

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

AMY CAO, BICH DOAN VO,
HIEN HOANG, JAN THOA NGUYEN,
and LINDA HO,

Petitioners,

v.

LOUISIANA STATE BOARD OF
COSMETOLOGY
and
RENE BOSWORTH, RAYMOND
COSEY, C. NICOLE GAUDIN, HIEU
HOANG, JEAN PITRE, LAUREN
QUINLAN, and JENNIFER COBB
REED, Board Members,

Respondents.

Civil Action No. C-770893

PETITIONERS' BRIEF

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Introduction

Petitioners Amy Cao, Hien Hoang, Jan Thoa Nguyen, and Linda Ho are licensed cosmetologists. Petitioner Bich Doan Vo is a licensed manicurist. Because of their professions, each Petitioner falls under the broad regulatory purview of the Louisiana State Board of Cosmetology (Board). The Board’s primary function is to license cosmetologists and enforce the Cosmetology Act by punishing violations through license suspension/revocation and fines. The scope of the Board’s fining power is broad, and there is little recourse for cosmetologists hit with fines. They can either pay up or request an administrative hearing to challenge the fine. But that hearing takes place before the Board itself. Unsurprisingly, these proceedings almost always result in the imposition of monetary fines by the Board—an entity funded exclusively through license fees and fines.

The Board does not submit cases it brings against its licensees to a jury supervised by state trial judges. Because the Board seeks monetary fines of more than \$20, the enforcement targets have the right to a jury trial.

Recognizing a fundamental right of American citizens with deep roots going back to the Magna Carta, the Seventh Amendment to the U.S. Constitution guarantees the right to trial by jury in civil cases. The Fourteenth Amendment, in turn, should make that right applicable in Louisiana. Indeed, under the Supreme Court’s current approach to incorporation, it is inconceivable that the Fourteenth Amendment would *not* encapsulate the Seventh Amendment right. By any metric, the civil jury is both fundamental to ordered liberty and deeply rooted in Anglo-American tradition. To be sure, two precedents from 1916 and 1972, *see Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211 (1916); *Mayer v. Ellis*, 409 U.S. 943 (1972), cast doubt on this Court’s authority to effectuate the Seventh Amendment, as guaranteed by the Fourteenth. But *SEC v. Jarkesy*, 603 U.S. 109 (2024), has reopened the door to incorporation under the Due Process Clause. And as an added bonus, following *Jarkesy* better implements the separation of powers within Louisiana. If, however, the Court deems itself without authority to follow *Jarkesy*, Petitioners ask this Court to confirm as much so that they may seek relief on appeal.

Background

The Board, as required of “[e]ach agency” in Louisiana, provides for “the filing and prompt disposition of petitions for declaratory orders.” L.R.S. §§ 49:977.4,

37:575(A)(b)(11); La. Admin. Code tit. 46, pt. XXXI, § 1501(A). The Board’s resulting declaratory order has “the same status as agency decisions or orders in adjudicated cases.” L.R.S. § 49:977.4. That is, the Board’s order is judicially reviewable if a petition to that effect is timely filed in the appropriate state district court. *Id.* § 49:978.1.

On September 18, 2024, Petitioners, who are all licensed by the Respondent Board, requested a declaratory order from the Board declaring whether they have the right to trial by jury when the Board seeks fines exceeding \$20.¹

Having waited more than a year for an order, Petitioners first filed a Petition for Writ of Mandamus in this Court on November 24, 2025. Close to fifteen months later, and perhaps in response to the pending mandamus petition, on January 5, 2026, the Board declared that Petitioners do not have the right to trial by jury when the Board seeks fines exceeding \$20. Being “aggrieved” by the Board’s order, L.R.S. § 49:978.1(A), Petitioners timely filed the Petition for Judicial Review in this Court (filed February 4, 2026) within thirty days in accord with L.R.S. § 49:978.1(B).

After the Petitioners filed the Petition for Judicial Review in this Court, the Court denied as moot the Petition for Writ of Mandamus, on February 10, 2026. And the Court set the case for a hearing to be held on April 27, 2026.

Petitioners then filed an unopposed motion for a briefing schedule so that the Court will have the benefit of the parties’ written positions in advance of the April 27 hearing. The Petitioners’ Brief follows.

Argument

I. Standard of review

All “[q]uestions of law” are decided “*de novo* ... without deference to the legal conclusions of the tribunals below.” *Wooley v. Lucksinger*, 09-0571, p. 49 (La. 4/1/11), 61 So. 3d 507, 554. Constitutional questions are also decided “*de novo*.” *Westlawn Cemeteries, LLC v. La. Cemetery Bd.*, 2021-01414, p. 12 (La. 3/25/22), 339 So. 3d 548, 559.

¹ In the year July 2023–June 2024, the Board imposed monetary fines exceeding \$20 in *each* of the 103 cases the Board adjudicated. That is, 100% of the Board-adjudicated cases ended with the imposition of monetary fines. This information is collected from the minutes of the Board’s meetings for the stated time period.

II. This Court has jurisdiction

A. The Order is a reviewable final order.

The Board's Order constitutes a "final ... order" eligible for this Court's review. L.R.S. § 49:978.1(A). Via the Order, the Board determined legal rights and obligations because it concluded that Petitioners have no right to a jury trial when the Board pursues monetary sanctions. *See Vogt v. Bd. of Comm'rs of Orleans Levee Dist.*, 98-2379, p. 10 (La. App. 4 Cir. 6/9/99), 738 So. 2d 1142, 1148 (explaining that agency decisions are "final" when they are "determinative of the rights of the parties").

Nevertheless, the Board may raise two nonfinality arguments to delay this Court's review. Neither has any merit.

First, a *written* final order is not required. The Board might argue that it has failed to produce a written declaratory order. But the absence of writing has no effect on finality. "A final decision or order" can be either "in writing or stated in the record." L.R.S. § 49:977. The Board's Order is orally stated in the record of the January 5 Board meeting; the Board's attorney read the full order into the record.

Second, Attorney General review is irrelevant to finality. The Board might argue that the Department of Justice's Occupational Licensing Review Program (OLRP) has yet to review the Order, and the Board purported to condition the Order's finality on OLRP approval. But that argument is meritless because:

(1) Participation in OLRP is "voluntary and optional," L.R.S. § 49:260(C), and has no bearing on the finality of an "order in an adjudication." *Id.* § 49:978.1(A)(1) (entitling aggrieved parties to judicial review without any mention of OLRP).

(2) Participation in OLRP relates only to the promulgation of "occupational regulation[s]" (*i.e.*, rules) by occupational licensing boards, *not* the issuance of declaratory orders. *Id.* § 49:260(D)(1). The distinction between *rulemaking* and *adjudication* is well established in Louisiana law. The Administrative Procedure Act (APA) plainly distinguishes a "decision" or "order," *id.* § 49:951(4), from a "rule." *Id.* § 49:951(8). An "occupational regulation" for purposes of OLRP review "means a rule as defined in the Administrative Procedure Act[.]" L.R.S. § 49:260(G)(4) (emphasis added). Indeed, "[t]he term ['rule'] includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders." *Id.* § 49:951(8) (emphasis added). Adjudication and rulemaking are, therefore, mutually exclusive modes of agency action, and OLRP review—while applicable to rules—simply does not apply

to orders. It follows that any assertion of non-finality by the Board based on OLRP's review (or lack thereof) is erroneous. For APA purposes, the Order is final and squarely within the Court's power to review. *Id.* § 49:978.1.

B. If the Order is not final, the Court should reopen the mandamus petition and order the Board to issue a final order.

Alternatively, if the Court finds the January 5 Order is not yet final, the Court should reopen and grant the Petition for Writ of Mandamus, which the Court denied as moot on February 10, 2026.

If the Board failed to issue a final order—while giving Petitioners and this Court an appearance of having done so at its January 5 meeting—then the Petition for Mandamus is not moot. *See Arthur v. Connick*, 24-480, p. 3 (La. App. 5 Cir. 1/10/25) 404 So. 3d 1028, 1031 (cautioning against “spurious technical mootness”) (citing *Cat's Meow, Inc. v. City of New Orleans ex rel. Dep't of Fin.*, 98-0601, p. 8 (La. 10/20/98) 720 So. 2d 1186, 1194). A matter is moot only “when a judgment or decree on that issue has been ‘deprived of practical significance’ or ‘made abstract or purely academic.’” *Id.* (quoting *Ulrich v. Robinson*, 2018-0534, p. 9 (La. 3/26/19), 282 So. 3d 180, 186). But if in fact a final order remains elusive, the “practical significance” of the mandamus petition remains intact, *id.*, for Petitioners are still owed a clear legal duty the Board has failed to perform: issuance of a final, appealable order that the Board had ninety days from September 18, 2024, to issue. *See* La. Admin. Code tit. 46, pt. XXXI, § 1501.

III. Petitioners prevail on the merits

A. While the Board was correct that the Seventh Amendment is not incorporated, this Court should follow *Jarkesy*.

The Seventh Amendment provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” U.S. CONST. amend. VII. Under *SEC v. Jarkesy*, 603 U.S. 109 (2024), the Seventh Amendment applies to claims that are legal in nature. *Id.* at 122. Claims are “legal in nature” when “the cause of action” and “the remedy it provides” have common law analogs. *Id.* at 123. But “[s]ince some causes of action sound in both law and equity,” “the remedy [is] the ‘more important’ consideration.” *Id.* (quoting *Tull v. United States*, 481 U.S. 412, 421 (1987)). So, for instance, “civil penalties ... designed to punish or deter the wrongdoer” are legal in nature because they are “a type of

remedy at common law that could only be enforced in courts of law.” *Id.* (citation modified).

The Board did not conduct the *Jarkesy* analysis. Instead, the Board concluded that the Seventh Amendment does not apply to it. The Board is correct that the U.S. Supreme Court has not incorporated the Seventh Amendment against the states. *See Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211 (1916). And state courts have no power to ignore controlling U.S. Supreme Court precedent; the Supremacy Clause so requires. U.S. CONST. art. VI, § 2.

“Louisiana courts have routinely looked to the federal jurisprudence for guidance” on all manner of topics. *Gauthreaux v. City of Gretna*, 22-424, p. 5 (La. App. 5 Cir. 3/29/23), 360 So. 3d 930, 934. While state constitutions cannot be interpreted to afford less protection than the federal Constitution because such an interpretation would violate the Supremacy Clause, “a state constitutional provision can certainly be intended to afford and construed as affording greater protection than its federal counterpart.” *Progressive Sec. Ins. Co. v. Foster*, 97-2985, p. 2 (La. 4/23/98), 711 So. 2d 675, 691 (Johnson, J., dissenting). But Louisiana’s Constitution contains no civil-jury provision, which means the only guarantor of civil juries for Louisianans is the Seventh Amendment of the U.S. Constitution. In such situations, Louisiana courts should “loo[k] to the federal jurisprudence for guidance.” *Gauthreaux*, 22-424 at p. 5, 360 So. 3d at 934.

Jarkesy is the most recent U.S. Supreme Court precedent about when an enforcement target has the right to trial by jury and this Court should follow it owing to its due process underpinnings. To be sure, *Jarkesy* rested most squarely on Article III and the Seventh Amendment to the U.S. Constitution. 603 U.S. at 127. But at *Jarkesy*’s core is due process of law: The Constitution requires an independent judge and jury, not merely because the Seventh Amendment and Article III so dictate, but because fundamental fairness requires it before “the government may go about depriving an individual of life, liberty, or property.” *Id.* at 141 (Gorsuch, J., concurring); *cf.* Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672 (2012). Plus, “due process promises any trial will be held in accord with time-honored principles,” which for legal claims, means with a jury. *Jarkesy*, 603 U.S. at 141 (Gorsuch, J., concurring). Thus, viewed through the lens of fundamental fairness, *Jarkesy*’s core and unimpeachable reasoning

remains just as valid under the Fourteenth Amendment’s Due Process Clause. We now turn to its application.

Under the *Jarkesy* test, the cause of action and remedy here are both legal in nature. Under Louisiana state law, the Board is empowered to “[e]nforce th[e] provisions of [the Cosmetology Act] related to conduct and competence, including but not limited to revocation, summary suspension, suspension, probation, reprimand, warnings, or fines.” L.R.S. § 37:575 (emphasis added). These fines can be hefty—“up to two hundred dollars per violation, not to exceed a total of five thousand dollars.” *Id.* § 37:604(A). And they can stack up quickly. *See id.* § 37:604(B) (“Each day on which a violation occurs is a separate violation ...”).

The Board pursues fines for one reason: to deter and punish wrongdoing. *See* L.R.S. § 37:575 (including “fines” alongside such clearly punitive terms as “probation,” “reprimand,” and “warnings”); *Fine*, MERRIAM-WEBSTER, <https://tinyurl.com/ks3skfad> (last visited Mar. 10, 2026) (defining “fine” as “a sum imposed *as punishment for an offense*” or “a forfeiture or *penalty* paid to an injured party in a civil action”) (emphasis added). It follows that when the Board seeks fines against cosmetologists and manicurists like Petitioners—which it does in 100% of its cases—it is pursuing a common law action in debt. *See Jarkesy*, 603 U.S. at 123 (explaining *legal* monetary relief “is designed to punish or deter the wrongdoer” whereas *equitable* relief “is designed ... to restore the status quo”) (internal quotation marks omitted). As the Supreme Court has made clear, in such situations there is a Seventh Amendment right to jury trial. *See Tull*, 481 U.S. at 420 (holding a suit for money penalties for violations of the Clean Water Act “is clearly analogous to the 18th-century action in debt”); *Jarkesy v. SEC*, 34 F.4th 446, 454 (5th Cir. 2022) (drawing on *Tull* to conclude “the actions the SEC brought seeking civil penalties under securities statutes are akin to those same traditional actions in debt”), *aff’d* 603 U.S. 109 (2025); *see also United States v. Regan*, 232 U.S. 37, 47 (1914) (assuming that a jury trial is required in civil penalty actions).

As in *Jarkesy*, the remedy here “is all but dispositive.” 603 U.S. at 123. When the Board imposes fines, it is not to restore some pre-misconduct “status quo,” but “to punish culpable individuals,” namely cosmetologists, for statutory violations. *Id.* (citation modified). These fines constitute legal remedies and “can make no pretense

of being equitable.” *Id.* at 124. And “[t]hat conclusion effectively decides ... that a defendant would be entitled to a jury.” *Id.* at 125.

As to the cause of action, “whether th[e] claim is statutory is immaterial to th[e] analysis.” *Id.* at 122. The Board can only pursue statutory causes of action authorized by the Cosmetology Act. But the statutory nature of the claim has no bearing here because “[a]ctions by the Government to recover civil penalties under statutory provisions ... requir[e] trial by jury.” *Id.* There is a “close relationship between” the Cosmetology Act’s “causes of action” and common law torts such as negligence, assault, and battery. *Id.* at 125. “Both target the same basic conduct:” tortious action or inaction that could harm another. *Id.* Louisiana’s Cosmetology Act simply codifies common law causes of action “to protect the public health, safety, and welfare of the citizens of the state of Louisiana.” L.R.S. § 37:562(A).

Following *Jarkesy* would vindicate Petitioners’ fundamental rights. And it would both better arrange Louisiana’s separation of powers and comport with the due process of law. Following that test is the most sensible approach to deciding whether Petitioners are entitled to trial by jury when the Board seeks monetary fines alleging violations of the Cosmetology Act. Whatever else the Louisiana Supreme Court may have said on the subject, it was well settled at the time of Louisiana’s re-admission to the Union that common law claims were universally tried to juries. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions when the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 *Tex. L. Rev.* 7, 77 (2008) (noting that thirty-six of thirty-seven states provided for jury trials in civil cases).

Bolstering the case for *Jarkesy* is that its application here would better arrange the separation of powers between Louisiana’s Executive and Judicial Branches. *Jarkesy* permits the Executive Branch to execute; the Judicial Branch, with the help of juries, to adjudicate cases that might result in depriving a person of liberty or property; and permits neither Branch to do the work of the other. 603 U.S. at 127. Permitting the Board here to be “prosecutor, judge, and jury” would be the “very opposite of the separation of powers” that the Louisiana Constitution “demands.” *Id.* at 140; LA. CONST. art. II.

Following *Jarkesy* would also implement the due process of law dictated by the Fourteenth Amendment. Petitioners have the right to “a fair process of

decisionmaking” before they can be “deprive[d] ... of [their] possessions.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). To constitute fair process, the process must be designed to dispel even the “appearance of partiality” or “impropriety.” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872, 888 (2009). And whereas an administrative proceeding where the Board acts as accuser, prosecutor, and judge does not meet that standard, a jury trial in state district court presumptively does. *Accord Jarkesy*, 603 U.S. at 141, 149 (Gorsuch, J., concurring) (noting that the Seventh Amendment “operates together with ... the Due Process Clause” to “vindicate the Constitution’s promise of a ‘fair trial in a fair tribunal’” by requiring “independent judges and juries”).

In sum, the Board’s enforcement targets are plainly entitled to trial by jury when the Board seeks monetary penalties alleging violations of the Cosmetology Act. Applying *Jarkesy*, the Court should so hold and thereby reverse and vacate the Board’s January 5 Order.

B. The Seventh Amendment should be incorporated.

Even though the Board was correct that the Seventh Amendment has not been incorporated, Petitioners maintain that *Jarkesy* counsels this Court in favor of incorporation. *Accord Ball v. N.Y. St. Dep’t of Health*, 233 N.Y.S.3d 893 (Sup. Ct. Schoharie Cnty. 2025) (incorporating the Seventh Amendment against the state of New York). But should the Court disagree, Petitioners preserve the incorporation argument for the U.S. Supreme Court on appeal.

Petitioners have the right to a jury trial here because the right is “fundamental to our scheme of ordered liberty” or is otherwise “deeply rooted in this Nation’s history and tradition.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010). Indeed, evidence “at the time of the founding through the adoption of the Fourteenth Amendment demonstrates that the Seventh Amendment was a fundamental right and thus was incorporated against the states under the due process clause of the Fourteenth Amendment.” Suja A. Thomas, *Nonincorporation: The Bill of Rights After McDonald v. Chicago*, 88 Notre Dame L. Rev. 159, 191–94 (2012). The founders viewed the right to trial by jury in civil cases as one of their “inherent rights and liberties,” 2 James Kent, *Commentaries on American Law* *5, *13 (Blackstone Publ’g 1889).

The right is a fundamental *individual* right that should apply equally in state proceedings. And although the U.S. Supreme Court declined to apply the civil-jury right to the states in the 1916 *Bombolis* decision, that case did not consider the Fourteenth Amendment’s Due Process Clause because it “predate[d] the era of selective incorporation.” *McDonald*, 561 U.S. at 784 n.30. But the Court has since held “that the Due Process Clause fully incorporates particular rights contained in the first eight Amendments,” *id.* at 763, and has cast doubt on the “continued validity on incorporation” of cases that “did not engage in the sort of Fourteenth Amendment inquiry required by [the Court’s] later cases.” *District of Columbia v. Heller*, 554 U.S. 570, 620 n.23 (2008).

Alternatively, the right to trial by jury in civil cases is a “Privileg[e] or Immunit[y]” of federal citizenship that “No State shall ... abridge.” U.S. CONST. amend. XIV, § 1. “As a constitutionally enumerated right understood to be a privilege of American citizenship,” the right of civil jury trial should “appl[y] in full to the States.” *Timbs v. Indiana*, 586 U.S. 146, 169–70 (2019) (Thomas, J., concurring in the judgment).²

Petitioners recognize that this Court might deem the distinct issue of Seventh Amendment incorporation foreclosed by U.S. Supreme Court precedent. *But see Jarkesy*, 603 U.S. at 141 (Gorsuch, J., concurring) (framing the right as due process of law). If so, they ask this Court to confirm as much, so that they may seek relief on appeal.

There is no valid legal theory to justify nonincorporation. None of the Board’s three possible arguments would be persuasive.

Fundamentality. The Board might argue that the right to civil jury trial is not fundamental. *See Rudolph v. Mass. Bay Ins. Co.*, 472 So. 2d 901, 902–03 (La. 1985). But that conclusion is impossible to square with centuries of tradition. *See Thomas, supra*, at 191–96; *Thomas v. Humboldt Cnty.*, 146 S. Ct. 27, 27–28 (2025) (statement of Gorsuch, J., respecting the denial of certiorari). To Blackstone, the jury

² As originally conceived, the incorporation doctrine developed as a means of grappling with textual hurdles in the Bill of Rights. *See, e.g., Gitlow v. New York*, 268 U.S. 652, 666 (1925); U.S. CONST. amend. I (beginning “Congress shall make no law ...”). But for the Seventh Amendment, no such obstacle exists. The Amendment deploys passive voice, omitting any mention of the governmental actor whose power has been truncated by an enumerated right. The Seventh Amendment simply recognizes a fundamental individual right that preexisted the Union.

was “the glory of the English law,” 3 William Blackstone, *Commentaries on the Laws of England* *379, and the institution of civil jury has maintained that high honor throughout Anglo-American history. See *Jarkesy*, 603 U.S. at 121–22.

Idiosyncrasy of juries. The Board might argue that juries are less fundamental than, say, the freedom of speech. As explained above, there is no historical basis for that argument, either. If anything, the jury holds a particularly esteemed place in our history. See *Dimick v. Schiedt*, 293 U.S. 474 (1935). So, if there is anything unique about juries, it is that they are *uniquely* fundamental.

Stare decisis. The Board could argue, based on *stare decisis*, that the Court should not follow *Jarkesy*.³ Properly understood, however, *stare decisis* is inapposite to the question whether this Court should follow *Jarkesy*. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 264 (2022) (discussing the values the doctrine of *stare decisis* protects).

If *stare decisis* is apposite, it counsels in favor of both incorporation and following *Jarkesy* here. The right to trial by jury is “of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right” has always been and “should be scrutinized with the utmost care.” *Dimick*, 293 U.S. at 486.

In sum, short of incorporation, the Court should follow *Jarkesy* here. Not following *Jarkesy* would be tantamount to this Court violating the Supremacy Clause. U.S. CONST. art. VI, § 2.

IV. The lack of procedures for assertion or waiver of the right to jury trial deprives petitioners of the due process of law

The Court should reverse and vacate the Board’s January 5 Order for another reason: the Order violates the Fourteenth Amendment’s Due Process Clause and *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Board’s Order confirms that the Board has no established procedures for an enforcement target to knowingly and voluntarily assert or waive their right to trial by jury. Given the importance of the liberty and property interests at stake and the relatively small administrative burden of

³ See also *Melancon v. McKeithen*, 345 F. Supp 1025, 1045 (E.D. La. 1972) (declining to incorporate under “a pragmatic approach that, absent ‘total incorporation’, a civil jury trial is not so implicit in the concept of ordered liberty in a cooperative federalism as to be required of the states by due process”), *aff’d mem. sub nom. Mayes v. Ellis*, 409 U.S. 943 (1972).

obtaining knowledgeable waivers, the Board's lack of procedures violates due process of law.

Under *Mathews*, courts conduct a balancing test that weighs three variables: "(1) the private interest affected by the proceeding; (2) the risk of erroneous deprivations of that private interest by the state's chosen procedure," and reciprocally, "the value of any additional or substitute procedural safeguards"; and "(3) the countervailing government interest supporting the use of the challenged procedure." *In the Interest of A.C.*, 93-1125, p. 7 (La. 10/17/94), 643 So. 2d 743, 747.

Private interests. The private interest affected should be obvious: Petitioners' property interest in the money due for fines. While the Board's fines start at \$25 per day per violation, the fines can max out at \$300/week and quickly compound from there. *See* L.R.S. § 37:601 ("Each day a violation exists shall be considered a separate violation."). These are not small sums of money for small business owners like Petitioners.

Risk of erroneous deprivation/value of additional safeguards. The risk of erroneous deprivation of these interests and the value of additional safeguards is high. As noted, 100% of Board proceedings result in the Board imposing hundreds of dollars in fines. There is no mechanism for an administrative respondent to assert the right to trial by jury, and no mechanism to knowingly waive that right. In contrast, the additional safeguard of requiring the Board to properly notify the enforcement target in writing of all her rights, and requiring the Board to obtain a knowing, voluntary, and uncoerced waiver of some or all of those rights, would be a straightforward, modest change to the Board's procedures.

Allowing the Board to act as accuser, judge, jury, and settlement officer creates an inherently coercive environment. Respondents face a Hobson's choice: pay a fine now or pay a larger fine (plus the Board's attorney fees) later. Under the circumstances, the risk of erroneously depriving innocent respondents of their property is not only high but assured; 100% of the Board's cases result in fines.

Reciprocally, the value of a statement clearly advising administrative respondents of their right to jury trial is high. Wrongly charged respondents are far more likely to avail themselves of rights where a jury of peers is involved, as opposed to a self-interested Board sitting as prosecutor, judge, jury, and benefactor of the fine. *See Ward v. Village of Monroeville*, 409 U.S. 57, 58–60 (1972) (holding that it violates

the Due Process Clause where, as here, the judging entity pockets the fines).⁴ And as to the rightly charged, there is value in informing citizens of their constitutional rights, especially where liberty and property are at stake. *Cf. Miranda v. Arizona*, 384 U.S. 436 (1966).

Government interests. The government has minimal to no interest in keeping Louisianans in the dark about their rights. *Mathews*, 424 U.S. at 347–48. Indeed, the Board stands to enhance the legitimacy of its administrative apparatus if it were to fully inform enforcement targets of their rights including the right to trial by jury, and then seek uncoerced and intelligent waivers of some or all those rights.

Because the Board’s Order confirmed it provides no procedures to ensure proper assertion or waiver of the right to jury trial, the Board’s current procedures violate the Due Process Clause of the Fourteenth Amendment and flunk the *Mathews* test. The Court should so hold and thereby reverse and vacate the Board’s January 5 Order.

Conclusion

The Court should reverse and vacate the Board’s January 5 Order.

Dated: March 20, 2026.

Respectfully submitted,

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⁴ The Board “receives no state funds and is not included in the state budget”; instead, “[a]ll [Board] funds are received through license fees or fines.” Minutes of Board Meeting held on April 1, 2024, Attachment B, 2025 Budget Approval, <https://tinyurl.com/7bfp2p5c>.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2026, I electronically filed the foregoing with the Clerk of the Court using the Nineteenth Judicial District's e-filing system. I further certify that the foregoing was served on the following parties via U.S. First Class Mail:

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