No. 28 EAP 2026

IN THE SUPREME COURT OF PENNSYLVANIA

GOLDATA COMPUTER SERVICES, INC., D/B/A GOLDATA FINANCIAL; ELLIOT MITCHELL GOLDBERG; 1931 FUNDING, LLC; 442 FUNDING, LLC; 567 FUNDING, LLC; 803 FUNDING, LLC; AND LEGS 1, LLC,

Appellants,

v.

DEPARTMENT OF BANKING AND SECURITIES,

Appellee.

BRIEF OF *AMICUS CURIAE* THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. IN SUPPORT OF APPELLEE

On Appeal from the Judgment of the Commonwealth Court of Pennsylvania at No. 328 C.D. 2024, dated December 9, 2025, Affirming the Final Order of the Department of Banking and Securities, dated February 28, 2024

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Formed in 1919, the North American Securities Administrators Association, Inc. ("NASAA") is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and México. NASAA has 68 members, including the securities regulators in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. Pennsylvania is a NASAA member by and through Appellee, the Department of Banking and Securities (the "Department").

The overriding mission of NASAA and its members is to protect investors, particularly retail investors, from fraud and abuse. NASAA supports its U.S. members in carrying out their investor protection and regulatory duties by, *inter alia*, promulgating model rules and statutes, coordinating examination sweeps and multi-state enforcement actions, and commenting on legislative and rulemaking proposals. NASAA also offers its legal analysis and policy perspectives to state and federal courts as *amicus curiae* in cases involving the interpretation of state and federal securities laws.

NASAA and its U.S. members have a substantial interest in this case because it poses fundamental questions about the authority of state securities

[1] In accordance with Pa. R.A.P. 531(b)(2), no person outside NASAA and its legal counsel paid for any portion of the preparation of this brief or authored any part of this brief.

regulators to assess administrative penalties against their licensees.[2] Virtually all of NASAA's U.S. members can bring administrative enforcement actions, and all but three can assess penalties administratively against investment advisers they find liable for fraud.[3] If this Court were to curb the Department's administrative penalty authority here, this Court could undermine the work of state securities regulators nationwide, resulting in real harm to retail investors.

ARGUMENT

I. The Department's Administrative Enforcement Authority, Including its Penalty Authority, is Entirely Consistent with 18th Century English Law and the Subsequent Development of the Law in U.S. States.

State securities laws, including the Pennsylvania Securities Act, are remedial statutes that should be interpreted liberally and flexibly to protect investors. *See, e.g.*, *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151 (1972); *Waters v. Millsap*, 465 S.W.3d 851, 858-59 (Ark. 2015); *State v. Kirby*, 133 N.M. 782, 788 (2003); *Penn. Secs. Comm'n v. Cons. Research Consultants*, 414 Pa. 253, 255 (1964). The fifty state securities regulators in the United States exist in a

[2] A Hearing Officer of the Department found Appellants liable in an administrative proceeding for a host of securities law violations that fell into three basic categories: (i) unlawful sale of unregistered securities, (ii) unlawful securities activities by an investment adviser, and (iii) fraud by an investment adviser. In this brief we focus solely on the third category of violations, fraud, and the Department's assessment of administrative penalties thereon.

[3] One state (New York) does not authorize its securities regulator to bring any administrative enforcement actions. In addition, the Colorado and Ohio securities regulators can bring administrative actions but cannot impose penalties. *See infra* note 6 and accompanying text.

variety of legal structures.[4] Some are independent or quasi-independent commissions (akin to the U.S. Securities and Exchange Commission ("SEC")) while others are agencies or bureaus within their state's executive branch of government. State securities regulators can be created through a state's constitution (*e.g.*, the Arizona Securities Division) or through state statutes (*e.g.*, the Delaware Investor Protection Unit).[5]

State securities laws set disclosure standards for securities issuers and conduct standards for securities intermediaries (such as Appellants Goldata and Goldberg here). State securities laws provide for civil and criminal causes of action in the hands of the government and for civil causes of action to private litigants. State securities regulators can issue cease-and-desist orders, revoke securities licenses, and order respondents to pay disgorgement or provide restitution of ill-gotten gains. What is more, nearly every state securities regulator can assess civil

[4] We do not discuss the securities regulators or securities regulations in the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam because those jurisdictions do not have state sovereignty and constitutions separate from the U.S. Constitution.

[5] The Arizona Securities Division (a NASAA member) is part of the Arizona Corporation Commission, which was established through that state's constitution. *See* Ariz. Const. art. 15, § 1(B). The Delaware Investor Protection Unit (also a NASAA member) is an arm of the Delaware Department of Justice and was created through the Delaware Securities Act of 1973. *See* 6 Del. Admin. Code § 200-A-100. We note these differences to acknowledge this fact and to foreshadow that, contrary to arguments raised by Appellants' *amici*, issues regarding how the Department is structured or the manner of its administrative proceedings are relevant to Appellants' constitutional jury trial rights. *See infra* note 25 and accompanying text.

penalties administratively against registered investment advisers (like the Department did here).[6] This authority is vital to their investor protection missions.

A. The Department's Administrative Enforcement Action and Civil Penalty Against Appellants Was an Exercise of Governmental Regulatory Authority, One of Three Types of Legal Disputes Exempt from Jury Trials Under 18th Century English Law and U.S. State Law Since America's Founding.

United States law has always recognized that three categories of legal disputes are exempt from constitutional jury trial rights. Two of these exceptions arise in civil law and one arises in criminal law. These three exceptions are for (i) certain types of private civil claims as determined by a legislature and (ii) regulatory enforcement actions brought by the government (in civil law), and (iii)

[6] The Department's administrative penalty authority springs from Section 602.1(c) of the Pennsylvania Securities Act (though the statute refers to these as "administrative assessments," not as "penalties" or "fines"). *See* 70 Pa. Cons. Stat. § 1-602.1(c) (2026). Forty-six other states give their securities regulators comparable (or even broader) administrative penalty authority. *See* Ala. Code § 8-6-19(j) (2026); Alaska Stat. § 45.56.690(d) (2026); Ark. Code § 23-42-209(a)(2)(C) (2026); Cal. Corp. Code § 25252 (2026); Conn. Gen. Stat. § 36b-27 (2026); Del. Code tit. 6, § 73-601(a) (2026); Fla. Stat. § 517.191(9) (2026); Ga. Code § 10-5-73(d) (2026); Haw. Rev. Stat. § 485A-604(d) (2026); Idaho Code § 30-14-604(d) (2026); 815 Ill. Comp. Stat. § 5/11(E)(4) (2026); Ind. Code § 23-19-6-4(d) (2026); Iowa Code § 502.604(4) (2026); Kan. Stat. § 17-12a604(b)(1) (2026); Ky. Rev. Stat. § 292.470(3)(c) (2026); La. Rev. Stat. § 51:710.1 (2026); Me. Rev. Stat. tit. 32, § 16604(4) (2026); Md. Code, Corps. & Ass'ns § 11-701.1(b)(4) (2026); Mass. Gen. Laws ch. 110A, § 407A(a) (2026); Mich. Comp. Laws § 451.2604(4) (2026); Minn. Stat. § 80A.81(d); Miss. Code § 75-71-604(d) (2026); Mo. Rev. Stat. § 409.6-604(d)(1) (2026); Mont. Code § 30-10-305(3) (2026); Neb. Rev. Stat. § 8-1108.01(4) (2026); Nev. Rev. Stat § 90.630(2)(d) (2026); N.H. Rev. Stat. § 421-B:6-604(d) (2026); N.J. Stat. § 49:3-68.1(b) (2026); N.M. Stat. § 58-13C-604(C) (2026); N.C. Gen. Stat. § 78A-47(c)(1) (2026); N.D. Cent. Code § 10-04-16(1) (2026); Okla. Stat. tit. 71, § 1-604(D) (2026); Or. Rev. Stat. § 59.995 (2026); R.I. Gen. Laws § 7-11-602(b)(4) (2026); S.C. Code § 35-1-603(b)(2)(C) (2026); S.D. Codified Laws § 47-31B-604(d) (2026); Tenn. Code § 48-1-121(d) (2026); Tex. Gov't Code § 4007.106 (2026); Utah Code § 61-1-20(1)(e)(ii) (2026); Vt. Stat. tit. 9, § 5604(d) (2026); Va. Code § 13.1-521(A) (2026); Wash. Rev. Code § 21.20.395(1), (2) (2026); W. Va. Code § 32-4-407a(b)(1) (2026); Wis. Stat. § 551.604(4) (2026); Wyo. Stat. § 17-4-604(d) (2026).

misdemeanor criminal trials (in criminal law). The Pennsylvania Constitution's provision that "[t]rial by jury shall be as heretofore, and the right thereof remain inviolate", Pa. Const. of 1968, art. I, § 6, must be interpreted in light of these three longstanding exceptions.[7]

1. 18th Century English Law and State Law Thereafter Recognize an Exception to Jury Trial Rights for Certain Types of Private Civil Claims as Determined by a Legislature.

Turning back to English law at the time of America's founding, the general adjudicators of civil disputes were the common law courts and courts of equity. However, English law permitted numerous other special tribunals set up by Parliament to resolve civil disputes in particular areas. Examples included the forest courts (to administer the Crown's forested lands),[8] ecclesiastical courts (to hear disputes related to the Church of England),[9] prerogative courts (to probate estates and wills),[10] and an insurance court (to hear insurance disputes).[11] England

[7] The right to jury trial was expressed in Article IX, Section vi, of the Pennsylvania Constitution of 1790. *See* Pa. Const. of 1790, https://palrb.gov/getfile.cfm?file=resources/preservation-project/smithlaws/17001799/1790/0/const/conpa.pdf&view=true. Pennsylvania has had five constitutions, and the right to jury trial is now expressed in Article I, Section 6.

[8] William Blackstone, Commentaries on the Laws of England in Four Books, Vol. 2, Book III, at *71 (George Sharswood *et al.* eds., J.B. Lippincott Co. 1893), publicly available by download at https://oll.libertyfund.org/titles/sharswood-commentaries-on-the-laws-of-england-in-four-books-2-vols.

[9] *Id.* at *63.

[10] *Id.*

[11] *Id.* at *74.

also had non-judicial regulatory bodies such as its commissioner of sewers.[12] All these authorities could issue orders without resort to a jury, and some (such as the commissioner of sewers) could assess civil penalties.[13] It is thus simply incorrect for anyone to assert that 18th century English law always required a jury if a penalty was going to be imposed.

These types of special civil tribunals were incorporated into American jurisprudence. For example, in the 1700s and early 1800s, several states (including Pennsylvania) established Orphans' Courts.[14] Orphans' Courts oversaw the administration of estates of deceased landowners to protect the interests of their minor heirs.[15] They had "broad powers" to settle debts, appoint guardians, and hold property in escrow.[16] Decisions were made by justices of the peace (and later by county judges) acting without juries. Pursuant to a 1713 act of the Pennsylvania colonial assembly, Pennsylvania's Orphans' Courts could assess penalties against

[12] *Id.* at *73.

[13] *See id.* This listing contains only some of the many English special tribunals. *See generally id.* at *29-84.

[14] Pennsylvania's Orphans' Courts were expressly incorporated into the Pennsylvania Constitution of 1790. *See* Pa. Const. of 1790, *supra* note 7, art. V, § 1.

[15] *See* Neal G. Wiley, A Brief History of the Pennsylvania Orphans' Court, 90 Pa. Bar Ass'n Q. 134, 135, 138 (2019).

[16] *Id.* at 135.

estate administrators for committing fraud or otherwise failing to properly account for the assets in an estate.[17]

The proceedings in Orphans' Courts survived constitutional right to jury challenges. In *Wood v. Tallman's Ex'rs*, 1 N.J.L. 153 (1793), the New Jersey Supreme Court upheld that state's Orphans' Courts against precisely such a challenge. *Wood* noted that New Jersey's Orphans' Courts had been created by a state statute and that the law establishing them was "remedial." *Id.* at 156. *Wood* held Orphans' Court proceedings did not infringe upon constitutional jury trial rights because these courts were like "chancery, prerogative and spiritual courts [that] have always proceeded without the intervention of a jury." *Id.* at 158.[18]

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[17] *See* "An Act for Establishing Orphans' Courts," Act of March 27, 1713 (1 Smith L. ch. 198, pp. 81-89), at 82, https://www.palrb.gov/Preservation/Smith-Laws/View-Document/17001799/1713/0/act/0197.pdf (stating justices of the peace are empowered to impose "such penalties [. . .] as the said Justices [. . .] shall approve of" if an estate administrator cannot "answer or make good the value of what the decedent's estate doth or shall amount to").

[18] This analysis shows why Appellants *amici* are wrong when they assert (in part I of the Investor Choice Advocates Network's brief and part II of the U.S. and Pennsylvania Chambers of Commerce brief) that civil penalties necessarily required jury trials under 18th century Pennsylvania law. Not so. Orphans' Courts (at a minimum) could do this. *Wood* also supports the conclusion that the Department's action here is not properly viewed as an action in debt, an issue included within the scope of the question presented in this case. *Wood* expressly rejected this argument. *See id.* at 157-58 (holding Orphans' Court proceedings are not actions in debt because there is no definable amount of money being contested). Modern courts have held similarly about administrative proceedings. *E.g.*, *Comm'r of Env. Prot. v. Conn. Bldg. Wrecking Co.*, 227 Conn. 175, 184 (1993) (holding an administrative enforcement action seeking a civil penalty is not an action in debt because there is no predetermined amount of money the agency is seeking to recover and the amount of any penalties that may be imposed are unknowable at the outset).

2. 18th Century English Law Recognized Jury Trial Exceptions for Regulatory Enforcement Actions and Misdemeanor Criminal Cases Brought by the Crown.

English law also allowed the Crown to bring cases in its own name before magistrates or tribunals acting without a jury. These types of cases, which William Blackstone termed "summary proceedings," can be put into two broad categories: (a) civil regulatory enforcement actions and (b) criminal misdemeanor trials. It is worth quoting Blackstone at length for this body of 18th century English law. From Blackstone (all emphasis and spelling in the original):

> By a *summary* proceeding I mean principally such as is directed by several acts of parliament (for the common law is a stranger to it, unless in the case of contempts) for the conviction of offenders and the inflicting of certain penalties created by those acts of parliament. In these there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge [. . .].
>
> I. Of this summary nature are all trials of offences and frauds contrary to the laws of the *excise* and other branches of the *revenue*, which are to be inquired into and determined by the commissioners of the respective departments, or by justices of the peace in the country; officers who are all of them appointed and removable at the discretion of the crown. And though such convictions are absolutely for the due collection of the public money, and are a species of mercy to the delinquents, who would be ruined by the expense and delay of frequent prosecutions by action or indictment; and though such has usually been the *conduct* of the commissioners, as seldom (if ever) to afford just grounds to complain of oppression, yet when we again consider the various and almost innumerable branches of this revenue which may be in their turns the subjects of fraud, or at least complaints of fraud, and of course the objects of this summary and arbitrary jurisdiction, we

> shall find that the power of these officers of the crown over the property of the people is increased to a very formidable height.
>
> II. Another branch of summary proceedings is that before *justices of the peace*, in order to inflict divers petty pecuniary mulcts and corporate penalties denounced by act of parliament for many disorderly offences [. . .].[19]

America incorporated these two types of governmental summary proceedings into our jurisprudence as well.

3. State Laws Have Always Recognized Jury Trial Exceptions for Regulatory Enforcement Actions and Misdemeanor Criminal Trials, and the Department's Action Here Falls Within the Exception for Regulatory Enforcement Actions.

Taking Blackstone's second category of summary proceedings first, early American courts routinely upheld misdemeanor criminal convictions imposed without juries. This Court in *Byers v. Commonwealth*, 42 Pa. 89 (1862), affirmed a term of imprisonment ordered by a Philadelphia justice of the peace for a misdemeanor pickpocketing offense. This Court wrote that "never in England" was there a requirement "that every litigated question of fact should be submitted to a jury," and similarly that "[s]ummary convictions for petty offences [*sic*]" have always been sustained. *Id.* at 94. This distinction in criminal law of course still exists today, with "serious offences" entitling a defendant to trial by jury whereas

[19] Blackstone, *supra* note 8, Book IV, at *280-81.

"petty offenses" do not. *See, e.g.*, *Commonwealth v. Langley*, 145 A.3d 757, 760 (Pa. Super. Ct. 2016) (citing *Commonwealth v. Mayberry*, 459 Pa. 91, 98 (1974)).

We can also find examples of Blackstone's first category of juryless summary proceedings, governmental regulatory actions, since the earliest days of our republic. *Farrar v. Eastman*, 5 Greenl. 345 (Me. 1828), tells the story of a regulatory proceeding from the 1700s. A local government seized a parcel of real property and sold it to pay delinquent taxes owed. No jury was involved. *See id.* The Maine Supreme Court upheld the seizure and sale notwithstanding the absence of a jury and even in spite of the fact that the 1753 colonial act authorizing such proceedings had required that they be adjudicated by a "committee."[20] The court wrote that nothing in the text of colonial act or in public policy precluded the township "from confiding this [seizure and sale] power to a committee of one" (*i.e.*, to a single person). *Id.* at 350. In another field, early courts upheld summary proceedings in connection with alcohol regulations. To offer but two examples, this Court did so in *Van Swartow v. Commonwealth*, 24 Pa. 131 (1854), and New York's highest court did so in *Presmeyer v. Bd. of Comm'rs*, 59 N.Y. 92 (1874).

[20] *See* "An Act to Subject the Unimproved Lands Within This Province to be Sold for Payment of Taxes Assessed on Them By Order of the Great and General Court and Votes and Agreements of the Proprietors Thereof", July 26, 1753, Acts and Resolves of the Province of the Massachusetts Bay, Vol III, pp. 251-52 (Albert J. Wright, ed., 1878), Internet Archive, https://archive.org/details/actsresolvespass4256mass/page/250/mode/2up. The transaction was ultimately invalidated, though, because the township had executed the seizure and sale too quickly; it did not wait the minimum forty days as required by the 1753 colonial act. *See Farrar v. Eastman*, 1 Fairf. 191 (Me. 1833).

The scope of regulatory summary proceedings picked up steam in the mid-1800s, with the creation of the first federal and state banking regulators and railroad regulators. Over time, the regulatory authority of these agencies expanded to include public utilities, telegraph and telephone companies, and other so-called public service industries. By the early 1900s, there were "innumerable commissions in this country, federal and state, [. . .] which are authorized by legislative authority to make rules governing the conduct of business of various kinds, and the violation of those rules when made, is often declared by legislative authority to be a crime."[21] These agencies routinely brought administrative enforcement actions that were upheld against right to jury trial challenges.

The Wisconsin Railroad Commission provides an example. This commission was created by statute in 1905[22] to regulate railroads in the state, and its authority was expanded over time to include all public utilities in Wisconsin. *See Hotel Pfister*, *Inc. v. Wis. Tel. Co.*, 233 N.W. 617, 618 (Wis. 1930). The commission's authority was "broad, comprehensive, and all-inclusive." *Id.* It could

[21] Edward A. Harriman, The Development of Administrative Law in the United States, 25 Y.L.J. 658, 665 (1916).

[22] *See* "An Act, to regulate railroads and other common carriers in this state, create a board of railroad commissioners, fix their salaries, define their Outies, prevent the imposition of unreasonable rates, prevent unjust discriminations, insure an adequate railway service, prescribe the mode of procedure and the rules of evidence in relation thereto, prescribe penalties for violations, and making an appropriation therefor.", June 13, 1905, Laws of Wisconsin (ch. 362, pp. 549-69), https://docs.legis.wisconsin.gov/1905/related/acts/362.pdf.

receive public complaints and initiate investigations, call witnesses, hold hearings, make findings of fact, and issue orders. *See Frank A. Graham Ice Co. v. Chicago, M. & St. P. Ry. Co.*, 140 N.W. 1097, 1099 (Wis. 1913). It could impose various remedies, including penalties. *See id.* Anyone aggrieved by a commission order could appeal it in state court, but the scope of judicial review was statutorily limited.[23] Notably for purposes here, there was no right to a jury at any point in this process. The Wisconsin Supreme Court upheld these procedures against a respondent's right to jury trial challenge (though the court did not restate in its decision the precise details of the respondent's challenge). *See id.* at 1101-02. The court wrote that the Wisconsin legislature could decide upon the appropriate adjudicatory procedures for the commission's causes of action given that the legislature had created this regulatory regime. *Id.* at 1102.

Pennsylvania has an equivalent to Wisconsin's railroad commission, the Pennsylvania Public Utility Commission ("PUC"). The PUC was created in 1913[24] and was given "general administrative power and authority [. . .] to supervise and regulate all public service companies doing business within this commonwealth."

[23] *See id.* at 560 (Section 16(b)).

[24] The PUC was actually created in 1937 as a successor to the previous Pennsylvania Public Service Commission (which in turn was the successor to an even earlier railroad commission). *See* History, Pennsylvania Public Utility Commission, https://www.puc.pa.gov/about-the-puc/history/. These organizational changes are not material here and we treat the PUC and its predecessors as a single continuous agency.

Borough of White Haven v. Pub. Svc. Comm'n, 123 A. 772, 773 (Pa. 1924). The PUC has the same basic powers and applies substantially similar adjudicatory procedures as the Wisconsin Railroad Commission discussed above. Of note, the PUC can evaluate potential frauds and assess penalties. This Court upheld these procedures and the PUC's civil penalty authority in *HIKO Energy, LLC v. Penn. Pub. Util. Comm'n*, 653 Pa. 1 (2019). This Court has never ruled on the precise question of whether PUC proceedings violate the Article I, Section 6, jury trial right, but a Pennsylvania appellate court has done this analysis and upheld them. *See W.J. Dillner Transfer Co. v. Penn. Pub. Util. Comm'n*, 155 A.2d 429, 435 (Pa. Super. 1959) (holding the "legislature may withhold trial by jury from new judicial proceedings created by statute and clothed with no common law jurisdiction" as were being adjudicated by the PUC).

The preceding discussion has focused on summary proceedings by independent or quasi-independent state regulators. The same results hold for regulators that are unequivocally part of their state's executive branch of government. A regulatory agency's perceived independence (or lack thereof) from the executive branch thus has no bearing on whether a constitutional right to jury trial attaches to its administrative proceedings.[25] Below are cases in three areas of

[25] This analysis accordingly shows that the arguments in part II of the brief to this Court by Appellants' *amici* the CCFI Companies are misplaced. The perceived fairness or unfairness of an

state law (consumer protection, environmental regulation, and banking regulation) that arose through executive branch agencies and that illustrate this point.

Maryland's highest court upheld administrative proceedings within that state's attorney general's office in *Cons. Prot. Div. v. Morgan*, 387 Md. 125 (2005). The Consumer Protection Division of the Maryland Attorney General ("CPD") was formed and tasked by the Maryland legislature to administer and enforce the Maryland Consumer Protection Act, a remedial state statute intended to combat fraudulent or deceptive business practices. *See id.* at 149, 163. A respondent challenged the CPD's proceedings, arguing (among other things) that they violated his constitutional right to a jury trial. The Maryland Court of Appeals rejected this challenge. The court held the consumer protection statute did not trigger constitutional jury rights because the statutory duties and causes of action being brought by the state were different than any that had existed in common law. The court wrote (emphasis added):

> Where, however, the General Assembly has provided that a matter shall not be resolved in a judicial proceeding, **by legislatively abrogating or modifying a cause of action** [that existed at common law], no question concerning the right to a jury trial arises. Since, under such circumstances, the matter

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administrative proceeding is irrelevant to whether a constitutional jury right attaches. This is a *due process* issue, not a *jury trial* issue. (But, even if such considerations were pertinent here, it is not an unconstitutional process for the Department to adjudicate its own enforcement actions. *See, e.g.*, *Cons. Prot. Div. v. Morgan*, 387 Md. 125, 194 (2005) (holding a state agency does not violate the Maryland Constitution when it "investigates, prosecutes, and adjudicates a case").)

> will not be resolved in a judicial proceeding, **the question as to whether a judge or a jury shall resolve the matter simply does not arise**.

Id. at *191-92 (quoting *Murphy v. Edmonds*, 325 Md. 342, 372 (1992)). As an aside, the above quotation reflects Maryland's juridical test for when a statutory cause of action implicates constitutional jury rights: If a statutory cause of action is different than any cause of action at common law—*i.e.*, if it has different elements, then the constitutional right to trial by jury does not attach.

Nat'l Velour Corp. v. Durfee, 637 A.2d 375 (R.I. 1994), involved another right to jury challenge of an executive branch proceeding. The Rhode Island Department of Environmental Management ("DEM") was an executive branch agency with broad authority to administer and enforce state environmental laws. *See* R.I. Gen. Laws § 42-6-1(k) (2026) and § 42-17.1-2 (2026). After an investigation and administrative proceeding, DEM found National Velour had violated the agency's environmental regulations and DEM assessed a $205,000 penalty. *See Nat'l Velour*, 637 A.2d at 376. The Rhode Island Supreme Court upheld the action and the penalty against a jury trial challenge on a public rights theory. *See id.* at 379-81.[26] Pennsylvania courts have not incorporated the public

[26] The public rights doctrine springs from federal case law (principally *Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm'n*, 430 U.S. 442 (1977) and *Granfinanciera, S.A. v. Norberg*, 492 U.S. 33 (1989)) and holds there is no right to a jury trial when the government pursues a statutory claim unknown at common law that is of broad public interest and the

rights doctrine into the law of this commonwealth, but a Pennsylvania appellate court reached an analogous outcome to *Nat'l Velour* in the case *Dep't of Env. Res. v. Wheeling-Pittsburgh Steel*, 22 Pa. Commw. 280 (1975). Specifically, *Wheeling-Pittsburgh Steel* upheld an administrative penalty by the Pennsylvania Department of Environmental Resources ("DER") against a jury trial challenge because the environmental regulations at issue where "wholly a creature of recent statutory law" and, therefore, "no right to jury trial ever existed which the Constitution could preserve" in DER proceedings. *Id.* at 286.

Another more recent example of an executive branch agency imposing an administrative penalty is *Legal Funding, LLC v. Dep't of Banking*, No. CV23-6081708-S, 2024 WL 4824568 (Sup. Ct. Conn. 2024). The Connecticut Department of Banking, an agency of the state executive,[27] brought an administrative enforcement action against an unlicensed payday lender. *See id.* at *2-3. The department found the respondent liable for violating the Connecticut Small Loan and Related Activities Act and ordered the respondent to pay a civil penalty (among other relief). *Id.* at *3. A state court upheld the proceeding and the

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government has decided to adjudicate the claims without juries. *See, e.g.*, *Lisanti v. Alamo Title Ins.*, 132 N.M. 750, 755 (2002).

[27] *See* 2025 Annual Report of the Banking Commissioner, Connecticut Department of Banking, at 2, https://palrb.gov/getfile.cfm?file=resources/preservation-project/smithlaws/17001799/1790/0/const/conpa.pdf&view=true. The department of banking also regulates securities in Connecticut and is a NASAA member.

penalty against a jury trial challenge. The court reasoned that the state could have enacted these same regulations when the Connecticut Constitution was first adopted and they would have survived a challenge then. *Id.* at *5 ("In Connecticut, the [proper analysis for a] right to a civil jury trial is whether a similar case would require a jury trial in 1818 when that constitution was adopted. While the plaintiff is correct that usury cases might be tried then by jury, the regulation by an administrative agency of a lender would not have resulted in a jury trial in 1818." (internal citation omitted)).

The preceding discussion documents a jurisprudential throughline from 18th century English law to contemporary administrative enforcement actions such as the Department's action here. The drafters of the Pennsylvania Constitution who declared that "trial by jury shall be as heretofore, and the right thereof remain inviolate,"[28] would have known that English law included jury trial exceptions for (i) certain private claims as determined by Parliament, (ii) regulatory enforcement actions, and (iii) misdemeanor criminal cases. These same three exceptions, and specifically the exception for governmental regulatory actions, provide the constitutional basis for the Department's action against the Appellants here.

[28] *See* Pa. Const. of 1790, *supra* note 7, art. IX, § vi.

B. Two Other State Supreme Courts Have Upheld Administrative Penalties Assessed Under Virtually Identical Circumstances as are Presented Here and This Court Should Do Likewise.

The basic constitutionality of the Department's enforcement action and administrative penalty against Appellants is supported by the decisions of two other state supreme courts that have adjudicated essentially identical questions. Namely, the New Hampshire Supreme Court and the Delaware Supreme Court have both upheld administrative penalties by their state securities regulators against constitutional right to jury challenges in substantially similar cases as the case at bar.[29]

First, the New Hampshire Supreme Court upheld a $3 million administrative penalty against an investment adviser in *Ridlon v. N.H. Bur. of Secs. Reg.*, 172 N.H. 417 (2019). The respondent challenged the securities regulator's administrative action, arguing it was akin to "an action for common law fraud," and therefore that he was entitled to a jury trial. *Id.* at 419. The New Hampshire Supreme Court disagreed. It upheld the proceeding, including the penalty, finding the respondent had no constitutional right to a jury trial where (a) the statutory duties at issue did not exist in common law (*i.e.* the duties of an investment adviser

[29] Appellate courts in Arizona also reached comparable results in *EFG Am., LLC, v. Ariz. Corp. Comm'n*, 569 P.3d 806 (Ariz. Ct. App. 2025), and *Sync Title Agency, LLC v. Ariz. Corp. Comm'n*, No. CV 23-0606, 2025 WL 1304213 (Ariz. Ct. App. 2025), though the *EFG* decision is currently under review and pending before the Arizona Supreme Court.

under the state's securities law were not the same as common law fiduciary duties), and (b) the elements of the state's securities fraud claim differed from the elements of a common law fraud claim. *See id.* at 423-24.

Second, the Delaware Supreme Court recently upheld the Delaware Investor Protection Unit's authority to bring administrative enforcement actions for securities fraud in *Swan Energy v. Inv. Prot. Unit of Del.*, No. 331-2025, 2026 WL 2053613 (Del. 2026). The respondents in that action sought an injunction to stop the state's administrative proceeding. The court held there was no constitutional issue because the state's securities fraud claim was not "sufficiently analogous" to common law fraud as thus did not trigger the respondents' constitutional rights. *Id.* at *8. Of note, *Swan Energy* was decided after the Supreme Court's decision in *SEC v. Jarkesy*, 603 U.S. 109 (2024), and the Delaware Supreme Court considered but rejected *Jarkesy's* analysis in reaching its conclusions (as will be discussed further below).

This Court should conclude likewise that the Department's administrative proceeding and civil penalty against Appellants do not implicate the Appellants' Article I, Section 6, jury trial rights. There are a variety of juridical tests this Court could apply in deciding this case. The *Morgan*, *Ridlon* and *Swan Energy* decisions discussed above each applied slightly different tests (and other state supreme courts have applied still other tests). We do not see a clear test used by lower

courts in this commonwealth, notwithstanding this Court's decisions in *Wertz v. Chapman Township*, 559 Pa. 630 (1999), and *Commonwealth v. One 1984 Z-28 Camaro Coupe*, 530 Pa. 523 (1992). Irrespective of which juridical test this Court ultimately applies, a decisive factor in the outcome of this case should be whether the elements of the Department's statutory cause of action are the same as, or different than, the elements of a similar common law fraud charge. As will be shown below, the elements of these two types of claims are different. Accordingly, the Department's administrative enforcement action should be upheld.

There are five elements in a common law fraud claim: misrepresentation, materiality, scienter, reliance and damages. *E.g.*, *Commonwealth v. Burns*, 663 A.2d 308, 311 (Pa. Commw. Ct. 1995). These same five elements existed at the time of Pennsylvania's founding. *See*, *e.g.*, *Cornelius v. Molloy*, 7 Pa. 293, 296-97 (1847) (discussing these same five elements as the "general rule" for common law fraud). However, it is equally well established that securities regulators are not held to all five of these elements when they bring securities fraud claims pursuant to state securities laws designed to achieve remedial purposes. Regulators are often excused from showing scienter and are always excused from showing reliance or damages. *See*, *e.g.*, *Harrington v. Sec'y of State*, 129 So. 3d 153, 170 (Miss. 2013). Thus, of the five elements required at common law, state securities regulators are usually required to show only two (misrepresentation and materiality) or at most

three (misrepresentation, materiality and scienter). Pennsylvania law is consistent with these standards. *See Stas v. Penn. Secs. Comm'n*, 910 A.2d 125, 130-31 (Pa. Commw. Ct. 2006) (holding the Department is not required to prove scienter). Given the different elements of a securities fraud claim versus a common law fraud claim under Pennsylvania law, and in light of the remedial purpose of the Pennsylvania Securities Act, this Court should hold that Appellants' Article I, Section 6, jury trial rights were not infringed by the Department's administrative enforcement action and civil penalty.

C. *SEC v. Jarkesy* Does Not Control, No State Court has Followed *Jarkesy's* Legal Analysis, and This Court Similarly Should Not Follow It.

The U.S. Supreme Court's decision two years ago in *SEC v. Jarkesy*, 603 U.S. 109 (2024), runs counter to the long history of juryless state proceedings outlined above. *See id.* (holding respondents are entitled to a jury trial when the SEC seeks civil penalties under the federal securities laws). *Jarkesy* was rooted in the Seventh Amendment to the U.S. Constitution and therefore it is not binding on this Court. *E.g.*, *Anderson v. Elliott*, 555 A.2d 1042, 1043 n.1 (Me. 1989) ("the Seventh Amendment applies only to proceedings in courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts") (citation omitted). To the extent this Court considers *Jarkesy* as a persuasive authority, though, this Court should still decline to follow it for the same reasons

the Delaware Supreme Court did not follow it in *Swan Energy* and a previous decision of that court, *Blue Beach Bungalows, LLC. v. State*, 351 A.3d 1007 (Del. 2025). Indeed, no state court—at any level—has followed *Jarkesy's* analysis when evaluating the scope of jury trial rights under a state constitution.[30]

The Delaware Supreme Court declined to follow *Jarkesy* in that court's *Swan Energy* and *Blue Beach Bungalows* opinions because it found *Jarkesy's* analysis to be misdirected as a matter of state law. In short, *Jarkesy* focused on the wrong issue. *Jarkesy* evaluated the Seventh Amendment right to jury trial by focusing on the remedy the SEC had sought in its administrative proceeding (a civil penalty). *Jarkesy* asked if civil penalties were "legal or equitable in nature," and the answer to this question was then "all but dispositive" as to whether Seventh Amendment jury rights attached. *See Blue Beach Bungalows*, 351 A.3d at 1039. The U.S. Supreme Court ignored whether the SEC's cause of action was

[30] Like the Supreme Court of Delaware, the supreme courts in Nevada, Tennessee, Montana and Vermont have also all declined to follow *Jarkesy* when asked to do so. *See Hagen v. Harrison*, No. 90455, 2026 WL 3265752, at *3 (Nev. 2026) (declining to apply *Jarkesy* in a dispute about whether the constitutional right to jury trial extended to a state administrative proceeding); *Reguli v. Bd. of Prof. Resp. of the Sup. Ct. of Tenn.*, No. M2024-00153-SC-R3-BP, 2026 WL 2082926, at *28 (Tenn. 2026) (same); *Victory Ins. Co. v. State*, 423 Mont. 377, 388-89 (2025) (same); *In re Investigation Pursuant to V.S.A. Sec. 30 & 209*, 220 Vt. 73, 92-93 (2024) (same). We focus on the Delaware Supreme Court's treatment of *Jarkesy* (rather than these other four decisions) because the Delaware Supreme Court gave *Jarkesy* the most thorough examination in its *Swan Energy* and *Blue Beach Bungalows* decisions. Note that one state trial court did follow *Jarkesy* because the court held it was bound by the Seventh Amendment, but that holding was reversed on appeal and the appellate court held *Jarkesy* was inapplicable. *See Ball v. N.Y. Dep't of Health*, 256 N.Y.S.3d 430, 432, 434 n.4 (N.Y. App. Div. 2026), *reversing Ball v. N.Y. Dep't of Health*, 233 N.Y.S.3d 893 (N.Y. Sup. Ct. 2025).

similar to or different than any similar common law claim. However, that is precisely the framework through which state courts should evaluate this issue. The Delaware Supreme Court wrote that, "in Delaware, the relationship between common law fraud and [a statutory cause of action] is not an incidental point. It is a critical one." *Blue Beach Bungalows*, 351 A.3d at 1039. The focus of a constitutional analysis of civil jury rights under state law is the comparison of a statutory cause of action to "the common law, not the remedy sought." *Swan Energy*, 2026 WL 2053613, at *11 (quoting *Blue Beach Bungalows*, 351 A.3d at 1039). The Delaware Supreme Court accordingly did not follow *Jarkesy's* analytical framework, and this Court should similarly disregard it.

II. The Department's Administrative Enforcement Authority, Including Its Ability to Assess Civil Penalties, is an Essential Investor Protection Measure.

The U.S. Securities and Exchange Commission has a tripartite mission: "The SEC's mission is to protect investors; maintain fair, orderly and efficient markets; and facilitate capital formation."[31] This mission statement reflects that investor protection is only one of the SEC's agency's core responsibilities. Co-equal with this are the SEC's responsibilities to (a) oversee the health and safety of America's securities markets (akin to banking regulators' responsibility for ensuring the

[31] *See* About, U.S. Securities and Exchange Commission, https://www.sec.gov/about.

safety and soundness of the banking industry), and (b) foster efficient rules for business capital formation in the country. State securities regulators do not have quite the same missions. State regulators have a very limited role in market oversight. And given that the amount of capital raised through state securities offerings is small in comparison to the amount raised through federal offerings (whether registered or exempt), state regulators have a narrower remit on capital formation. State securities regulators thus devote comparatively more of their resources toward investor education and investor protection than the SEC.

These subtle differences in regulatory focus are reflected in court decisions that interpret state securities laws. The Washington Supreme Court, writing about the Washington State Securities Act ("WSSA"), stated "it is important to note that the WSSA has a different purpose than the federal statute, in that it endeavors to protect investors, not just the integrity of the marketplace. Accordingly, our statute is more broadly construed." *Hoffer v. State*, 113 Wash. 2d 148, 152 (1989). A California appellate court commented similarly that, "the primary purpose of our state's corporate securities law is to protect the innocent investing public from fraudulent and manipulative practices." *Mirkin v. Wasserman*, 858 P.2d 568, 594 (Cal. Ct. App. 1993). The Kansas Supreme Court noted too the "strong public policy in favor of rigid governmental regulation of the sale of securities [for] the

protection of investors" reflected in that state's securities act. *Brenner v. Oppenheimer & Co.*, 273 Kan. 525, 543 (2002).

The ability of state securities regulators to bring administrative enforcement actions, including antifraud actions seeking civil penalties, is a critical investor protection measure that supports these underlying statutory objectives. Administrative authority enables state securities regulators to move quickly to stop ongoing frauds and to pursue cases that might otherwise fall into the "enforcement gap" (wherein a fraud is not significant enough to merit action by the SEC nor potentially remunerative enough to encourage a private plaintiffs' attorney to pursue it on a contingency fee basis).[32] State regulators' proximity to their citizenry also makes them "better situated than federal counterparts to detect highly localized frauds" and able to work quickly to remediate such frauds.[33] State regulators bring more enforcement actions every year than the SEC does, and the majority of these state actions are administrative proceedings.[34] Administrative

[32] *See* Andrew K. Jennings, State Securities Enforcement, 47 B.Y.U. L. Rev. 67, 70, 127 (2021).

[33] *Id.* at 129.

[34] *Compare* 2026 NASAA Enforcement Report, North American Securities Administrators Association, at 5 (Nov. 2026), https://www.nasaa.org/wp-content/uploads/2026/11/2026-NASAA-Enforcement-Report-FINAL.pdf (reporting 1,036 enforcement actions by NASAA's U.S. members in 2025, of which 855 were administrative), *and* 2025 NASAA Enforcement Report, North American Securities Administrators Association at 5 (Oct. 2025), https://www.nasaa.org/wp-content/uploads/2025/10/2025-NASAA-Enforcement-Report_FINAL.pdf (reporting 1,183 enforcement actions in 2024, of which 853 were administrative), *with* Press Release, *SEC Announces Enforcement Annual Results for Fiscal Year 2026*, U.S. Securities and Exchange Commission (Nov. 10, 2026),

proceedings can also usually be resolved more quickly than court proceedings, with administrative hearing officers extremely well positioned to adjudicate securities disputes by virtue of their experience in doing so.[35]

For all these reasons, public policy interests argue in favor of upholding the Department's administrative action here. Were this Court to do otherwise, it would interfere with the Department's important investor protection work and potentially undermine the efforts of other NASAA members to bring administrative proceedings in their jurisdictions.

CONCLUSION

This Court should affirm the decision of the appellate court below and find that the Department's administrative enforcement action against Appellants, including the Department's imposition of civil penalties, did not infringe upon their rights to trial by jury under Article I, Section 6, of the Pennsylvania Constitution.

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https://www.sec.gov/newsroom/press-releases/2026-113-sec-announces-enforcement-annual-results-fiscal-year-2026 (stating the SEC brought a total of 348 enforcement actions, either administratively or in court, during its 2026 fiscal year), *and* Press Release, *SEC Announces Enforcement Results for Fiscal Year 2025*, U.S. Securities and Exchange Commission (Apr. 7, 2026) https://www.sec.gov/newsroom/press-releases/2026-34 (stating the SEC brought 456 enforcement actions in its 2025 fiscal year).

[35] Administrative hearing officers also will likely be better able to digest large amounts of data (as has been introduced in this case) than can lay jurors.

Respectfully Submitted

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Dated: November 20, 2026

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the word limit of Pa. R.A.P. 531(b)(3) because this brief contains fewer than 7,000 words including footnotes (excluding supplementary matters within the meaning of Pa. R.A.P. 2135(b)) as counted by the word-count function of Microsoft Word.

2. I certify that this filing complies with Pa. R.A.P. 127 and the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than nonconfidential information and documents.

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