

IN BRIEF

NEWSLETTER | WINTER 2025



President's Message

This winter marks several pivotal moments for Pioneer New England Legal Foundation. January celebrates eight months since our strategic alliance with the New England Legal Foundation—a partnership that has strengthened our capacity to defend constitutional rights across the region. We've also launched our Education Law Team, dedicated to advancing educational opportunity and excellence for all children.

As this newsletter goes to press, we find ourselves in the midst of litigation that exemplifies why our work matters: the Legal Foundation and Sullivan & Worcester have filed a class action lawsuit against the City of Boston's Assessor's Office for conduct that can only be described as tyrannical.

The facts are straightforward and deeply troubling. When commercial property owners in Boston filed appeals with the Appellate Tax Board—a right guaranteed by law—the City's Assessor's Office responded by artificially inflating their tax assessments. Even when the City's own assessors agreed that property values had declined, the office deliberately overrode its software system and quietly added value back under "discretionary adjustments" for one reason: the property owner had dared to appeal.

This is not a tax policy dispute. This is government retaliation against citizens for exercising their constitutional rights.

The right to petition government—to appeal unjust decisions without fear of retribution—is foundational to our system of



ordered liberty. When government punishes citizens for exercising their First Amendment rights, it abandons the rule of law and rules by arbitrary power.

Our investigation began earlier this year when we uncovered this retaliatory scheme through research at City Hall. We gave written notice to the City and the Department of Revenue at least three times since June, documenting dozens of examples of this unlawful practice. The City failed to offer any meaningful response, leaving affected property owners with no choice but to resort to litigation.

We are asking the court to stop this practice immediately, declare it unlawful, and order the City to repay the excess taxes.

This case embodies our mission, but it is far from our only work. We're heading back to the U.S. Supreme Court to build on our 2023 *Tyler v. Hennepin County* victory, tackling Michigan's bureaucratic barriers that prevent homeowners from recovering their equity after tax foreclosures. Recent court decisions have affirmed our positions: the Massachusetts Supreme Judicial Court agreed with our interpretation of workers' compensation law, and the First Circuit sided with us in striking down Maine's overly broad restrictions on corporate political speech.

Our new Education Law Team is monitoring significant shifts in education policy throughout New England. Massachusetts is implementing lottery systems for oversubscribed vocational schools, while New Hampshire has opened its Education Freedom Account program to families at all income levels. We're convening legal experts and education leaders through our Working Group on Private School Choice to develop strategies that expand options for families.

This work—from challenging government tyranny to defending school choice—exemplifies our mission: to defend constitutional democracy through principled legal advocacy and strategic litigation. Thank you for standing with us.

The Honorable Frank J. Bailey
President
Pioneer New England Legal Foundation



IN THE NEWS AND COMMUNITY



BRACKETT B. DENNISTON, III RULE OF LAW LECTURE

Speaking Freely, Listening Well: Civil Disagreement in Polarized Times

Danielle Sassoon, former Assistant U.S. Attorney for the Southern District of New York, delivered the second annual Denniston Lecture on the essential role of rigorous debate in preserving both our legal system and our democracy.

"Debate, even when uncomfortable, is the mechanism of progress," Sassoon argued. "On the other hand, when we stifle disagreement, we allow harmful or mediocre

ideas to go unchallenged, which in turn can hurt the development of the law, as well as the pursuit of truth and just outcomes."

Drawing from her experience prosecuting high-profile corruption and financial fraud cases, Sassoon recounted her decision to resign rather than dismiss corruption charges against NYC Mayor Eric Adams—a powerful example of the courage required to uphold the rule of law in the face of political pressure and the importance of principled disagreement within our institutions.



Annual National Conference of Bankruptcy Judges: Frank Bailey spoke on the value, impact and best practices in filing amicus briefs in federal and state courts.



Unveiling the Truth Behind the City of Boston's ATB Penalty Program: Frank Bailey spoke, along with Dan Swift of Ryan LLC, at a webinar for the Real Estate Bar Association on Pioneer's recent exposure of Boston's unlawful retaliatory tax practices against commercial property owners.



Unveiling the Truth Behind the City of Boston's ATB Penalty Program (Part II): Frank Bailey and Dan Swift hosted a follow-up discussion about this case.



The Steward Healthcare Case Demystified: In a program presented jointly by the American Bar Association and the Legal Foundation, Frank Bailey moderated a panel discussion featuring Andrew Troop and Samuel Maizel on the collapse of Steward Health Care into Chapter 11 bankruptcy.



National Association of Bankruptcy Trustees: Frank Bailey presented a tutorial on the effective presentation of evidence at trial.

CASE UPDATES



Pioneer New England Legal Foundation Fights to End “Home Equity Theft” (Again!) at the U.S. Supreme Court

Following the landmark 2023 Supreme Court victory in *Tyler v. Hennepin County* (2023), the Legal Foundation helped expand that decision into new protections for homeowners in Massachusetts and across the country.



Home equity theft occurs when governments seize homes over unpaid property taxes and pocket the entire property value—even after the debt is satisfied. The *Tyler* victory established that this practice violates the Constitution. Now, the fight continues at the Supreme Court.

The Legal Foundation, alongside Greater Boston Legal Services (GBLS) and Greenberg Traurig, has filed briefs in two critical Michigan cases: *McGee v. Alger County* and *Joseph v. Iron County*. These cases challenge complicated and unfair rules that make it impossible for people to reclaim the value left in their homes after a tax foreclosure.

In one case, a woman lost the full value of her long-time family home simply because she used FedEx instead of certified mail to send her paperwork. The paperwork arrived on time, but Michigan’s intentionally complicated rules disqualified her anyway.

The Legal Foundation is urging the Court to strike down these unconstitutional barriers and affirm a basic principle: falling behind on property taxes shouldn’t mean losing your family wealth.

SJC Rules for Workers’ Compensation Insurers

The Massachusetts Supreme Judicial Court delivered a significant win for workers’ compensation insurers, adopting our interpretation of a widely contested state insurance statute and rejecting the Department of Industrial Accidents’ (DIA) longstanding position.

The statute establishes a Workers’ Compensation Trust Fund that reimburses insurers when they pay “second injury”

benefits—extra costs for workers with preexisting conditions who suffer new, work-related injuries that worsen their condition. The purpose is to encourage employers to hire and retain employees with physical disabilities.

But what happens when an insurer becomes insolvent and no longer issues new policies, but it continues to pay “second injury” insurance claims under existing policies? Is that insurer still entitled to second-injury reimbursement from the Trust Fund? The DIA has long said no.

In its amicus brief, the Legal Foundation argued that the statute establishes a *mandatory* funding and reimbursement scheme with no exception for insolvent insurers. The Act requires the Commonwealth to reimburse employers’ insurers when the insurers pay an employee’s second-injury benefits, regardless of insolvency status.

The Court adopted the Legal Foundation’s understanding of the statute. This ruling protects insurers fulfilling their obligations to injured workers and ensures that the reimbursement scheme operates as the legislature intended.

Upholding The First Amendment Rights of Domestic Corporations

The First Circuit struck down Maine’s categorical ban on political spending by corporations with foreign ownership, vindicating the First Amendment rights we defended.

Maine’s statute prohibited any corporation with 5% or more foreign government ownership from making campaign contributions or expenditures for political candidates and ballot initiatives—regardless of whether foreign shareholders *actually* influenced spending decisions. We argued that this sweeping ban violated core political speech protections.

The First Circuit agreed, ruling that Maine’s 5% threshold was likely unconstitutional because it restricted speech based solely on ownership structure, not actual foreign influence. This decision protects domestic corporations’ right to participate in democratic discourse.



IN THE PIPELINE



Pioneer New England Legal Foundation Cracks Down on Punitive Damage Abuse

In *Fontaine v. Philip Morris USA, Inc.* and *Demoulas Super Markets, Inc.*, the jury awarded an unprecedented \$1 billion in punitive damages—the largest such verdict in the history of the Commonwealth. The sum was modified through an order of remittitur to \$56 million, which is still seven times the \$8 million compensatory award in the case. In its brief, the Legal Foundation respectfully asks the Court to refer the issue of how punitive damages are handled in jury trials to the civil rules committee. Massachusetts is antiquated by national standards, putting biotech, pharmaceutical, and other product-based businesses at serious risk.

The Legal Foundation Challenges Counterproductive Inclusionary Zoning Ordinances

A severe shortage of housing in Greater Boston has driven talented young professionals away from our community. Inclusionary zoning ordinances require that a percentage of each residential development be devoted to “affordable housing,” which often makes the development impossible to finance. Cambridge’s inclusionary zoning ordinance requires that 20% of all new housing developments be allocated to affordable housing. As a result, there are inadequate new housing developments in Cambridge. Recent U.S. Supreme Court cases have found inclusionary zoning ordinances violative of the Fifth Amendment’s Takings Clause, and we have been asked by a local developer to challenge the Cambridge ordinance under this standard. While we applaud affordable housing opportunities, an ordinance that results in no new housing is simply counterproductive.

The Legal Foundation Challenges Project Labor Agreements That Hurt Communities and Small and Minority-Owned Businesses

Massachusetts’ new Project Labor Agreement (PLA) law impacts 80 percent of the construction workforce in the Commonwealth—and not for the better. PLAs have historically been shown to cause delays, increase taxpayer burdens, and adversely impact non-union contractors; including minority-owned contractors.

As part of our advocacy for small and minority-owned businesses and against government overreach, the Legal Foundation is assisting open-shop contractors by preparing documents for government review to minimize the law’s adverse impact. Additionally, we have recently filed a public

records request with the City of Boston, which will serve as an investigative tool to determine whether any PLA used in the City’s White Stadium renovation project has been given the requisite deliberation or otherwise unlawfully discriminates against non-union contractors in an important and lucrative public project.

Fighting Government Overreach in Consumer Protection Enforcement

A Massachusetts Superior Court recently awarded over \$50 million in restitution damages and \$114 million in civil penalties in a health insurance marketing case—“the largest total of civil penalties in an action brought by the Attorney General’s office” in state history. However, the Attorney General failed to prove that consumers actually relied on the alleged misleading marketing statements or suffered any “ascertainable loss” because of the alleged misleading statements.

Instead, the Court adopted an unprecedented “assumed reliance” theory. This dangerous precedent threatens every business in Massachusetts. The Legal Foundation is challenging this government overreach to protect free enterprise and ensure the Consumer Protection Act is applied fairly. “The question in this case is whether those retention bonus payments are ‘wages’ for purposes of the Wage Act, G.L.c. 149, §148. We conclude that they are not; instead, they are a form of additional, contingent compensation outside the ambit of the Wage Act. We accordingly affirm the judgment in favor of the defendants dismissing the plaintiff’s Wage Act claim,” Justice Gabrielle R. Wolohojian wrote for the SJC.

SJC Agrees with Pioneer New England Legal Foundation on Wage Act Claim

An employee claiming to be owed bonus payments under a retention agreement with his employer could not bring suit under the Wage Act, as the retention bonus payments are not “wages” but instead are a form of additional, contingent compensation outside the ambit of the statute, the Supreme Judicial Court has ruled. The plaintiff entered an agreement with his employer under which he would receive two retention bonus payments if he remained with the company until fixed dates and remained in good performance without any reduction in his work schedule. “The question in this case is whether those retention bonus payments are ‘wages’ for purposes of the Wage Act, G.L.c. 149, §148. We conclude that they are not; instead, they are a form of additional, contingent compensation outside the ambit of the Wage Act. We accordingly affirm the judgment in favor of the defendants dismissing the plaintiff’s Wage Act claim.”

EDUCATION LAW UPDATE



The Legal Foundation's Education Law Team is dedicated to advancing educational opportunity, equity, and excellence through strategic litigation and public education. Our team collaborates closely with policy experts and national partners to advance school choice, strengthen civics education, and ensure that every child has access to a high-quality education. We work to protect the rights of students and families, promote innovative reforms, and hold state actors accountable for meeting their obligations under the law.

We are excited to announce the creation of our **Working Group on Private School Choice**, a new initiative bringing together legal experts, educators, policymakers, and advocates to advance educational equity and expand opportunities for families. We will create a collaborative forum where leaders in law, education, and policy can work together to defend and expand parental choice in education, ensure students can access essential services, and develop innovative approaches to education equity, including litigation.

Recent Policy Developments

Adoption of Lottery-Based Admissions

On May 20, 2025, Massachusetts adopted a weighted lottery system for admissions to in-demand vocational-technical schools when applications exceed available seats. Between 2005 and 2020, voc-tech enrollment rose 24 percent. The problem is demand is outpacing supply. For example, Worcester Technical High School has a list of 700 students waiting to get in.

The lottery will prioritize applicants with:

- o Fewer than 27 unexcused absences,
- o No major disciplinary infractions, and
- o Demonstrated interest in career tech programs (e.g., attending an open house or information session).

Proponents argue the lottery will help dismantle admissions barriers that disproportionately impact low-income students, students of color, English learners, and students with disabilities. Administrators and parents raised concerns that abandoning grades and other performance measures could undermine student motivation and undermine the vocational model. Leaders emphasized the need to expand school capacity rather than overhaul admissions processes.

New Hampshire Expands Education Freedom to All Students

On June 10, 2025, Governor Kelly Ayotte signed SB295 into law, making New Hampshire the sixth state this year to establish or expand a universal school choice program.

The new law removes income restrictions on the state's Education Freedom Account (EFA) program, opening eligibility

to all K-12 students. Through education savings accounts (ESAs), families can direct funds toward a broad range of approved expenses, including private school tuition, tutoring, therapies, instructional materials, and technology. The program is financed through the state's education funding formula, ensuring that every student who chooses to participate can access support.

Since launching in 2021, 5,600 students have enrolled in the EFA program, receiving an average of \$5,100 annually. By eliminating eligibility limits the expansion is expected to empower thousands more families to tailor their children's education to their individual needs.

Senate Passes Legislation to Make Schools Cell Phone-Free



The Massachusetts Senate has approved legislation establishing cell phone-free schools statewide. The measure requires public school districts to prohibit student cell phone use during the school day to strengthen focus, support mental health, and create healthier learning environments.

Under SB2561, An Act to Promote Student Learning and Mental Health, all districts must implement cell phone-free policies by fall 2026. The bill allows reasonable exceptions for students who rely on personal devices to manage medical conditions, meet off-campus travel needs, follow individualized education plans (IEPs), or accommodate a disability. Districts must also provide families and students with at least one reliable method of communication during school hours and ensure access in emergencies.

EDUCATION LAW UPDATE



We are watching a case where the U.S. Supreme Court has been asked to review a California case, known as *Miller v. Civil Rights Department*. Catharine Miller is a baker who was sued by the State of California for unlawful discrimination after she refused to sell a wedding cake for a same-sex marriage because of her religious beliefs. As part of her appeal, Miller is asking the Court to overrule *Employment Div. v. Smith*, 494 U.S. 872 (1990), which holds that laws that restrict religious practice are acceptable as long as the law imposes the same restriction on everyone else, and any impact on religious exercise is merely incidental. Relying on *Smith*, the California courts held that Miller could be fined and forced to close her business if she refused to sell cakes for same-sex weddings, because laws prohibiting discrimination based on sexual orientation apply to every one, and not just to people who are motivated by their religious beliefs.

Five justices have said in previous cases that *Smith* was wrongly decided because the right to engage in religious conduct should not depend on how other people are treated, but for various reasons the court has declined to overrule *Smith*. We should know within the next few months whether the Supreme Court decides that *Miller* is the right case to reconsider *Smith* and agrees to hear it. If the Court takes the case, and overrules *Smith*, this would be a significant change in Free Exercise law. In the education context, it may then be possible to challenge laws that apply to all private schools, both religious and sectarian, but in practice make it more difficult or expensive for parents to exercise their fundamental right to send their children to private religious schools.



Frank Bailey attended The Top Women of Law, an annual *Massachusetts Lawyers Weekly* event celebrating outstanding women lawyers and their professional achievements. Pictured above is Julia Frost Davies, Shareholder at Greenberg Traurig, who was honored as a Top Woman of Law for her groundbreaking work on *Tyler v. Hennepin County* and local equity theft cases with Pioneer New England Legal Foundation, and Charlie Liu, Associate at Greenberg Traurig. Together, they were instrumental partners in our local home equity theft litigation.

*Thank you to our co-counsel
and partners.*



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MEET OUR TEAM



Meet The Legal Foundation's New Staff



Gabriela Forero

Gabriela is a graduate of the LL.M. program at Boston University School of Law, where she was recognized as a Dean's Scholar and received the LL.M. Pro Bono Award.

Originally from Colombia, where she earned her LL.B. and first practiced, Gabriela brings experience in litigation, arbitration, and antitrust, along with a deep commitment

to educational justice through her leadership with several education initiatives and legal advocacy efforts across Latin America and the United States. Her work bridges international legal practice with a passion for using the law to expand access to quality education.



Paul Johnson

Paul Johnson brings 40 years of diverse litigation experience to Pioneer New England Legal Foundation. Paul has practiced in Massachusetts, Maine and Vermont, and is admitted to the bars of those states and New Hampshire. He has handled appeals before the First Circuit, the

Maine Supreme Court, and the Massachusetts

Appeals Court in matters ranging from professional liability and products liability claims, to real estate disputes, to insurance coverage and personal injury claims. He is a graduate of Dartmouth College and the University of Virginia Law School.

The Legal Foundation is hiring!

Pioneer New England Legal Foundation is seeking a highly talented Paralegal/Legal Assistant to support our fast-paced public interest law practice. The ideal candidate will bring strong knowledge of the litigation process in state and federal court and the ability to provide administrative support to the lifecycle of the case. To be considered, please send your resume and cover letter to Mary Connaughton at mconnaughton@pioneerinstitute.org, with the subject line: "Legal Foundation Paralegal."

Meet The Interns

Emma Ferdinandi



Emma is a third-year law student at the Boston University School of Law. Emma will serve as judicial law clerk to The Honorable Scott Kafer of the Massachusetts Supreme Judicial Court in the fall of 2025, following which she will join Goodwin in Palo Alto.

Thomas Lane



Tom is a second-year law student at Boston College Law School, where he is involved in BC Law Republicans, Campus Ministry, the Saint Thomas More Society, and the Federalist Society. This summer, Tom will join Dain, Torpy, Le Ray, Wiest & Garner, P.C. as a 2026 Summer Associate in their Litigation group.

Deeya Modhwadiya



Deeya is a third-year law student at the Boston University School of Law. Deeya will join the law firm of Cahill Gordon & Reindel LLP in New York after her graduation in May 2025.

MESSAGE FROM OUR CDO



Victories Are Just the Beginning—Your Support Ensures They Last



A message from Andrew Horgan, Chief Development Officer

As you've read in this newsletter, the Legal Foundation continues to win significant victories for constitutional rights, free enterprise, and educational freedom. From the Supreme Court to the First Circuit to the Massachusetts SJC, our legal team is having real impact.

But here's what most people don't realize: winning in court is only half the battle.

Whether it's Michigan creating impossible procedural barriers after our Tyler victory on home equity theft or government agencies finding new ways to overreach and violate constitutional rights, we've learned that protecting liberty requires constant vigilance and the willingness to challenge unlawful conduct wherever we find it.

That's why your investment in the Legal Foundation matters so much. Every dollar you give doesn't just fund a single case—it supports the ongoing fight required to turn legal victories into lasting change.

This winter, we're fighting on multiple fronts:

- Returning to the Supreme Court in two Michigan cases to protect homeowners across the country

- Challenging Massachusetts' outdated punitive damages framework that threatens businesses with unpredictable liability
- Protecting small and minority-owned contractors from discriminatory Project Labor Agreements
- Exposing and challenging Boston's unlawful practice of increasing property assessments on taxpayers who appeal to the Appellate Tax Board

None of this work is possible without committed supporters like you.

As we welcome the new year, I invite you to join us in this vital work. Your partnership ensures that we can continue defending constitutional principles, promoting economic opportunity, and ensuring government accountability across New England and around the nation.

Together, we're not just winning cases—we're preserving the rule of law for future generations.

With gratitude,

Andrew Horgan
Chief Development Officer

To make your tax-deductible contribution, visit www.pioneerlegal.org or contact me directly at ahorgan@pioneerinstitute.org / 857.990.9036.

Want to Learn More about Pioneer New England Legal Foundation?



Visit Our Website
www.pioneerlegal.org



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