

In the
Supreme Court of Pennsylvania

No. 28 EAP 2026

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 AMICI CURIAE THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA AND
THE PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY
IN SUPPORT OF APPELLANTS**

Appeal from the Order of the Commonwealth Court of Pennsylvania entered
December 9, 2025, at No. 328 C.D. 2024, affirming the Final Order of the
Department of Banking and Securities entered February 28, 2024, at Docket No.
210039 (SEC-OSC)

Steven A. Engel
(*pro hac vice* application pending)
DECHERT LLP
1900 K Street, NW
Washington, D.C. 20006

Michael H. McGinley (PA 325545)
Counsel of Record
Brian A. Kulp (PA 329593)
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
(215) 994-4000
michael.mcginley@dechert.com

Counsel for *Amici Curiae*

TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	7
I. Claims for Securities Fraud Require Trial by Jury.	7
A. Actions for Fraud and Deceit Have Long Been Tried by Juries in Common Law Courts.	7
B. Statutory Securities Fraud Is Closely Analogous to Common Law Fraud.....	10
II. Claims for Civil Monetary Penalties Require Trial by Jury.	12
A. Actions for Civil Monetary Penalties Have Long Been Tried by Juries in Common Law Courts.....	12
B. Pennsylvania’s History Reinforces that a Jury Is Required in Suits for Civil Monetary Penalties.	14
CONCLUSION	19

TABLE OF AUTHORITIES

CASES

<i>Atcheson v. Everitt</i> , 1 Cowper 382, 98 Eng. Rep. 1142 (K.B. 1776)	13
<i>Blum ex rel. Blum v. Merrel Dow Pharms., Inc.</i> , 534 Pa. 97 (1993).....	5, 12, 14
<i>Brown v. Hummel</i> , 6 Pa. 86 (1847).....	6
<i>Bruckshaw v. Frankford Hosp. of Phila.</i> , 619 Pa. 135 (2014).....	2
<i>Calcraft v. Gibbs</i> , 5 T.R. 19, 101 Eng. Rep. 11 (K.B. 1792)	13
<i>Commonwealth ex rel. Reynolds v. Bussier</i> , 5 Serg. & Rawle 451 (Pa. 1820)	16
<i>Commonwealth v. Hall</i> , 291 Pa. 341 (1928).....	11
<i>Commonwealth v. Johnson</i> , 89 Pa. Super. 439 (1927)	11
<i>Commonwealth v. One (1) 1984 Z-28 Camaro Coupe</i> , 530 Pa. 523 (1992).....	<i>passim</i>
<i>Commonwealth v. Pastor</i> , 289 Pa. 22 (1927).....	11
<i>Cox v. Mundy</i> , 1 Black W. 462, 96 Eng. Rep. 267 (K.B. 1764)	13
<i>Crisp v. Pratt</i> , Cro. Car. 549, 79 Eng. Rep. 1072 (K.B. 1640)	8
<i>Dornick v. Reichenback</i> , 10 Serg. & Rawle 84 (Pa. 1823)	9

<i>Emerick v. Harris</i> , 1 Binn. 416 (Pa. 1808).....	5
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024).....	4, 5
<i>Fitzgerald v. Caldwell</i> , 1 Yeates 274 (Pa. 1793).....	9
<i>Goldata Comp. Servs., Inc. v. Dep’t of Banking & Sec.</i> , 350 A.3d 278 (Pa. Cmwlth. 2025).....	6
<i>High v. Berret</i> , 148 Pa. 261 (1892).....	9
<i>Johns v. Nichols</i> , 2 Dall. 184 (Pa. 1792).....	16
<i>Johnson v. Hocker</i> , 1 Dall. 406 (Pa. 1789).....	9
<i>McKibbin v. Martin</i> , 64 Pa. 352 (1870).....	9
<i>N. Pa. Coal Co. v. Snowden</i> , 42 Pa. 488 (1862).....	18
<i>Parsons v. Bedford</i> , 28 U.S. (3 Pet.) 433 (1830).....	5
<i>Pasley v. Freeman</i> , 3 T.R. 51, 100 Eng. Rep. 450 (K.B. 1789).....	8
<i>Perdue v. Taylor</i> , 146 Pa. 163 (1892).....	9
<i>Porter v. McIlroy</i> , 4 Serg. & Rawle 436 (Pa. 1818).....	9
<i>Rees v. Jackson</i> , 64 Pa. 486 (1870).....	9

<i>Rhines v. Clark</i> , 51 Pa. 96 (1866).....	18
<i>Richter v. Selin</i> , 8 Serg. & Rawle 425 (Pa. 1822)	9
<i>Roberts v. Guernsey</i> , 3 Grant 237 (Pa. 1858).....	9
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024).....	<i>passim</i>
<i>Tull v. United States</i> , 481 U.S. 412 (1987).....	12, 13, 14, 18
<i>Wertz v. Chapman Township</i> , 559 Pa. 630 (1999).....	11
<i>William Goldman Theatres, Inc. v. Dana</i> , 405 Pa. 83 (1961).....	18

CONSTITUTIONAL PROVISIONS

Pa. Const. art. I, § 6.....	5, 12, 18
Pa. Const. of 1776, § 47	15
U.S. Const. amend. VII	5

STATUTES

Act of Apr. 5, 1785, ch. 1160, § IV, 11 Pa. Stat. at Large 573	16, 17
Act of Dec. 5, 1972, P.L. 1280, No. 284, § 511	11
Act of Jan. 28, 1777, ch. 737, § I, 9 Pa. Stat. at Large 29	8
Act of July 11, 1917, P.L. 804, No. 309, § 10	11
Act of May 4, 1993, P.L. 4, No. 4, § 4	12
70 P.S. § 1-102(h)	10
70 P.S. § 1-401(b)	10

70 P.S. § 1-401(c)	10
2 Pa. Cons. Stat. § 704	6
OTHER AUTHORITIES	
<i>A Democratic Federalist</i> , Pennsylvania Herald (OCT. 17, 1787), bit.ly/46idnBc ...	13
Alexander Addison, <i>Charge to the Grand Juries</i> (Dec. Sessions 1792), in <i>Reports of Cases in the County Courts of the Fifth Circuit and in the High Court of Errors & Appeals of the State of Pennsylvania and Charges to Grand Juries of Those County Courts</i> 53 (1800).....	17, 18
3 William Blackstone, <i>Commentaries on the Laws of England</i> (1768)	2, 8, 14
Charter of Privileges Granted by William Penn, esq. to the Inhabitants of Pennsylvania and Territories (Oct. 28, 1701), bit.ly/4yYF8xE3	3
Paula J. Dalley, <i>The Law of Deceit, 1790-1860: Continuity Amidst Change</i> , 39 Am. J. Legal Hist. 405 (1995).....	10
1 <i>Journals of the Continental Congress 1774–1789</i> (Oct. 14, 1774).....	5
2 <i>Journals of the Continental Congress 1774–1789</i> (July 6, 1775).....	5
1 James Kent, <i>Commentaries on American Law</i> (6th ed. 1848)	14
William H. Loyd, <i>The Early Courts of Pennsylvania</i> (1910).....	16
Luther Martin, <i>Genuine Information</i> (1787), reprinted in 3 <i>The Records of the Federal Convention of 1787</i> , at 172 (Max Farrand ed., 1911).....	13
Theodore F. T. Plucknett, <i>A Concise History of the Common Law</i> (4th ed. 1948)...8	
<i>Proceedings Relative to the Calling of the Conventions of 1776 and 1790</i> (Harrisburg 1825)	15, 16
<i>Resolutions of the Stamp Act Congress</i> (Oct. 19, 1765), bit.ly/3YdhAFo	4
<i>Resolves of the Pennsylvania Assembly on the Stamp Act</i> (Sept. 21, 1765), bit.ly/4zbp7Vr	4
The Declaration of Independence (U.S. 1776)	4

The Frame of the Government, Laws Agreed Upon in England (1682), reprinted in Lane S. Hart, <i>Charter to William Penn and the Laws of the Province of Pennsylvania</i> 91 (Staughton George et al. eds., 1879).....	3
The Great Law ch. XXXVIII (1682), reprinted in Lane S. Hart, <i>Charter to William Penn and the Laws of the Province of Pennsylvania</i> 107 (Staughton George et al. eds., 1879).....	3
3 <i>The Select Works of William Penn</i> (James Phillips ed., 1782).....	3
Carl Ubbelohde, <i>The Vice-Admiralty Courts and the American Revolution</i> (1960).....	4
13 Charles Viner, <i>A General Abridgement of Law and Equity</i> (1741).....	8
Thomas R. White, <i>Commentaries on the Constitution of Pennsylvania</i> (1907).....	14, 18
2 James Wilson, <i>The Works of the Honourable James Wilson</i> (Bird Wilson ed., 1804)	12

STATEMENT OF INTEREST OF *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

The Pennsylvania Chamber of Business and Industry (“Pennsylvania Chamber”) is the largest broad-based business association in Pennsylvania. It has over 13,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth’s private workforce. Its members range from small companies to mid-size and large business enterprises. The Pennsylvania Chamber’s mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania’s economic development for the benefit of all Pennsylvania citizens.

¹ No party’s counsel authored this brief in whole or in part, and no person or entity, other than *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Businesses and corporate officers are frequent respondents in administrative enforcement actions brought by federal and state securities regulators. *Amici* thus have a significant interest in safeguarding the constitutional rights of these enforcement targets, including their right to trial by jury. The Chamber has defended that right in many cases nationwide, including before the U.S. Supreme Court in *SEC v. Jarkesy*, 603 U.S. 109 (2024). *Jarkesy* held that when the government seeks to extract monetary penalties for securities fraud, the Seventh Amendment requires that it prove its case to a jury. *Amici* submit this brief to explain why Article I, Section 6 of the Pennsylvania Constitution secures that same guarantee.

INTRODUCTION AND SUMMARY OF ARGUMENT

“The right to a jury trial in a civil action is a fundamental aspect of our system of law.” *Bruckshaw v. Frankford Hosp. of Phila.*, 619 Pa. 135, 147 (2014). Indeed, by the time Pennsylvania ratified its Constitution, that “most excellent method of decision” had already long been hailed as “the glory of the English law.” 3 William Blackstone, *Commentaries on the Laws of England* 391 (1768). For good reason. A jury provides a shield against arbitrary government action. It ensures that a person’s rights or property may be taken away only by “the unanimous consent of twelve of his neighbours and equals,” rather than by the political will of government functionaries. *Id.* at 379.

The right to trial by jury was therefore “prized by the American colonists” in both criminal and civil cases alike. *Jarkesy*, 603 U.S. at 121. And nowhere was that more true than in Pennsylvania. In the Commonwealth’s founding charter, William Penn declared as governor that “*all* trials shall be by twelve men.” The Frame of the Government, Laws Agreed Upon in England (1682), reprinted in Lane S. Hart, *Charter to William Penn and the Laws of the Province of Pennsylvania* 91, 100 (Staughton George et al. eds., 1879) (emphasis added). The Pennsylvania Assembly reiterated that guarantee soon after when enacting the Colony’s “Great Law,” which provided for the right to a jury in “all tryalls in Civil Cases.” The Great Law ch. XXXVIII (1682), reprinted in Hart, *supra*, at 107, 117. And, in 1701, the Charter of Privileges reaffirmed the historic liberties and privileges of Pennsylvania’s inhabitants as “heretofore.” Charter of Privileges Granted by William Penn, esq. to the Inhabitants of Pennsylvania and Territories (Oct. 28, 1701), bit.ly/4yYF8xE. As in England, then, the right to “trial by jur[y]” was a “fundamental part of our government” from the birth of the Pennsylvania Colony. 3 *The Select Works of William Penn* 223 (James Phillips ed., 1782) (emphasis omitted). In fact, the “dedication to trial by jury was even more pronounced in the new world than in the old.” *Commonwealth v. One (1) 1984 Z-28 Camaro Coupe*, 530 Pa. 523, 532 (1992).

But “as tensions grew between the British Empire and its American Colonies, imperial authorities responded by stripping away that ancient right” on this side of

the Atlantic. *Erlinger v. United States*, 602 U.S. 821, 829 (2024). Most notably, the Crown enforced unpopular acts of Parliament in the 1760s “by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts.” *Jarkesy*, 603 U.S. at 121; see also Carl Ubbelohde, *The Vice-Admiralty Courts and the American Revolution* 12–13, 63, 145–46, 206–08 (1960). And “[j]ust as authorities hoped, the tactic proved ‘most effective’ at securing the verdicts they wished.” *Erlinger*, 602 U.S. at 829 (citation omitted).

Pennsylvania’s objections to Parliament’s derogation of the jury trial right served as a major catalyst for the coming break. The Pennsylvania Assembly decried the expansion of admiralty jurisdiction as “highly dangerous” to the liberties of American subjects, “contrary to Magna Charta,” and “destructive of one of their most darling and acknowledged Rights, that of Trials by Juries.” *Resolves of the Pennsylvania Assembly on the Stamp Act* (Sept. 21, 1765), bit.ly/4zbp7Vr. Soon after, delegates from Pennsylvania and eight other Colonies protested the juryless “jurisdiction of the courts of Admiralty” as “hav[ing] a manifest tendency to subvert the rights and liberties of the colonists.” *Resolutions of the Stamp Act Congress* (Oct. 19, 1765), bit.ly/3YdhAFo. The First and Second Continental Congresses amplified this colonial indignation—most famously in the Declaration of Independence, which identified “depriving [the colonists] in many cases, of the benefits of Trial by Jury,” among its list of grievances against the King. The

Declaration of Independence para. 20 (U.S. 1776); see 1 *Journals of the Continental Congress 1774–1789*, at 69 (Oct. 14, 1774); 2 *Journals of the Continental Congress 1774–1789*, at 145 (July 6, 1775).

“After securing their independence, the founding generation sought to ensure what happened before would not happen again.” *Erlinger*, 602 U.S. at 829. The American people thus quickly ratified the Seventh Amendment to “preserve[]” the civil jury trial right in “Suits at common law.” U.S. Const. amend. VII. And they understood this language to “embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume.” *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830).

The people of Pennsylvania adopted a parallel guarantee. Article 1, Section 6 of the Pennsylvania Constitution declares that “[t]rial by jury shall be as heretofore, and the right thereof remain inviolate.” Pa. Const. art. I, § 6. Pennsylvania’s Constitution has carried those words since 1790. And this provision—like its federal counterpart—“preserves the right to trial by jury in cases where that right existed at common law.” *Blum ex rel. Blum v. Merrel Dow Pharms., Inc.*, 534 Pa. 97, 110 (1993).

The Department of Banking and Securities (“Department”) has violated that “sacred inherent right” of Appellants here. *Emerick v. Harris*, 1 Binn. 416, 424 (Pa. 1808). It charged them with 133 violations of the Pennsylvania Securities Act and

ordered them to pay \$931,000 in penalties. Yet no jury found any of the 133 violations, fixed any part of the \$931,000 in penalties, or heard a word of the evidence. The Department's hand-selected hearing officer presided; the Department's own enforcement bureau prosecuted; the Department itself decided the exceptions; and no court could retry the facts anew. See 2 Pa. Cons. Stat. § 704. From accusation to judgment, Appellants faced only one factfinder, and that factfinder worked for their prosecutor.

The lower court saw no problem with this concentration of power. It reasoned that the “legislature may withhold trial by jury from new judicial proceedings created by statute and clothed with no common law jurisdiction.” *Goldata Comp. Servs., Inc. v. Dep’t of Banking & Sec.*, 350 A.3d 278, 309 (Pa. Cmwlth. 2025) (citation omitted). But that gets the analysis backwards. By constitutionalizing the jury right, the people of Pennsylvania ensured that it would be “for ever excluded from legislative invasion.” *Brown v. Hummel*, 6 Pa. 86, 90 (1847). The right thus does not turn on whether a claim is “of statutory origin.” *Camaro Coupe*, 530 Pa. at 528. Rather, it turns on the historical “nature of the proceeding.” *Id.* If the matter would have been tried “in common law courts such as the Court of Exchequer, but not courts of Admiralty or Chancery,” then the jury right applies. *Id.* at 528–29.

That historical inquiry is dispositive here. The question is whether Appellants are entitled to a jury in a securities fraud action in which the government seeks

monetary penalties. The U.S. Supreme Court has answered that question in the affirmative under the U.S. Constitution, and the people of the Commonwealth deserve nothing less. As explained below, securities fraud descends from the common-law writ of deceit, which was a matter tried before juries in Pennsylvania and throughout the United States in 1790. And a statutory money penalty was recovered by an action of debt—a historically legal claim that was similarly tried to juries in 1790. However one views the underlying merits, this Court should recognize that Appellants have the constitutional right to be tried by a jury of their peers. The judgment below should be reversed.

ARGUMENT

I. Claims for Securities Fraud Require Trial by Jury.

The claims at issue are for securities fraud. Those charges “target the same basic conduct” as common-law fraud—“misrepresenting or concealing material facts.” *Jarkesy*, 603 U.S. at 125. And fraud is one of the oldest types of actions tried by juries in the common-law courts, including the courts of this Commonwealth. It follows that just as in federal court, “[a] defendant facing a fraud suit has the right to be tried by a jury of his peers before a neutral adjudicator.” *Id.* at 140.

A. Actions for Fraud and Deceit Have Long Been Tried by Juries in Common Law Courts.

The common law gave fraud its own writ. By the American Revolution, the “action of deceit” was already “a peculiar remedy” of ancient standing, available “to

give damages in some particular cases of fraud.” 3 Blackstone, *supra*, at 165–66 & n.b (italics omitted) (citing Fitzherbert’s *Natura Brevium*—the register of the old writs). In fact, the writ traces back to the early thirteenth century. See Theodore F. T. Plucknett, *A Concise History of the Common Law* 604 (4th ed. 1948). Alongside the writ stood its successor in ordinary use, “the action on the case, in nature of deceit.” 3 Blackstone, *supra*, at 166 (italics omitted). Such an action would historically lie for all sorts of commercial misrepresentations: the seller who “knew the goods to be unsound, and hath used any art to disguise them”; the warranty false when made; the cloth “warranted to be of such a length, when it is not.” *Id.* at 165. In these cases and others, aggrieved parties could bring an action “to exact damages for [the] deceit.” *Id.*

Those fraud actions lived on the civil side of the common law courts. See, e.g., *Pasley v. Freeman*, 3 T.R. 51, 100 Eng. Rep. 450, 450 (K.B. 1789); *Crisp v. Pratt*, Cro. Car. 549, 79 Eng. Rep. 1072, 1072 (K.B. 1640). And the trial of fact in these matters was the peculiar province of the jury. See 13 Charles Viner, *A General Abridgement of Law and Equity* 554–55 (1741) (“The Court will not adjudge it Fraud, where the Jury do not expressly find the Fraud.”).

Pennsylvania received that body of law by statute, see Act of Jan. 28, 1777, ch. 737, § I, 9 Pa. Stat. at Large 29, 30, and administered it in its own courts. In 1789, the year before Pennsylvania’s convention met, this Court held in an action

for debt that “if any deceit was used upon the occasion,” it was “incumbent upon [the plaintiff] to shew it to the satisfaction of the Jury.” *Johnson v. Hocker*, 1 Dall. 406, 407 (Pa. 1789). Just a few years later, this Court reiterated that “if there is any fraud or collusion in [a] transaction,” then it “may be put in issue and determined by a jury.” *Fitzgerald v. Caldwell*, 1 Yeates 274, 279 (Pa. 1793).

That understanding persisted throughout the nineteenth century. Time and again, “[t]he fact of frau[d] was put to the jury.” *Porter v. McIlroy*, 4 Serg. & Rawle 436, 442 (Pa. 1818). This Court and others would “give no opinion whether [a] fraud was proved or not,” because “that was for the jury to decide.” *Richter v. Selin*, 8 Serg. & Rawle 425, 436 (Pa. 1822); *see also, e.g., Roberts v. Guernsey*, 3 Grant 237, 239–40 (Pa. 1858); *Dornick v. Reichenback*, 10 Serg. & Rawle 84, 90 (Pa. 1823). Indeed, this Court stressed that a factual dispute as to “fraud is *always* a question for the jury.” *McKibbin v. Martin*, 64 Pa. 352, 356 (1870) (emphasis added).

Fraud in the sale of stocks or other intangibles was no exception. These matters, too, were governed by common law in common-law courts, with juries deciding the ultimate factual questions of fraud. *See, e.g., High v. Berret*, 148 Pa. 261, 263–64 (1892); *Rees v. Jackson*, 64 Pa. 486, 491–93 (1870). The courts “had no right to decide” those issues of fact for themselves and were “bound to commit [them] to the jury.” *Perdue v. Taylor*, 146 Pa. 163, 174 (1892).

B. Statutory Securities Fraud Is Closely Analogous to Common Law Fraud.

Given this history, there can be no doubt that the securities fraud claims in this case have a “common law basis.” *Camaro Coupe*, 530 Pa. at 529. For just as “Congress incorporated prohibitions from common law fraud into federal securities law,” *Jarkesy*, 603 U.S. at 125, the General Assembly imported those concepts into Pennsylvania’s own Securities Act.

The text of the law makes that clear. Section 401(c) makes it unlawful to “engage in any act, practice or course of business which operates or would operate *as a fraud or deceit* upon any person” in connection with the sale or purchase of securities. 70 P.S. § 1-401(c) (emphasis added). The terms “[f]raud” and “deceit” are specifically defined to include “common law fraud or deceit.” *Id.* § 1-102(h). Likewise, Section 401(b) forbids the making of “any untrue statement of a material fact” or the omission of “a material fact necessary in order to make the statements . . . not misleading.” *Id.* § 1-401(b). That is exactly the type of conduct that common law fraud punished at the time that Article I, Section 6 was ratified: “By the end of the eighteenth century, the law of fraud (or, as it was more commonly called, deceit)” required a plaintiff to “prove a misrepresentation (or, in some cases, a suppression) of a material fact.” Paula J. Dalley, *The Law of Deceit, 1790-1860: Continuity Amidst Change*, 39 Am. J. Legal Hist. 405, 407–08 (1995) (footnote omitted). Such claims were not entirely “foreign and unknown to the common law

at the time our constitution was adopted.” *Wertz v. Chapman Township*, 559 Pa. 630, 639–40 (1999) (cause of action for “sexual harassment and discrimination”). They were instead, “according to common law tradition[,] heard by the court sitting with a jury.” *Camaro Coupe*, 530 Pa. at 529; *see supra* Section I.A.

Pennsylvania’s enforcement history of securities fraud points in the same direction. The Commonwealth first regulated securities sales by statute in 1917, enforcing the law by criminal fine “upon conviction.” Act of July 11, 1917, P.L. 804, No. 309, § 10. Those criminal matters, of course, were tried before juries. *See Commonwealth v. Hall*, 291 Pa. 341, 355 (1928) (“The law of Pennsylvania . . . contemplates the trial, on a plea of not guilty, of indictable offenses by a court consisting of both judge and jury.”). And when the General Assembly enacted its first general blue-sky law in 1923, it chose the same instrument for enforcement. Violations were “made a misdemeanor punishable by fine or imprisonment,” *Commonwealth v. Pastor*, 289 Pa. 22, 22 (1927), and they too were tried before juries, *see, e.g., Commonwealth v. Johnson*, 89 Pa. Super. 439, 441 (1927).

The modern Securities Act kept that architecture in place for its first twenty-one years. The 1972 Act’s enforcement provisions contemplated criminal penalties. *See* Act of Dec. 5, 1972, P.L. 1280, No. 284, § 511. But the Act did not authorize the Department or any other agency to assess monetary penalties through in-house

enforcement proceedings. The administrative assessment power was only added in 1993, *see* Act of May 4, 1993, P.L. 4, No. 4, § 4, without a word of recorded floor debate in either chamber.

That haphazard deprivation of the jury right cannot be squared with Article I, Section 6. Securities fraud is a “type of case” that “would have been within the jurisdiction of the court of Exchequer, and later, American common law courts.” *Camaro Coupe*, 530 Pa. at 531–32. Therefore, to maintain the jury right “as heretofore,” the cause of action must be tried to a jury. Pa. Const. art. I, § 6. And the legislature is powerless to take away that right by statute. “[T]hat constitutional guarantee has been consistently reaffirmed by the people of this Commonwealth and the only way to change it is by constitutional amendment.” *Blum*, 534 Pa. at 121.

II. Claims for Civil Monetary Penalties Require Trial by Jury.

Even if there were no specific jury right for civil claims of securities fraud, the remedy the government pursues here controls. That is because the jury right undoubtedly extends to actions brought by the government for civil penalties. *Jarkesy* confirmed as much for the Seventh Amendment. And the Commonwealth’s history only reinforces that conclusion for Pennsylvania’s analogous guarantee.

A. Actions for Civil Monetary Penalties Have Long Been Tried by Juries in Common Law Courts.

When the Colonies declared their independence, “a civil penalty suit was a particular species of an action in debt” in the Anglo-American court system. *Tull v.*

United States, 481 U.S. 412, 418 (1987); accord 2 James Wilson, *The Works of the Honourable James Wilson* 312 n.e (Bird Wilson ed., 1804). Importantly, this action in debt fell exclusively “within the jurisdiction of the courts of law,” rather than the courts of equity. *Tull*, 481 U.S. at 418; see, e.g., *Atcheson v. Everitt*, 1 Cowper 382, 98 Eng. Rep. 1142, 1142 (K.B. 1776). And, just like other common law actions, these suits for civil penalties were consistently tried before juries. See, e.g., *Calcraft v. Gibbs*, 5 T.R. 19, 101 Eng. Rep. 11, 11 (K.B. 1792) (jury trial on action for “penalties on the game laws”); *Cox v. Mundy*, 1 Black W. 462, 96 Eng. Rep. 267, 267 (K.B. 1764) (common-law case involving “a penalty incurred by having foreign lace in her house”).

That was no historical accident. Suits “between [the] government and its officers on the one part, and the subject or citizen on the other,” are the “very cases, where, of all others,” the jury trial is “most essential for [the people’s] liberty.” Luther Martin, *Genuine Information* (1787), reprinted in 3 *The Records of the Federal Convention of 1787*, at 172, 222 (Max Farrand ed., 1911) (italics omitted). After all, having a jury preside in such cases helps “shelter [the people] from the iron hand of arbitrary power.” *A Democratic Federalist*, Pennsylvania Herald (Oct. 17, 1787), bit.ly/46idnBc. For even “the most powerful individual in the state will be cautious of committing any flagrant invasion of another’s right, when he knows that the fact of his oppression must be examined and decided by twelve indifferent men.”

3 Blackstone, *supra*, at 380. Parliament broke down that barrier when it transferred actions for “penalties” to the juryless admiralty courts. 1 James Kent, *Commentaries on American Law* 377 (6th ed. 1848). This overreach was “much discussed and complained of on the part of this country, at the commencement of the revolution.” *Id.* And it served as “one of the principal causes” of the war. Thomas R. White, *Commentaries on the Constitution of Pennsylvania* 66 (1907). As a result, suits by the government to extract civil penalties have long been understood to implicate the core of the right to trial by jury.

The U.S. Supreme Court confirmed that understanding just a few years ago. It held that “the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud.” *Jarkesy*, 603 U.S. at 120. And the “remedy [was] all but dispositive” for the Court on that score. *Id.* at 123. That was because, historically, “only courts of law issued monetary penalties to ‘punish culpable individuals.’” *Id.* (quoting *Tull*, 481 U.S. at 422). The “civil penalties in [that] case [were] designed to punish and deter,” and so Mr. Jarkesy had “the right to be tried by a jury of his peers.” *Id.* at 125, 140.

B. Pennsylvania’s History Reinforces that a Jury Is Required in Suits for Civil Monetary Penalties.

Pennsylvania’s Constitution provides no less protection than the Seventh Amendment affords in federal court. “[B]oth provisions retain the right to trial by jury in civil cases where it existed at common law.” *Blum*, 534 Pa. at 107. And

nothing in the common law of Pennsylvania carved out claims for civil penalties from the purview of juries. On the contrary, Pennsylvania’s early history manifests even less tolerance for the juryless adjudication of civil penalty actions.

Consider the actions of the Council of Censors. The 1776 Constitution created this Council “to enquire whether the constitution ha[d] been preserved inviolate in every part.” Pa. Const. of 1776, § 47. The Council sat in 1783 and 1784—shortly before the 1790 convention—to review the wartime statutes clause by clause. And it concluded that several enactments violated the constitutional provision that “Trials shall be by jury as heretofore.” *Proceedings Relative to the Calling of the Conventions of 1776 and 1790*, at 108 (Harrisburg 1825). Most relevant here, the Council determined that committing penalty and public-account disputes to juryless adjudication ran afoul of this fundamental guarantee. As the Council explained:

The summary jurisdiction, whereby the president and council have been authorised, to impose and levy fines, not exceeding five hundred pounds, on county commissioners, is neither the trial by jury, nor is it the trial on impeachment, directed by the constitution. It is a deviation from the constitution. . . .

The acts for settling the public accounts of this state, as well by the late auditors, as that which constitutes the office of comptroller general of this state, do not give trial by jury upon the disputes concerning fact or law, which may arise in adjusting the public accounts, and are therefore unconstitutional.

Id. at 108–09. The Council also condemned a “fine” imposed “on the summary judgment of two justices of the peace.” *Id.* at 109. And it emphasized that, in “an action for debt,” a jury trial “is supposed to be necessary.” *Id.*

The Council adopted the report by a vote of 14 to 9, and no dissenter objected to any finding relating to the violations of the right to trial by jury. *See id.* at 113–14. That is powerful evidence that the Framers understood the jury right to extend to actions for debt—including those, like this case, where the government sought monetary penalties.

Indeed, this Court has given special solicitude to the Council’s interpretation. As it explained long ago, the “construction of the Constitution of 1776” was all but “fixed by the Council of Censors, whose special duty it was to interpret it.” *Commonwealth ex rel. Reynolds v. Bussier*, 5 Serg. & Rawle 451, 460 (Pa. 1820). Legislation was also enacted “in pursuance of the . . . resolves of the Council of Censors.” *Johns v. Nichols*, 2 Dall. 184, 187 (Pa. 1792). And those resolves were perhaps “the best authority” available “at the time of the formation of the Constitution of 1790” for understanding its provisions—many of which were influenced by the Council’s findings. *Reynolds*, 5 Serg. & Rawle at 460; *see also* William H. Loyd, *The Early Courts of Pennsylvania* 129 (1910) (noting that the “findings of the censors” would “bear fruit in the Constitution of 1790”).

The Council’s views of the jury right were also shared by the General Assembly. In 1785, the General Assembly repealed an act that provided for juryless small-debt adjudication, reciting that the act, “in not allowing trial by jury in suits or actions for debts,” was “contrary to the spirit of the constitution of this state.” Act

of Apr. 5, 1785, ch. 1160, § IV, 11 Pa. Stat. at Large 573, 574. The legislature thus directed that remaining small-claims damages be assessed “as fully as the same might in like case be done in a court of law by a jury, and not otherwise.” *Id.*, § VII (P.L.), 11 Pa. Stat. at Large at 575. This, too, shows that the people of Pennsylvania understood the jury trial right to encompass actions for debt.

A drafter of the jury trial clause said the same thing from the bench. Alexander Addison sat on the committee of nine that drafted the 1790 Declaration of Rights, and he proclaimed that “[e]very legal method of deciding facts, without the intervention of a jury, is an encroachment on the constitutional authority of the people, in the administration of justice.” Alexander Addison, *Charge to the Grand Juries* (Dec. Sessions 1792), in *Reports of Cases in the County Courts of the Fifth Circuit and in the High Court of Errors & Appeals of the State of Pennsylvania and Charges to Grand Juries of Those County Courts* 53, 56 (1800). That is particularly true, Addison said, for cases involving civil penalties. “All summary convictions, for penalties, before justices of the peace, are corruptions of the genuine spirit of civil liberty, and invasions of the people’s influence in government,” and “[a]ll summary proceedings, in actions of debt, are of the same dangerous tendency.” *Id.* To Addison, even small encroachments on this right were intolerable. They would eventually spread “to all actions of debt,” then further, until “[j]ury trials may be

disused, from disuse, may be forgotten, and, this pillar of our liberties being removed, we may forget that we were free.” *Id.* at 56–57.

That is why the people of this Commonwealth preserved the jury trial right “as heretofore” and declared that this right shall forever “remain inviolate.” Pa. Const. art. I, § 6. They knew that those in power would be inclined to siphon actions away from juries to impose their political will—just as the British did with the admiralty courts. Accordingly, they made sure that “[n]o power in our government can take from the litigant the right to have his case tried by a jury, substantially in the mode and with the same effect as that which belonged to jury trials in similar cases” at the Founding. *N. Pa. Coal Co. v. Snowden*, 42 Pa. 488, 492 (1862).

Measured by that original understanding, this is not a close case. As in *Jarkesy*, the “remedy is all but dispositive” of Appellants’ right to a jury trial. 603 U.S. at 123. The Department has pursued a slew of civil monetary penalties against Appellants through the inner workings of the agency. That “civil penalty suit” is a species of “an action in debt, requiring a jury trial.” *Tull*, 481 U.S. at 418. And the “Legislature cannot establish any other tribunal” that would undermine that constitutional guarantee, particularly not for a securities fraud cause of action that is itself rooted in the common law. *White, supra*, at 69 (citing *Rhines v. Clark*, 51 Pa. 96 (1866)); see also *Camaro Coupe*, 530 Pa. at 528–32; *William Goldman Theatres, Inc. v. Dana*, 405 Pa. 83, 95 (1961). To hold otherwise would eradicate the jury’s

crucial check on bureaucratic overreach while “concentrat[ing] the roles of prosecutor, judge, and jury in the hands of the Executive Branch.” *Jarkesy*, 603 U.S. at 140. Article I, Section 6, forbids that dangerous intrusion on individual liberty.

CONCLUSION

The judgment of the Commonwealth Court should be reversed.

Steven A. Engel
(*pro hac vice* application pending)
DECHERT LLP
1900 K Street, NW
Washington, D.C. 20006

Respectfully submitted,

/s/ Michael H. McGinley
Michael H. McGinley (PA 325545)
Counsel of Record
Brian A. Kulp (PA 329593)
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
(215) 994-4000
michael.mcginley@dechert.com

Counsel for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the word limit of Pa.R.A.P. 531(b)(3) because, excluding the parts of the brief exempted by Pa.R.A.P. 2135(b), it contains 4,696 words, as counted by the word-count function of Microsoft Word.

2. I certify that this filing complies with 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 non-confidential information and documents.

/s/ Michael H. McGinley
Michael H. McGinley

PROOF OF SERVICE

I certify that on this date I caused the foregoing Brief of Amicus Curiae to be served upon all counsel of record via the Court's PACFile electronic filing system, which satisfies the requirements of Pa.R.A.P. 121. I also caused a copy of the foregoing Brief to be both mailed (via FedEx) and emailed on this date to the following counsel of record:

William W. Uchimoto

William W. Uchimoto Law
613 Cascades Court
Berwyn, PA 19312
(215) 990-7416
wwuchimoto@gmail.com

Counsel for Appellants

Alexander Korn

Department of Banking and Securities
Office of Chief Counsel
17 North 2nd Street, Suite 1300
Harrisburg, PA 17101
(717) 783-4185
RA-BNChiefCounsel@pa.gov

Daniel B. Mullen

Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120
(412) 235-9067
dmullen@attorneygeneral.gov

Counsel for Appellee

In addition, an original and fifteen copies of this Brief were mailed via FedEx to the Prothonotary's Office on this date.

/s/ Michael H. McGinley
Michael H. McGinley