

In The Supreme Court of Nevada

CASE No. 90455

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JEFFREY HAGEN, AN INDIVIDUAL; AND JAHA ARCHITECTURE, INC., A
CALIFORNIA CORPORATION;

Appellants

v.

MONICA HARRISON, AN INDIVIDUAL AND EXECUTIVE DIRECTOR; THE
NEVADA STATE BOARD OF ARCHITECTURE, INTERIOR DESIGN AND
RESIDENTIAL DESIGN;

Respondents

District Court Case No. A-24-892597-J
(and related action A-23-883139-W)
Eighth Judicial District Court

APPELLANTS' OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Neither Pacific Legal Foundation, Hutchings Law Group, nor JAHA, Inc., has any parent company to report. The attorneys expected to appear in this action for Appellants Jeffrey Hagen and JAHA, Inc., are Cameron Halling, Esq., of Pacific Legal Foundation, and Mark H. Hutchings, Esq., and John B. Lanning, Esq., of the law firm Hutchings Law Group. The attorneys who appeared in prior proceedings in relation to this matter in the Eighth Judicial District Court, and before the Nevada State Board of Architecture, Interior Design and Residential Design (the “Board”) are Mark H. Hutchings, Esq., on behalf of Appellants and Louis Ling, Esq., of the law firm Ling Ltd., on behalf of Monica Harrison and the Board.

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JURISDICTIONAL STATEMENT

The District Court denied Appellants' petition for judicial review on March 13, 2025. This appeal was timely filed on April 10, 2025. This Court's jurisdiction rests on Nevada Constitution, Article 6, Section 4 and NRS § 2.090(1).

ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(11) because it presents as a principal issue a question of first impression involving the Constitution and common law, namely, whether an administrative agency may impose civil monetary penalties against an enforcement target absent a jury trial. This matter thus also raises as a principal issue a question of statewide public importance. *Id.* 17(a)(12). Questions concerning the nature and extent of the Nevada Constitution's jury trial rights are of critical importance to the state. *See, e.g., Taylor v. Colon*, 482 P.3d 1212, 1216 (2020) (explaining that the civil jury trial right has served as a check against unbridled despotism throughout history and is protected as a fundamental right under the Nevada Constitution).

The District Court, in adopting the Board's position that it may adjudicate private rights and impose civil penalties through an administrative proceeding without a jury, incorrectly strengthened the Board's power at the expense of Appellants' constitutional rights and the Nevada Constitution's carefully drawn checks and balances. The Court should retain review to confirm that the Nevada constitution requires trial by jury in district court where the Board adjudicates private rights and imposes civil monetary penalties on an enforcement target.

STATEMENT OF THE ISSUE

Whether a jury trial in district court is required under Nevada Constitution Article I, Section 3, or United States Constitution amendment VII, in cases initiated by the Nevada State Board of Architecture, Interior Design and Residential Design for civil monetary penalties.¹

¹ Appellants submit that they were entitled to a jury trial under both the Nevada Constitution and the Seventh Amendment to the United States Constitution. Appellants acknowledge, however, that pursuant to *Minneapolis & St. Louis Railroad Co. v. Bombolis*, 241 U.S. 211 (1916), the Seventh Amendment is not incorporated against the states. Appellants therefore preserve for the U.S. Supreme Court the questions whether *Bombolis* should be overruled and whether the Seventh Amendment should be incorporated against the states.

STATEMENT OF THE CASE

This case arises from an in-house proceeding by the Nevada State Board of Architecture, Interior Design and Residential Design (the “Board”) against Appellants Jeffrey Hagen and his firm JAHA, Inc. for alleged violations of NRS § 623.360(1)(a)–(c). That statute makes it unlawful for any person to hold oneself out to the public as an architect in Nevada or practice architecture in the state without a certificate of registration issued by the Board. JA00322–24, Vol. 4. The Board conducted its proceeding without a jury, found that Appellants had violated the statute, and imposed a civil monetary penalty of \$20,000, plus attorneys’ fees and costs of \$9,610.64. JA00620–25, Vol. 5.

Appellants filed a timely petition for review before the Eighth Judicial District Court, asking the court to vacate and set aside the Board’s decision because, among other reasons, the Board violated Appellants’ rights to a jury trial as protected by the Nevada and United States Constitutions. JA00001–13, Vol. 1; JA00287–318, Vol. 3. The District Court remanded the matter back to the Board to determine in the first instance: “whether [the Board’s causes of action] involve a

common law issue that would allow [Appellants] to demand a jury trial under *SEC v. Jarkesy*,” 603 U.S. 109 (2024). JA00630–33, Vol. 5.

The Board answered this question in the negative. JA00634–44, Vol. 6. The District Court adopted the Board’s conclusions and denied the petition for review on March 13, 2025. JA01102–10, Vol. 7. This appeal promptly followed. JA01111–13, Vol. 7.

STATEMENT OF FACTS

The practice of architecture in Nevada is governed by NRS Chapter 623. An architect in Nevada who wants to practice in the state must obtain a “certificate of registration” from the Board. NRS § 623.180. An out-of-state architect licensed in a jurisdiction with equal qualifications as Nevada may be permitted to practice in the state upon approval by the Board. NRS § 623.210. The Board may accept a certificate from the National Council of Architectural Registration Board (“NCARB”) as satisfactory evidence of that qualifying license. NRS § 623.210.

Architects practicing in Nevada are subject to the requirements and limitations set forth in NRS Chapter 623, which the Board enforces through in-house administrative proceedings. *See* NRS §§ 622.150,

623.365; *see also* NRS Chapter 622A. Architects are subject to both criminal and civil penalties for violations. NRS §§ 623.360, 623.365.

Jeffrey Hagen is a California-licensed architect with over twenty years of practice. JA00144, Vol. 2. Hagen practices architecture through JAHA, Inc., d/b/a JAHA Architecture. JA00105, Vol. 2. He maintains an active NCARB registration to obtain reciprocity in other states. JA00144; JA00148, Vol. 2.

At issue here, Hagen drew up preliminary plans for a longtime client who was interested in purchasing property in Nevada. When his client decided to proceed with the project, Hagen submitted his drawings to the Las Vegas Building Department for a permit. JA00102–03; JA00112, Vol. 2; JA00940–56, Vol. 7. About two weeks later, Hagen applied for NCARB reciprocity from the Board to obtain permission to practice architecture in the state. JA00101; JA00114–15, Vol. 2.

As part of the application for reciprocity, Hagen checked “yes” in response to the question: “[h]ave you or any firm/business at which you practice architecture provided a proposal to a client, entered into a contract agreement with a client, prepared drawings for a client, or otherwise performed architectural work for a project located in Nevada?”

JA00936, Vol. 7. Hagen provided a supplemental statement explaining that “JAHA Architecture has been working with a Client on conceptual designs for an interior remodel for a project located in the State of Nevada. The Client would like to pursue the design and has asked JAHA Architecture to produce Construction Documents and apply for a Building Permit.” JA00937, Vol. 7.

A Board investigator, after reviewing Hagen’s application for reciprocity, contacted Hagen to discuss his application and the preliminary drawings he prepared. JA00100–04, Vol. 2. Upon request, Hagen provided a copy of the drawings. *Id.* The investigator then drafted a notice of charges and proposed settlement based on the drawings that Hagen had prepared and submitted. JA00116, Vol. 2. After Hagen rejected the Board’s proposed settlement—because it would have required him to admit criminal guilt—the Board issued a formal complaint and brought an in-house proceeding against Hagen and JAHA. JA00120–21; JA00135–37, Vol. 2; JA00322–24, Vol. 4. The hearing, held at the Board’s office in Las Vegas, was conducted by the Board’s counsel and overseen by the Board’s members without a jury. JA00090–92, Vol. 2.

At the hearing, the Board alleged that Hagen practiced architecture and held himself out as a Nevada architect without a license to practice in the state. JA00116, Vol. 2; JA00323, Vol. 4. The evidence showed, however, that Hagen's drawings clearly indicated that Hagen was a California architect and not a Nevada architect. JA00144, Vol. 2. Hagen never held himself out to anyone as a Nevada architect. JA00139–43, Vol. 2. Hagen never solicited anyone so that he could perform architecture services in Nevada. JA00140–43, Vol. 2. Hagen never advertised to anyone that he was a Nevada architect. JA00143, Vol. 2. There is no documentary evidence that Hagen and JAHA held themselves out as Nevada architects, solicited business under the presumption of being Nevada architects, or advertised to the public that they were Nevada architects. JA00139–43, Vol. 2. At the end of the hearing, the Board concluded that Hagen practiced architecture and held himself out as an architect without a certificate of registration. JA00620–25, Vol. 5. The Board then imposed a civil monetary penalty of \$10,000 per violation (\$20,000 total) plus attorneys' fees and costs of \$9,610.64. *Id.*

Hagen filed a timely petition for review of the Board's decision in district court. JA00001–05, Vol. 1; JA00287–318, Vol. 3. Hagen asked the

court to vacate and set aside the Board’s decision because, among other reasons, the Board violated Appellants’ rights to a jury trial as protected by Article I, Section 3 of the Nevada Constitution and the Seventh Amendment to the United States Constitution. *Ibid.* The District Court remanded the matter back to the Board to determine in the first instance: “whether [the Board’s causes of action] involve a common law issue that would allow [Appellants] to demand a jury trial under *SEC v. Jarkesy*[.]” JA00630–33, Vol. 5.

The Board answered this question in the negative. JA00634–JA00644, Vol. 6. The Board concluded: (1) Appellants waived their right to raise the jury trial issue because they did not do so before the Board in the first instance; (2) *Jarkesy* does not apply because the Seventh Amendment has not been incorporated against the states; (3) there is no entitlement to a jury trial because Nevada’s occupational licensing statutes did not exist at common law, are creatures of statute, and all postdate the creation of the Seventh Amendment and the Nevada Constitution; and (4) decisions by the Nevada and Vermont Supreme Courts hold that there is no entitlement to a jury trial in a matter such as the Board’s administrative proceedings. *See* JA00641–42, Vol. 6;

JA01102–08, Vol. 7. The District Court summarily adopted the Board’s arguments and conclusions and denied the petition for review. JA01102–JA01110, Vol. 7. This appeal promptly followed. JA01111–13, Vol. 7.

SUMMARY OF ARGUMENT

The District Court’s Order must be reversed and remanded because it violates appellants’ right to a jury trial under Article I, Section 3 of the Nevada Constitution. Nevada courts have held that the Jury Clause is defined by English common law as modified at the time of the state constitution’s adoption in 1864. The Board’s claims and asserted remedies implicate Nevada’s Jury Clause because they are akin to fraud, professional negligence, and an action in debt, all common law claims that historically required trial by jury.

ARGUMENT

I. Standard of Review

This Court reviews purely legal questions de novo. *Law Offs. of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008), *citing Howard v. City of Las Vegas*, 121 Nev. 691, 693, 120 P.3d 410, 411 (2005); *see also Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 618,

173 P.3d 707, 711 (2007) (“Constitutional issues, such as one’s right to a jury trial, present questions of law that [the Court] review[s] de novo.”).

II. The District Court’s Order Must Be Reversed Because Appellants Are Entitled to a Jury Trial Under Nevada’s Constitution.

This Court “do[es] not make light of the right to a civil jury trial, which has served as a check against unbridled despotism throughout American history and is protected as a fundamental right under Nevada’s constitution.” *Taylor*, 482 P.3d at 1216. For the following reasons, the District Court erred in concluding that Nevada’s Jury Clause does not apply to the Board’s action. JA01107, ¶26–JA01108, ¶20, Vol. 7.

A. In Nevada, a Jury Is Required When the Action Would Have Been Tried by Jury at Common Law.

Article I, Section 3 of the Nevada constitution provides, in pertinent part: “The right of trial by Jury shall be secured to all and remain inviolate forever” According to this Court, “Nevada’s jury trial right is defined by English common law as modified at the time of the Nevada Constitution’s adoption,” i.e., 1864. *Aftercare of Clark Cnty. v. Just. of Las Vegas Twp. ex rel. Cnty. of Clark*, 120 Nev. 1, 4, 82 P.3d 931, 932 (2004). This Court observed that a “historical approach to construing the jury trial right appears to be universal in federal and state courts” and that

“most states look to the jury trial practice in their own territory or colony prior to statehood, in addition to the English practice, recognizing that the course of the common law may have been modified by territorial or colonial statute.” *Id.* at 4–5, 933 (citations omitted).

But, the Court continued, a “slightly broader approach” to the jury-right inquiry applies in Nevada. *Aftercare*, 120 Nev. at 5, 933. Here, “the jury trial right [i]s not connected to ancient English common law, but rather, to English common law as modified by English or ‘state’ statute prior to the Nevada Constitution’s adoption.” *Id.* (citation modified). And, thus, “Nevada’s jury trial right is based on an 1864 version of the English common law as statutorily modified in this country.” *Id.* at 6, 933. Therefore, Nevada courts may look to the common law of other states circa 1864 to determine the scope of Nevada’s jury right. *See Aftercare*, 120 Nev. at 5–6, 933 (relying on Colorado and Idaho case-law); *Awada*, 123 Nev. at 619, 711 (relying on California, Iowa, Ohio, and Wisconsin case-law concerning Nevada jury-trial right).

Accordingly, the question before the Court is—under the 1864 version of the English common law as statutorily modified in this country—would Hagen and JAHA have had a jury-trial right for the

Board's claims that they practiced architecture and held themselves out as Nevada architects without certificates of registration? As explained next, the answer is yes.

B. Because the Board's Claims and Imposition of Civil Monetary Penalties Required Trial by Jury at Common Law, Hagen and JAHA Were Entitled to a Jury.

The Board's claims against Hagen and JAHA would have required a jury in 1864. First, the Board alleged that Hagen and JAHA improperly held themselves out as licensed architects in Nevada, a claim akin to fraudulent misrepresentation, which was recognized as a common law action in 1864. Second, the Board claimed that Hagen and JAHA practiced architecture in Nevada without licenses, a claim for professional negligence recognized under the common law of 1864. And finally, the Board's award of money damages compares to the well-recognized common law action in debt. Hagen and JAHA were entitled to a jury for any one of these reasons.

Fraudulent misrepresentation. First, the Board claimed that Hagen and JAHA violated NRS § 623.360(1)(a)-(b), which prohibits individuals from holding themselves out as licensed Nevada architects. JA00323, Vol. 4. The Board's claim is thus a classic common law case of

fraudulent misrepresentation. *See* JA00323, Vol. 4. Nevada courts have recognized common law fraud principles since 1864. *See, e.g., Gregory v. Frothingham*, 1 Nev. 253, 262–64 (1865) (holding that admissions of a vendor who intended to negotiate a colorable sale for the purpose of delaying creditors is admissible to show fraud); *see also In re Baily*, 40 Nev. 139, 161 P. 512, 512–13 (1916) (disbarring an attorney for fraudulent misconduct).

Likewise, NRS § 623.360(1)(a)–(b) prohibits the misrepresentation of a material fact—i.e., misrepresenting that one is licensed to practice architecture in Nevada. *Compare Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (identifying elements of fraud in Nevada as “[a] false representation” made with the “knowledge or belief that the representation is false”); *Restatement (Third) of Torts: Liability for Economic Harm*, § 9 (A.L.I. 2020) (“One who fraudulently makes a material misrepresentation of fact, opinion, intention, or law . . . is subject to liability for economic loss caused by [another’s] justifiable reliance on the misrepresentation.”).²

² *See Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 400, 302 P.3d 1148, 1153 (2013) (recognizing this Court’s adoption of the Second

Therefore, Hagen and JAHA were entitled to a jury trial for the Board's claim under NRS § 623.360(1)(a)–(b).

Professional Negligence. The Board further claimed that Hagen and JAHA violated NRS § 623.360(1)(c), i.e., practicing architecture in Nevada without a license, which sounds in common law professional negligence. *See* JA00323, Vol. 4. Common law professional negligence traces back to before Nevada's statehood. *See, e.g., Pennington's Ex'rs v. Yell*, 11 Ark. 212, 227 (1850) (recognizing attorney may be liable for gross negligence or ignorance in the performance of his/her duties); *see also Town of Griswold v. Gallup*, 22 Conn. 208, 211–12 (1852) (holding that a plaintiff suing for negligence need not state whether the duty of care was imposed by common law or by statute); *Pass v. Dibrell*, 16 Tenn. 470, 43–74 (1835) (holding that a clerk of court is liable for negligence at common law).

Liability under NRS § 623.360(1)(c) similarly prohibits the practice of architecture without a license, i.e., the conduct falling below the professional standard of care. *See Morgano v. Smith*, 110 Nev. 1025, 1028

Restatement of Torts in upholding claim for negligent misrepresentation).

n.2, 879 P.2d 735, 737 n.2 (1994) (elements of professional negligence in Nevada are: “the duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise” and “[the] breach of that duty” resulting in “actual loss or damage . . . from the professional’s negligence.”) (citations omitted); *Restatement (Third) Torts: Liab. for Econ. Harm*, § 4 (“A professional is subject to liability in tort for economic loss caused by the negligent performance of an undertaking to serve a client.”); *Terracon Consultants W., Inc. v. Mandalay Resort Grp.*, 125 Nev. 66, 69–70, 77, 206 P.3d 81, 83–84, 88–89 (2009) (concluding that common law economic loss rule applies to professional negligence claims in Nevada).

Therefore, Hagen and JAHA were entitled to a jury trial for the Board’s claim under NRS § 623.360(1)(c).

Common Law Action in Debt. Finally, the Board’s claim for a civil penalty is akin to a common law action in debt, which had to be tried by a jury in 1864. *Cf. Aftercare*, 120 Nev. at 5–8, 933–35; *Tull v. United States*, 481 U.S. 412, 417–21 (1987). Historically, an action in debt was the appropriate action for recovery of a penalty at common law. *See Tull*, 481 U.S. at 417–19; *see also Mia. Copper Co. v. State*, 17 Ariz. 179, 191–

92 (1915) (“At the common law, the action of debt is the appropriate action for the recovery of a statutory penalty . . .”). As such, the jury trial right, as it existed in 1864 in Nevada, would have required trial by jury for civil penalty suits such as the Board’s here. *See, e.g., U.S. v. Allen*, 24 F. Cas. 772 (C.C.D. Conn. 1810) (holding that an action in debt will lie for statutory penalties); *see also Sims v. Alderson*, 35 Va. 479, 484 (1836) (recognizing that an action in debt is the most approved action for a statutory penalty); *Elder v. Hilzheim*, 35 Miss. 231, 237 (1858) (declaring that an action in debt is the proper cause of action for recovery of statutory penalties); *Gebhart v. Adams*, 23 Ill. 397 (1860) (involving an action of debt to recover statutory penalties for cutting timber); *Cf. Tull*, 481 U.S. at 417–19; *Aftercare*, 120 Nev. at 5–8, 933–35.

Therefore, Hagen and JAHA were entitled to a jury trial for the Board’s claims seeking an award of a civil penalty.

C. The Board and District Court Erroneously Held that the Right to a Jury Does Not Exist in Administrative Proceedings.

The Board and District Court concluded that Appellants are not entitled to a jury trial for several reasons. None of these conclusions withstand scrutiny.

First, contrary to the decisions below, Hagen and JAHA did not waive their right to a jury trial because they had no opportunity to waive it. Instead, they were precluded from making a jury demand in the Board's in-house proceeding. *See* NRCP 38(d)(1); NRS § 623.365. Moreover, any waiver was cured when the District Court remanded the jury-trial issue to the Board for determination. JA00630–32, Vol. 5; JA00634–42, Vol. 6. In short, the jury-trial issue was presented to the Board, and the Board ruled on the merits, as did the District Court. The question, therefore, has been addressed below and is now squarely presented to this Court.

Second, the Board concluded that the U.S. Supreme Court's decision in *Jarkesy* was not relevant since it did not directly control. But *Jarkesy* remains persuasive authority for determining whether modern claims have historical common law analogs. As noted above, "Nevada's jury trial right is based on an 1864 version of the English common law as statutorily modified in this country." *Aftercare*, 120 at 6, 933. And the jury trial rights enshrined in the Nevada and federal constitutions share a similar history and context. *See id.* at 4–6; *see also Debates of Proceedings of the Nevada State Constitutional Convention of 1864*, at

53–59; 304 (Andrew J. Marsh off. rep., 1866); *cf. Jarkey*, 603 U.S. at 121–23.

In *Jarkey*, the Supreme Court held that respondents accused of securities fraud had the right to a jury even though the fraud claims were based on statute (which post-dated the adoption of the Seventh Amendment) and even though the respondents were tried before an administrative tribunal. 603 U.S. at 117–18, 120. Just as this Court staunchly defends Nevadans’ jury rights, the U.S. Supreme Court emphasized that 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.” *Id.* 121 (citation modified); *compare Taylor*, 482 P.3d at 1216 (stressing that this Court “do[es] not make light of the right to a civil jury trial, which has served as a check against unbridled despotism throughout American history and is protected as a fundamental right under Nevada’s constitution.”).

According to *Jarkey*, the Seventh Amendment right to a jury “extends to a particular statutory claim if the claim is legal in nature.” 603 U.S. at 122 (citation modified). To determine whether a claim is legal

in nature, the Supreme Court considers the cause of action and the remedy it provides. *Id.* at 122–23. And “whether that claim is statutory is *immaterial* to this analysis.” *Id.* at 122 (emphasis added).

As here, *Jarkesy* involved statutory claims that sound in common law fraud. *See* 603 U.S. at 125–27; NRS § 623.360(1)(a)–(c). *Cf. Tull*, 481 U.S. at 421 (explaining that establishing the nature of the statutory action does not require the identification of a “precise[]” analog in 18th-century English common law; rejecting the necessity of an “abstruse historical’ search”).

But even more importantly—because, as *Jarkesy* explained, the remedy is the more important consideration to determine whether a claim is legal, 603 U.S. at 123—the remedy sought here and in *Jarkesy* is the same, namely, a civil money penalty. The Supreme Court noted that money damages are the “prototypical common law remedy.” *See id.* And where, as here, civil penalties are designed to punish and deter, they are “a type of remedy at common law that [can] only be enforced in courts of law.” *See id.* at 125; NRS § 623.365.

Jarkesy therefore is persuasive authority that Hagen and JAHA were denied their rights to a jury trial under the Nevada Constitution.

Third, the Board and the District Court unduly narrowed the relevant analysis by emphasizing that “occupational licensing was unknown in and was not a matter of the common law. . . .” See JA00986, Vol. 7; JA01102–07, Vol. 7. It is irrelevant that Nevada’s architectural licensing statute was not passed until 1949. See JA00641, Vol. 6. See *Jarkesy*, 603 U.S. at 122 (jury right applies to all legal claims, statutory or otherwise); *Tull*, 481 U.S. at 417–18, 420–21. The question here is whether the Board’s claims would have been recognized at common law circa 1864. That the Board’s claims are codified is irrelevant to that analysis—and the Board cites to no authority to say otherwise. Here, the Board’s claims are analogous to (1864) common law claims of fraudulent misrepresentation, professional negligence, and action in debt. As a result, Hagen and JAHA were entitled to a jury for those claims. The Board’s attempt to add another roadblock to the analysis must be rejected.

Finally, the Board’s and District Court’s reliance on *In re Parental Rights as to M.F.*, 132 Nev. 209, 371 P.3d 995 (2016) and the Vermont Supreme Court’s decision *In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, 327 A.3d 789 (2024) is misplaced. See JA00640, Vol. 6;

JA00987–90, Vol. 7; JA01102–08, Vol. 7. This Court’s decision in *Parental Rights* has nothing to do with a governmental civil penalty suit—that case instead involves the termination of parental rights, proceedings that are inherently equitable and have no common law analog. *See Parental Rights*, 132 Nev. at 214–16, 371 P.3d at 999–1000. Furthermore, the Vermont Supreme Court’s decision in *Investigation* is readily distinguishable. *See* JA00640, Vol. 6; JA00987–90, Vol. 7. That case involved penalties that were “equitable in nature[,]” as the governing statute there required “a careful balancing of equities” both to impose and determine the amount of the penalty. *See Investigation*, 327 A.3d at 807, ¶34. Here, NRS § 623.365 imposes civil money penalties and contains no statutory factors for “balancing equities.”³ *See id.* Indeed, the civil penalties in NRS § 623.365 are clearly intended to punish violators as the statute makes no mention whatsoever of “restor[ing] the victim” and the Board is “not obligated to return any money to victims.” *See Jarkesy*, 603 U.S. at 123–24 (holding that money penalties designed for deterrence and not mere restitution are common law damages that

³ Compare NRS § 623.365 (no statutory factors) with 30 Vt. Stat. Ann. § 30 (listing eight statutory balancing factors).

require a jury trial). A monetary remedy is a legal remedy if it is “designed to punish or deter the wrongdoer” as NRS § 623.365’s penalties are clearly meant to do. *See id.*

Because the Board’s claims are based on common law principles of fraudulent misrepresentation and professional negligence, and its asserted remedy was historically tried by jury as a common law action in debt, Nevada’s Jury Clause requires a jury trial here. Nev. Const. art. I, § 3; *see Aftercare*, 120 Nev. at 5–8, 933–35; *cf. Tull* 481 U.S. at 417; *Jarkesy*, 603 U.S. at 122–23. The Board’s and District Court’s conclusions to the contrary must be reversed.

III. Appellants Preserve Their Right to Raise Seventh Amendment Claims.

The Board and the District Court correctly noted that the U.S. Supreme Court has not incorporated the Seventh Amendment’s civil jury trial right to the states. JA00641, Vol. 6; JA01102–08, Vol. 7; *see Bombolis*, 241 U.S. at 217 (The Seventh Amendment is “not concerned with state action, and deal[s] only with Federal action.”). This Court cannot incorporate the Seventh Amendment in the face of this contrary precedent from the U.S. Supreme Court. Accordingly, Appellants

expressly preserve for the U.S. Supreme Court the questions of incorporating the Seventh Amendment and overruling *Bombolis*.

IV. Conclusion

For the foregoing reasons, Appellants respectfully request that the Court retain review and reverse the order of the District Court.

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Respectfully submitted,

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RULE 28.2 ATTORNEY CERTIFICATE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word in 14-point Century Schoolbook font.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4,503 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

/s/ Mark H. Hutchings
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November 2025, the foregoing Appellants' Opening Brief was served upon all counsel of record by electronically filing the document using the Supreme Court of Nevada's electronic filing system.

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