In The Supreme Court of Nevada

CASE NO. 90455

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' REPLY 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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I. Introduction

The Court should reverse the order of the district court because Hagen and JAHA were entitled to a jury trial under article I, section 3 of the Nevada Constitution. The Board's arguments to the contrary should be rejected.

First, the Board argues that Hagen and JAHA waived their right to a jury trial by not raising this argument before the Board. Respondent's Answering Brief (Ans. Br.) at 17. But it would have been futile for Hagen and JAHA to have raised the jury-trial issue before the Board because it has no power to resolve constitutional claims. Moreover, Hagen and JAHA did raise their jury-trial argument in their petition for judicial review, and any purported waiver was cured on remand from the district court.

Second, the Board advances an unduly narrow interpretation of Nevada's jury clause. *See id.* at 27–28. In effect, the Board argues that no claims statutorily created after 1864 require trial by jury in Nevada. *See id.* This interpretation does not withstand scrutiny.

Third, the Board attempts to paint its claims and remedy as equitable to avoid the jury trial issue. *See id.* at 37. But the Board admits

that the purpose of its monetary assessment is deterrence—a classic *legal* remedy. *See id.* at 38. Therefore, because the Board's imposition of civil monetary penalties required trial by jury at common law, Hagen and JAHA were entitled to a jury here.

Accordingly, the Court should reject the Board's arguments and reverse the order of the district court entered against Hagen and JAHA.

II. Standard of Review

This Court reviews purely legal questions de novo. *L. 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.").

III. Appellants Did Not Waive Their Right to a Jury Trial Under Nevada's Constitution

The Board asserts that Hagen and JAHA waived their argument for a jury trial by failing to raise it for the first time before the Board or to the district court. *See* Ans. Br. at 17. But because the Board has no authority to resolve structural constitutional claims like this, it would

have been futile for Hagen and JAHA to have raised the jury trial issue before the Board.

The Board, like all administrative tribunals, lacks the authority to declare its own structure unconstitutional. Hagen and JAHA assert a purely constitutional claim "about which [the Board has] no special expertise and for which [it] can provide no relief." *See Carr v. Saul*, 593 U.S. 83, 93 (2021). Judges—not agencies—are experts in the "field" of legal interpretation, which is "'emphatically,' 'the province and duty of the judicial department.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). Because the Board cannot address constitutional questions, Hagen and JAHA had no obligation to present those questions to the Board. *See Carr*, 593 U.S. at 93; *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992) (recognizing exception for inadequate or unavailable administrative remedies); *cf. Englemann v. Westergard*, 98 Nev. 348, 352–53, 647 P.2d 385, 388–89 (1982) (holding that one need not exhaust administrative process where resort to administrative procedures would be futile); *State, Nevada Dept. of Tax'n v. Scotsman Mfg. Co., Inc.*, 109 Nev. 252,

255, 849 P.2d 317, 319 (1993) (recognizing exceptions where issues relate solely to the interpretation or constitutionality of a statute).

Moreover, Hagen and JAHA did not waive their right to a jury trial because they had no opportunity to waive it. The Board has no authority to empanel a jury; indeed, Hagen and JAHA were precluded from demanding a jury in the Board's in-house proceeding. *See* NRCP 38(d)(1); NRS § 623.365.

In the end, Hagen and JAHA raised their jury rights at the first available opportunity—in their petition for review to the district court—a court of law that is authorized to rule on constitutional questions. The Board glosses over this fact. *See* JA00296–JA00300, Vol. 3. But even if they had not done so, any purported waiver was cured when the district court remanded the jury-trial issue to the Board for determination and the Board addressed the merits. JA00630–32, Vol. 5; JA00634–42, Vol. 6; JA01007–JA01010, Vol. 7. And both parties argued the jury-trial issue as to the Nevada and federal constitutions—Hagen and JAHA specifically argued that Nevada's jury clause cannot fall below the protections afforded by the Seventh Amendment to the U.S. Constitution. *See id.* Because the Board lacks authority to rule on

constitutional issues, Hagen and JAHA raised their jury trial argument in the petition for review, and any waiver was cured on remand, the issue is properly before this Court.

IV. The Board's Overly Narrow Interpretation of Nevada's Jury Clause Should Be Rejected.

The Board argues that article I, section 3 of the Nevada Constitution does not apply here for several reasons. First, the Board claims that Nevada's jury clause cannot apply because occupational licensing was unknown in the common law. *See* Ans. Br. at 27. Second, the Board notes that it is a "creature of statute" and that its governing statute was not passed until 1949. *See id.* Third, the Board interprets *In re Parental Rights as to M.F.*, 132 Nev. 209, 371 P.3d 995 (2016), and two criminal law cases to mean that there is no jury trial right for any claims statutorily created after 1864. *See* Ans. Br. at 28. Fourth, the Board relies on sister-state case law to argue that administrative agencies need not prove their cases to a jury. Each of these reasons is unavailing.

First, the Board mistakenly assumes that because *legislation* regarding occupational licensing may not have been promulgated nationwide until the 1870s, then occupational licensing must have been

unknown in the common law prior to that time. *See* Ans. Br. at 27. The truth is that occupational licensing regimes have an ancient lineage. *See, e.g.*, Lawrence M. Friedman, *Freedom of Contract and Occupational Licensing 1890–1910: A Legal and Social Study*, 53 Cal. L. Rev. 487, 494 (1965) (acknowledging that licensing of occupations goes back to colonial times and English practice); James W. Ely, Jr., *The Guardian of Every Other Right: A Constitutional History of Property Rights*, 20–22 (3d ed. 2008) (recognizing colonial business regulations, including licensing). The licensing of lawyers, for example, goes back to English practice. *See id.* As a matter of historical fact, it is simply not true that occupational licensing was unknown in the common law. *See*, *e.g.*, *State v. Washington*, 13 Ark. 752 (1853) (regarding the granting of licenses to operate billiard tables and ten-pin alleys); *People v. Raynes*, 3 Cal. 366 (1853) (regarding the failure to obtain a license for a common gaming-house); *Barton v. Wilson*, 9 Rich. 273 (S.C. Ct. App. 1856) (regarding proof of having graduated and received a diploma from an organized medical college by procuring a license to practice medicine); *People ex rel. Hughes v. May*, 3 Mich. 598 (1855) (regarding a license to practice law as a qualification of eligibility to the office of prosecuting attorney);

Westmoreland v. Bragg, 2 Hill (SC) 414 (1834) (regarding a license to practice as an apothecary).

Second, it is irrelevant that the Board was created by statute and that its claims are statutory. Historically, claims for civil monetary penalties required trial by jury at common law. *See*, *e.g.*, *Tull v. United States*, 481 U.S. 412, 417–21 (1987). The Board makes no attempt to dispute this fact, nor does it substantively address the plethora of cases cited in Hagen and JAHA's opening brief respecting actions in debt for recovery of statutory penalties. *See* Appellants' Opening Brief (Op. Br.) at 15–16. The fact is that the common law is replete with examples of actions for the recovery of civil monetary penalties like the Board's here. Nor does it matter that the legislature "[directs] administrative enforcement actions to be before the Board and not to be before a court and a jury." Ans. Br. at 28. The right to a jury trial would be superfluous if the legislature could simply direct all legal claims and remedies to administrative tribunals and thereby eliminate jury trials entirely. *See SEC v. Jarkesy*, 603 U.S. 109, 127 (2024) (*quoting Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856), and *Stern v. Marshall*, 564 U.S. 462, 484 (2011)).

Third, the cases that the Board relies on are inapposite. Appellants have already shown that *Parental Rights* is distinguishable. *See* Op. Br. at 20–21. Furthermore, neither of the criminal cases cited by the Board (*Hudson v. City of Las Vegas*, 81 Nev. 677, 409 P.2d 24 (1965) and *Howard v. State*, 83 Nev. 53, 422 P.2d 548 (1967)), had anything to do with a governmental civil penalty suit.

Hudson involved a "petty" criminal offense which had historically been tried summarily without a jury. *Hudson,* 81 Nev. at 679–80, 409 P.2d at 246–47 (internal quotation marks and citation omitted). As such, *Hudson* has no application to the instant case. Nor does *Hudson* stand for the Board's overly formulistic interpretation that *any claims* created after 1864 do not require a jury trial. *See* Ans. Br. at 27–28.[1]

[1] If the Board's interpretation were correct, a bevy of absurd results would follow. For example, the Board's interpretation would mean that there is no jury-trial right for a defendant charged with the offense of driving under the influence of alcohol or a prohibited substance. *See* NRS § 484C.010 *et seq.* After all, that offense was not created until after 1864, the automobile was not invented until 1885, and more than half of the prohibited substances in the code did not exist until much later. Such an offense "could not have been in the contemplation of the framers of the Nevada Constitution in 1864" and so, according to the Board, Nevada's jury trial clause would be inapplicable.

Similarly, *Howard* involved a criminal defendant who raised his right to a jury trial during a court hearing to determine whether he was a habitual criminal. *See Howard*, 83 Nev. at 55–56, 422 P.2d at 549–50. This Court noted that such a hearing is procedural and does not address allegations of a separate crime. *Id.* at 56–57, 422 P.2d at 549–50. The Court therefore concluded that a habitual criminal hearing is not a "case" in the constitutional sense. *See id.* at 57, P.2d at 550.

The Board's in-house proceeding here is nothing like the habitual-criminal hearing at issue in *Howard*. Indeed, the Board's proceeding was not merely procedural and "held solely to determine facts, which if true, [would] increase punishment" in an underlying criminal proceeding. *See id.* at 56, 422 P.2d at 549 [internal citations omitted]. Rather, the Board's in-house proceeding was the entire "case" in every sense of the term. *See id.* at 57, 422 P.2d at 550. Therefore, *Howard* is inapposite.

Fourth, the Board's reliance on five sister-state cases is misplaced.[2] *See* Ans. Br. at 32–35. This Court has already noted its

[2] These cases are: (1) *State Bd. of Med. Exam'rs v. Macy*, 159 P. 801 (Wash. 1916); (2) *In re Investigation Pursuant to 30 VSA Sec. 30 & 209*, 327 A.3d 789 (Vt. 2024); (3) *Swan Energy, Inc. v. Inv. Prot. Unit of Del. Dep't of Just.*, 341 A.3d 1036 (Del. Super. Ct. 2025); (4) *Ridlon v. N.H.*

"slightly broader approach" to the jury-right inquiry compared with federal and other state courts. *See Aftercare of Clark Cnty. v. Just. of Las Vegas Twp. ex rel. Cnty. of Clark*, 120 Nev. 1, 5, 82 P.3d 931, 933 (2004). Appellants have already addressed *Investigation* in their opening brief. *See* Op. Br. at 20–22. And the remaining four sister-state cases are readily distinguishable. *Macy* and *Roy* involved physician disciplinary proceedings and license revocation, *not* governmental civil-penalty suits. *See Macy*, 159 P. at 801–02; *Roy*, 48 A. at 802–03. *Swan Energy* and *Ridlon* involved state securities fraud—and those cases deal primarily with *equitable* remedies such as restitution and disgorgement, in addition to fines. *See Ridlon*, 214 A. 3d at 1198; *Swan Energy*, 341 A. 3d at 1044.

In *Ridlon*, the New Hampshire Supreme Court held that administrative enforcement under the state's Uniform Securities Act was not equivalent to common-law causes of action for fraud or deceit, and, therefore, New Hampshire's jury trial right did not apply. *See Ridlon*, 172 N.H. at 425–26. As the Board admits, *Ridlon* preceded the

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Bureau of Sec. Regul., 214 A.3d 1196 (N.H. 2019); and (5) *State Bd. of Health v. Roy*, 48 A. 802 (R.I. 1901).

U.S. Supreme Court's decision in *Jarkesy*. Ans. Br. at 37. And the majority in *Ridlon* relied on the same arguments that the U.S. Supreme Court expressly rejected in *Jarkesy*—namely, that statutory securities fraud cases did not require juries because the statute was "designed to encompass a broader class of claims than the common law tort." *See Ridlon*, 172 N.H. at 425; *Jarkesy*, 603 U.S. at 126 (holding that securities-fraud claims require juries even if the statutory claims are broader than common-law claims).

Further, *Ridlon* admits that a civil penalty was not "unknown to the common law." *See* 172 N.H. at 423; *see also, e.g.*, *Tull*, 481 U.S. at 417–21. In fact, "the available historical evidence supports [the] position that [an] action to recover civil penalties [constitutes] an action in debt, for which there was a right to a jury trial at common law." *Ridlon*, 172 N.H. at 431–32 (Hantz Marconi, J., dissenting).

Swan Energy is a Superior Court of Delaware case currently on appeal to the Delaware Supreme Court. *See Swan Energy, Inc., et al. v. Inv. Prot. Unit of Del. Dep't of Just.*, No. 331-2025, *appeal filed* (Del. July 24, 2025). There, as in *Ridlon*, the court was persuaded that the difference in the elements and purposes of common-law fraud and state

securities fraud meant that the right to a trial by jury did not apply to the Delaware Securities Act. *See Swan Energy*, 341 A.3d at 1054. The Court held that "[g]overnment-brought securities fraud claims . . . are a 'new statutory' cause of action to which the right to trial by jury was not intended to apply." *See id.* at 1055. But the Court disregarded relevant Delaware precedent tending to show that an action for civil penalties was "akin to a common law action to recover a debt," evidencing a remedies-focused analysis in Delaware's jurisprudence like that of the U.S. Supreme Court's Seventh Amendment analysis. *See id.* at 1055, n. 97 (referencing *American Appliance, Inc. v. State ex rel. Brady*, 712 A.2d 1001 (Del. 1998)). Indeed, as the Delaware Supreme Court stated in *American Appliance*, "[a]n action to recover a civil penalty is an action 'of a civil nature' and is akin to a common law action to recover a debt. Thus, even if there were no statutory grant of power, the Constitution would vest jurisdiction over these claims in the Superior Court." *American Appliance*, 712 A.2d at 1003. Nevada need not narrow and cabin its jury trial right simply because a sister-state superior court judge has done so in Delaware.

For the foregoing reasons, the Court should reject the Board's overly narrow interpretation of Nevada's jury clause and reverse the order of the District Court.

V. The Board's Claims Are Not Equitable

The Board attempts to paint its civil penalty as equitable to avoid the jury trial issue. *See* Ans. Br. at 37. The Board claims that the civil penalty it imposed is equitable in nature because it was "intended to protect the public against [Hagen's] unregistered activities in Nevada, to assure that he was not unjustly enriching himself, and to deter such future conduct by him and others." *Id.* at 38. This argument does not withstand scrutiny.

First, there is nothing equitable about the Board's civil penalty. Whereas the Vermont Supreme Court's decision in *Investigation* involved a statutory scheme that contains eight statutory balancing factors for equitable weighing, NRS § 623.365 contains no statutory factors whatsoever. *Compare* NRS § 623.365 with 30 Vt. Stat. Ann. § 30. Instead, and as the Board admits, the civil penalties in NRS § 623.365 are clearly intended to punish violators—there is no mention of "restor[ing] the victim," and the Board is "not obligated to return any

money to victims." *See* Ans. Br. at 38. The Board's civil monetary penalty therefore is a legal—not equitable—remedy precisely because it is "designed to punish or deter the wrongdoer." *See Jarkesy*, 603 U.S. at 123–24. And as this Court has recognized, money damages are "the classic form of legal relief." *See Ahlers v. Ryland Homes Nev., LLC*, No. 52511, 2010 WL 3276221 (Nev. Apr. 16, 2010) (unpublished table decision) (internal citations and quotations omitted).

Second, the record here contradicts any alleged interest in "protect[ing] the public" and ensuring there was no "unjust enrichment." *See* Ans. Br. at 38. It is undisputed that Appellants' actions caused no harm. *See* JA00149, lines 11–20; JA00150, lines 2–6, Vol. 2. And even if there were, the Board does not explain how that would convert this case into an equitable one or deprive Hagen and JAHA of their right to trial by jury. Indeed, every criminal case is brought by the government to protect the public, yet that does not eliminate the right to a jury for criminal defendants. The Board's claims and remedies are clearly legal, designed as they are to "deter" conduct and not balance equities. *See* Ans. Br. at 38. As such, the Board's claims are not equitable.

VI. Conclusion

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

Dated: January 21, 2026.

Respectfully submitted,
/s/ Cameron M. Halling

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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 3,011 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
Mark H. Hutchings

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2026, the foregoing Appellants' Reply Brief was served upon all counsel of record by electronically filing the document using the Supreme Court of Nevada's electronic filing system.

/s/ Mark H. Hutchings
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