tax lien statute, 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 with us that the current state law cannot be applied to “steal” generational wealth from taxpayers and their families.



### *Pioneer Law Center Wins Case Forcing the Boston Public Schools to reveal data on violence*

Violence in public schools is on the rise, spurred in part by the use of social media apps that challenge students to engage in and to record violent acts. Our client sought access to 457 investigative summaries related to reports of violent acts in the Boston Public Schools (BPS). After being snubbed by the BPS, we commenced an action for injunctive and declaratory relief pursuant to the Massachusetts Public Record Law, seeking an order compelling production of the reports. In a recent ruling,

185 Devonshire Street, Suite 1101, Boston, MA 02110 • 617-819-1010

[pioneerlegal.org](http://pioneerlegal.org) • [Facebook.com/PioneerLegalBoston](https://Facebook.com/PioneerLegalBoston) • [Twitter.com/Boston\\_Pioneer](https://Twitter.com/Boston_Pioneer)

## Success Stories

### ***SJC Rules in favor of Pioneer Law Center in Massachusetts effort to drop high stakes testing in Massachusetts***

The Massachusetts Teachers Association (MTA) has brought a petition for the November ballot seeking to eliminate any statewide evaluation of students as a graduation requirement. Massachusetts is the only state that has been competitive internationally in student performance. This success is the result of the landmark 1993 Education Reform Act (ERA) that greatly increased state education funding in return for adoption of a high stakes statewide examination called MCAS. Now, the MTA seeks to roll back the 1993 law's testing requirement in favor of the district-by-district assessment of

students that prevailed before the ERA. Critics of the petition, including Governor Maura Healy, say that abandoning MCAS as a graduation requirement will damage the progress we have made.

When the MTA sued the Attorney General to obscure the wording of the petition and its title to mislead voters, a group of voters objected. Pioneer Law Center filed a brief on behalf of former Boston and Worcester school superintendents that asked the court to reject the MTA's proposed rewording which we referred to as "deceptive." The SJC fully agreed with Pioneer Law Center in a June ruling that upheld the Attorney General's presentation of the title and description of the petition.



## Pioneer Law Center In the News

President Frank Bailey was interviewed on the air by WCVB, channel 5 in Boston on several occasions regarding efforts to overturn the unconstitutional state tax foreclosure law. In fact, the reporting team, led by investigative reporter Karen Anderson, has been nominated for an Emmy Award for its dedicated work on this critical story.

<https://www.wcvb.com/article/judge-finds-equity-theft-law-unconstitutional-pressuring-massachusetts-lawmakers-to-act/60551942>



*Massachusetts Lawyers Weekly* featured Pioneer Legal's work on Massachusetts tax lien foreclosure law in a June 7, 2024 article that quoted Frank Bailey extensively.

<https://masslawyersweekly.com/2024/08/11/supreme-court-mandated-equity-theft-fix-gets-mixed-reviews/>  
<https://masslawyersweekly.com/2024/08/11/supreme-court-mandated-equity-theft-fix-gets-mixed-reviews/>



## Speaking Engagements By Pioneer Law Center President Frank Bailey

- Invited to give the keynote speech at the Real Estate Bar Association Annual Meeting in September 2024.
- Invited to the Central New York Bar Association Annual Meeting in Cooperstown, New York in November 2024 to present on public interest law initiatives – how to launch a public interest firm.
- Will moderate a panel at the NCBJ Annual Conference in Seattle, Washington on Judicial Disqualification: A Primer for Judges and Lawyers. "When must the judge get out, when should a lawyer seek to disqualify a judge."

### ***Board of Directors***



PIONEER  
PUBLIC INTEREST  
LAW CENTER

Brackett Denniston, Chair

Jonathan Albano

Hon. Robert Cordy

Stephen B. Darr

Stephen D. Fantone

Joseph A. Foster

Lena Goldberg

Ernest Haddad

R. Scott Henderson

Amelia Welt Katzen

Mark Matuschak

Bill McQuillan

Lisa Rickard

Stan Twardy



## Up Next At Pioneer Law Center

### *Boston Public Schools Free Museum Sundays Program must be open to all city students.*

In 2023, the City of Boston announced a laudable program that gives Boston Public Schools students and their families free admission to Boston-area museums and attractions on one Sunday each month. The Boston Science Museum, the New England Aquarium, and the Museum of Fine Arts are examples of the included institutions. Notable and inexplicably excepted from participation are charter school students and students enrolled in the METCO program. Charter school students and METCO students are public school students and entitled to all the rights and benefits of other similarly situated students in Boston. Pioneer Law Center stands ready to bring suit to require that charter school and METCO students are treated equally.

### *Pioneer Law Center and the Institute for Justice launch a constitutional challenge to an unreasonable regulation that discriminates against private school students.*

The Institute for Justice and Pioneer 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's 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.

## Meet the Interns:

### **Emma Ferdinandi**

*Emma is a rising second year law student at the Boston University School of Law*



*“The invaluable legal experience and mentorship I have gained during my time at Pioneer Legal has allowed me to develop my litigation skills while creating meaningful impacts in the community.”*

### **Deeya Modhwadiya**

*Deeya is a rising second year law student at the Boston University School of Law.*



*“Working at Pioneer Legal has afforded me the opportunity to enhance my legal research and writing skills, while simultaneously gaining insight into several complex legal topics from experienced attorneys.”*

### **Ryan Frigerio**

*Ryan is a rising sophomore at the University of California, Berkeley with aspirations to attend law school after college*



*“My time at Pioneer this summer has been invaluable. Under the exceptional mentorship of Judge Bailey and John Laliberte, I gained meaningful research, writing, and presenting experience, providing me with a strong foundation for a future legal career.”*

### **Ryan Haddad**

*Ryan is a rising sophomore at Cornell University with aspirations to attend law school after college.*



*My Pioneer experience has been marked by real-world research and writing opportunities, compelling hands-on legal projects, and learning invaluable skills working with a dedicated team of attorneys and other interns.*

### **Nathan Bornstein**

*Nathan is a rising senior at Vanderbilt University with aspirations to attend law school after college.*



*While working at Pioneer, I have learned how to apply the skills I learned at university to real-world legal issues and challenges, providing me with invaluable experiences that will stick with me throughout my professional career.*

## ***Pioneer Law Center files brief challenging the confiscatory aspects of the Inflation Reduction Act.***

The Third Circuit is reviewing the case of *Bristol Myers Squibb v. Becerra et al* and the case of *Janssen Pharmaceuticals v. Becerra*. In those cases, the plaintiffs challenged the Inflation Reduction Act's drug pricing provisions whereby the government can designate a drug for mandatory price negotiation. If the manufacturer chooses not to accept the lower price sales of the subject drug will be subject to a prohibitive excise tax. While the Inflation Reduction Act's drug policy provisions were touted as legislation that would lower healthcare costs by reducing the cost of a large basket of medications, the reality is that the IRA will devastate new drug development and innovations. The pricing structures of the IRA create incentives that will redirect research and development dollars to those drugs that are not within the mandatory price negotiation scheme of the act toward those that are either not affected or are less affected by those schemes. By its brief, amicus party Pioneer Law Center hopes to elucidate the negative policy implications of the IRA.

## ***Pioneer Law Center joins the fight against illegal teachers' union strikes that injure the most vulnerable children.***

In a nationally-publicized two-week strike, Newton, MA public school teachers walked out on the students they had agreed to teach under their existing contract. The Law Center immediately began to hear from Newton's parents whose children were left waiting for buses that never came to take them to school. The most vulnerable children, those with learning disabilities that ranged from minor to debilitating, were most affected by the loss of school. Experts say those children will take weeks or months to get back to where they should have been. But students who were counting on after-school activities, sports, and social interaction with peers were also set back. Games that were scheduled were never played. Practices that would have advanced their skills were canceled. Not to mention the family

disruption that occurred in countless Newton homes as parents had to change schedules to accommodate childcare responsibilities.

The teachers' unions were ordered to return to the classroom by a Superior Court Judge, an order that they ignored even after heavy fines were imposed. The Newton strike followed teacher strikes in Woburn, Andover, Brookline, Malden, and Haverhill.

Massachusetts Teachers Association President Max Page told the State House News Service in 2023 that unlawful teacher strikes are "worth it" because the concessions gained in long term benefits are substantial (C. Lininski, *Teachers Finding Illegal Strikes are "Worth It"* SHNS, 2/6/2023). There are reasons why certain public sector employees – teachers, police, and firefighters – are not permitted to strike. As noted, during strikes students may have profound learning loss and parents may have to choose between a paycheck and child safety. Page and his members should remember that an illegal strike is never "worth it" to the communities they serve. For that reason, only 13 states permit public school teachers to strike.

The Law Center sent lawyers to the court hearings. We are working to ensure that the cost of an illegal strike rises to the point that Max Page can no longer blithely state that such walkouts are "worth it."

## ***The Law Center prepares to challenge the State Changes to Title 5 septic system requirements on coastal communities.***

As noted in prior reports, the Pioneer Law Center has teamed up with Sidley Austin to prepare a challenge to the Massachusetts Department of Environmental Protection's (DEP) regulations regarding the reduction of nitrogen released by septic systems in coastal communities. The regulations will result in extreme expense to homeowners, but the studies show that the required changes will be ineffective. Key to the challenge is that the regulations were adopted without complying with the administrative processes required by state law. If the proper process had been followed the DEP would not have adopted the regulations as proposed.

## **Recent and Upcoming Pioneer Law Center Events**



### ***Artificial Intelligence and the Legal Profession.***

On July 24, 2024, Pioneer Law Center lawyers and interns hosted a presentation and demonstration on how artificial intelligence is being used in the practice of law. This program explored how the role of lawyers will change in light of developments with AI.

### ***Inaugural Brackett B. Denniston, III Program on Law and Democracy.***

The Pioneer Law Center will sponsor the first in a series of annual programs dedicated to an in-depth discussion of critical issues challenging the rule of law in America. The dinner and program is scheduled for Thursday, October 17, 2024 and will feature a lecture by former United States Solicitor General Paul Clement on free speech on college campuses. Sponsorship opportunities are available. To learn more, contact Caitlin Marple at: [cmarple@pioneerinsitute.org](mailto:cmarple@pioneerinsitute.org)

## Meet Our New Board Members



### *Amelia Welt Katzen*

Amelia Welt Katzen is the co-founder and Vice President of Jewish News Syndicate, an online news service focusing on Israel and the Middle East for Jewish community newspapers. She spent twenty years at the New England regional office of the U.S. Environmental Protection Agency as Senior Enforcement Counsel, overseeing hazardous waste management and emergency response laws. Amelia began her career focusing on commercial real estate in the Boston office of Sullivan & Worcester, later joining Kassler & Feuer and Hassman & Rackstein. She is a founding board member and current board clerk of the Committee for Accuracy in Middle East Reporting and Analysis (CAMERA) and serves on the Board of Directors of the Boston Lyric Opera.

Amelia holds an undergraduate degree from Cornell University, graduate degrees from the University of Chicago, and a JD from the University of Pennsylvania Law School. She is married to Joshua Katzen, a Boston real estate developer, and has three adult children and one grandchild.

### *Joseph A. Foster*



Joe is chair of our Bankruptcy Practice Group. He represents creditors ranging from small private lenders to nationally recognized banks and finance companies in out-of-court restructurings and chapter 11 reorganizations. Joe works with businesses and individuals in all aspects of insolvency matters ranging from prosecuting and defending litigation arising in bankruptcy courts, to counseling buyers of assets from businesses in bankruptcy, to assisting financially troubled businesses in loan restructuring and workouts. Joe also works with lenders and businesses in complex commercial finance matters.

In 2013, after almost 29 years with the firm, Joe was appointed New Hampshire Attorney General in 2013 by then Governor Maggie Hassan. As Attorney General, he led the New Hampshire Department of Justice which represents over 120 state agencies, commissions, boards, the governor, the executive council, the legislature, and the courts in complex transactions and litigation involving contract and employment disputes, personal injury, environmental laws, election laws, consumer protection laws, anti-trusts laws, non-profit matters and criminal justice matters. With that experience and knowledge, Joe now works with businesses and individuals in matters involving state government.

Joe received his J.D. from The George Washington University Law School (1984) and B.A. from Tufts University (1981).

## The Wins Keep Coming, Along with Requests for Help

In our last update, we shared a story about a philanthropist who saw the Law Center as an "investment in outcomes." With favorable rulings at the U.S. Supreme Court, the Massachusetts Supreme Judicial Court, and other legal venues, the Pioneer legal team continues to protect individual rights against well-resourced organizations like the SEC and Massachusetts Teachers Association, proving a tremendous return on investment for our donors.

As the Law Center's success becomes known, Frank and his team are receiving an increasing number of calls for help. Despite creative partnerships with leading law firms for pro bono support and leveraging legal interns, the number of individuals Frank has had to turn away continues to grow.

A solution exists—with increased philanthropic support, we aim to hire an additional attorney and paralegal to dramatically increase our capacity to help those in need. We invite you to join us in ensuring Frank and his team can continue to fight for individual rights and push back against government overreach. Together, we can keep the wins coming.

To learn more, contact Andrew Horgan, Chief Development Officer at [ahorgan@pioneerinstitute.org](mailto:ahorgan@pioneerinstitute.org) or 857.990.9036.



PIONEER  
PUBLIC INTEREST  
LAW CENTER