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IN THE SUPREME COURT OF PENNSYLVANIA
GOLDATA COMPUTER SERVICES, INC., d/b/a GOLDATA FINANCIAL; ELLIOT MITCHELL GOLDBERG; 1931 FUNDING, LLC; 442 FUNDING, LLC; 567 FUNDING, LLC; 803 FUNDING, LLC; and LEGS 1, LLC,
Appellants,
v.
DEPARTMENT OF BANKING AND SECURITIES,
Appellee.

BRIEF OF AMICUS CURIAE INVESTOR CHOICE ADVOCATES NETWORK IN SUPPORT OF APPELLANTS

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

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus curiae the Investor Choice Advocates Network ("ICAN") is a nonprofit, public-interest litigation organization dedicated to keeping the Commonwealth's and the Nation's capital markets open, fair, and governed by the rule of law—including the principle that the agencies charged with policing those markets must themselves respect the constitutional rights of the people they regulate. ICAN appears regularly as amicus curiae in cases testing the constitutional and statutory limits of securities-enforcement authority, and across those matters it has developed a body of experience in how enforcement agencies exercise—and describe—their own power.

ICAN's interest here is distinct from the parties'. Appellants seek to vindicate their own rights; the Department defends its own conduct. ICAN has no stake in the outcome as to any party. Its concern is institutional and forward-looking: whether Article I, Section 6 continues to guarantee a jury in enforcement actions of this kind, and what the answer will mean for the investors and entrepreneurs who depend on Pennsylvania's markets. ICAN does not write to repeat Appellants' showing that securities-fraud and debt actions were historically tried to juries. It writes to supply three things the parties are not positioned to provide: the historical reason Pennsylvania's jury guarantee turns on the remedy sought rather than on a cause-of-action label; the structural reason a jury matters most where the adjudicator keeps the penalties it imposes; and the practical consequences, for investor access and capital formation, of moving penal securities adjudication out of the courtroom and into the agency that collects the proceeds.[1]

SUMMARY OF ARGUMENT

This Court granted allocatur to decide whether Article I, Section 6 of the Pennsylvania Constitution guarantees a jury trial when the Department of Banking and Securities imposes civil penalties for securities fraud or in an action in debt. Appellants ably explain why the answer is yes under this Court's precedents. Amicus curiae files this brief to add what the parties cannot, and to avoid repeating what Appellants have shown.

First, the governing test is remedial, and history explains why. Pennsylvania in 1790 had no separate court of chancery; equity was administered through the common-law courts. "Trial by jury . . . as heretofore," Pa. Const. art. I, § 6, therefore could not have preserved a taxonomy of causes of action sorted by a law/equity divide that the Commonwealth never drew. It preserved the jury for claims seeking legal relief—including, as here, the sovereign's suit for a punitive sum of money.

[1]No party or party's counsel authored this brief in whole or in part, and no person or entity other than amicus curiae and its counsel contributed money intended to fund the preparation or submission of this brief. *See* Pa.R.A.P. 531(b)(2).

The court below erred at the threshold by asking whether the modern statutory action has an exact common-law twin rather than whether the remedy sought is legal.

Second, the jury guarantee applies most forcefully where the adjudicator keeps what it collects. The Department both decides these cases and receives the penalties it imposes into its own appropriation. 70 P.S. § 1-602.1. That is the structural conflict the jury was designed to check, and it is a reason to read Section 6 generously, not narrowly, in this setting.

Third, a jury trial produces a public, adversarial, appealable record—the very transparency the Pennsylvania Securities Act demands of every other market participant, and which in-house adjudication does not supply.

Fourth, the stakes are practical. Penal adjudication without a jury, before the body that receives the proceeds, will drive capital-raising away from Pennsylvania, at greatest cost to the underrepresented investors and entrepreneurs who have the fewest alternatives.

Amicus's argument is limited to the punitive monetary penalty—the demand for a sum of money designed to punish. Whether Article I, Section 6 also reaches the other remedies the Department may impose, such as bars, suspensions, revocations, or cease-and-desist orders, is beyond the scope of this brief, and amicus takes no position on it here. The certified question can be answered on the narrower ground that a punitive money judgment is a legal remedy for which the jury guarantee attaches.

I. BECAUSE PENNSYLVANIA ADMINISTERED EQUITY THROUGH ITS COMMON-LAW COURTS IN 1790, ARTICLE I, § 6 PRESERVES THE JURY BY REFERENCE TO THE REMEDY SOUGHT, NOT A CAUSE-OF-ACTION LABEL

Article I, Section 6 provides that "[t]rial by jury shall be as heretofore, and the right thereof remain inviolate." Pa. Const. art. I, § 6. The phrase "as heretofore" fixes the guarantee to the practice that prevailed in 1790, when the Constitution was adopted. *See Com. v. One (1) 1984 Z-28 Camaro Coupe*, 530 Pa. 523, 526, 610 A.2d 36, 38 (1992). Appellants explain why securities-fraud and debt actions were tried to juries at that time.[2] Amicus writes to identify the feature of Pennsylvania's legal order that determines how "as heretofore" must be read—and that forecloses the court below's approach at its root.

Unlike England and most of her sister colonies, Pennsylvania in 1790 had no separate court of chancery. Equity was not dispensed by a distinct

[2]The certified question's reference to an "action in debt" makes the point concrete. At common law the action of debt lay to recover a sum certain—a fixed or determinate amount. *See* 3 Blackstone, Commentaries on the Laws of England 153–54 (1768). It was equally the vehicle by which the sovereign recovered a statutory penalty. *See id.* at 261 (Crown's remedy "of debt, to recover moneys . . . forfeited by the breach of any penal statute"); *id.* at 347 (statute inflicting a penalty "gives an action of debt for recovering it"). A suit to recover a fixed monetary penalty for a statutory violation is thus the paradigmatic legal action, whatever the modern label affixed to it.

tribunal sitting without a jury; to the limited extent it was administered at all, it was administered by the common-law courts themselves, which, in exercising such chancery powers as they assumed, "would be governed by the same rules as a court of chancery." *Peebles v. Reading*, 1822 WL 1952, at *5 (Pa. 1822); *see Evans v. Tatem*, 9 Serg. & Rawle 252, 254–55 (Pa. 1823). The historical literature is uniform on the point.[3]

That history carries a direct doctrinal consequence. In a jurisdiction with parallel courts of law and equity, one might sort proceedings by the forum in which they originated. But Pennsylvania had no such division to codify. When the framers of the 1790 Constitution preserved trial by jury "as heretofore," they cannot have been freezing a classification of causes of action keyed to a law/equity jurisdictional line the Commonwealth did not draw. What they preserved was the jury's role in the matters the common-law courts tried to juries—matters seeking legal relief. The line the guarantee encodes is therefore the one this Court and the Supreme Court of the United States have always used: the nature of the remedy. *See Camaro Coupe*, 530 Pa. at 528–29, 610 A.2d at 39–40 (asking whether the proceeding is of

[3]*See* Spencer R. Liverant & Walter H. Hitchler, A History of Equity in Pennsylvania, 37 Dick. L. Rev. 156 (1933); Sydney George Fisher, The Administration of Equity Through Common Law Forms in Pennsylvania, in Select Essays in Anglo-American Legal History (1908).

the sort heard in common-law courts "such as the Court of Exchequer," not courts of "Admiralty or Chancery"); *Hausknecht v. John Hancock Life Ins. Co. of N.Y.*, 334 F. Supp. 3d 665, 677 (E.D. Pa. 2018) (the "usual distinction" turns on whether recovery is sought "against some specific thing . . . rather than . . . a sum of money generally"). And when the relief is a sum of money designed "to punish," it is legal, not equitable. That principle is Pennsylvania's own, drawn from the remedial focus of this Court's cases; it does not depend on federal law. The Supreme Court of the United States has recently reached the same conclusion in construing the Seventh Amendment, *see SEC v. Jarkesy*, 603 U.S. 109, 123–24, 144 S. Ct. 2117, 2129 (2024), but this Court need not follow *Jarkesy* to reach it, and nothing in the answer to the certified question turns on whether *Jarkesy* extends to state law. Article I, Section 6 independently secures the jury for legal remedies, and may afford Pennsylvanians broader protection than the Seventh Amendment—never less. *See Blum by Blum v. Merrell Dow Pharms., Inc.*, 534 Pa. 97, 105, 626 A.2d 537, 541 (1993).

That is why the court below erred at the threshold. It treated the jury right as forfeited because the General Assembly, in 1972, defined statutory "fraud" and "deceit" more broadly than the common law, 70 P.S. § 1-102(h), reasoning that the modern statutory action therefore lacks an exact eighteenth-century analog. But in a Commonwealth that never separated law from equity, the existence of an exact analog was never the test; the remedy was. A statute that enlarges the definition of fraud while leaving the Commonwealth to collect a punitive money judgment does not transform a legal remedy into an equitable one. The action remains what the common-law courts of 1790 would have tried to a jury: a suit by the sovereign for a sum of money as punishment. Appellants show that this action fits that description. The Commonwealth's chancery-free history explains why that description decides the case.

II. THE JURY GUARANTEE HAS ITS SHARPEST APPLICATION HERE, WHERE THE ADJUDICATOR RETAINS THE PENALTIES IT IMPOSES

The jury was not preserved as an antiquarian courtesy. Among its historical functions was structural: it placed the power to find facts and impose punishment in the hands of citizens with nothing to gain from the verdict, rather than in officials who did. That function is at its height in this case, because the Department both adjudicates the charges and keeps the money. By statute, the penalties the Department imposes are "deposited into the General Fund and . . . credited to the appropriation of the [D]epartment for the fiscal year received." 70 P.S. § 1-602.1. Appellants cite that provision to show the remedy is punitive. Amicus cites it for a complementary point: it describes precisely the configuration the jury guarantee exists to check.

The Supreme Court of the United States has repeatedly held that adjudication offends basic fairness when the decisionmaker has a financial interest in the outcome. In *Tumey v. Ohio*, a mayor who received a fee only upon conviction could not sit as judge. 273 U.S. 510, 523, 531–35 (1927). In *Ward v. Village of Monroeville*, the defect persisted even without a personal fee, because the fines the mayor imposed flowed to the village treasury he was responsible for funding. 409 U.S. 57, 59–62 (1972). And in the civil context, the Court has recognized that an enforcing sovereign's "financial stake" in the fruits of its own enforcement is a distorting influence the law must guard against. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55–56 (1993). Scholars studying modern penalty regimes have documented how the prospect of retained revenue shapes agencies' enforcement choices. *See* Margaret H. Lemos & Max Minzner, *For-Profit Public Enforcement*, 127 Harv. L. Rev. 853 (2014).

The concern has particular force because the size of the penalty turns on judgments of culpability. In fixing an administrative assessment, the Department must weigh the "willfulness," "seriousness," "persistence," and "magnitude" of the conduct. 70 P.S. § 1-602.1(c)(2)(i). Liability, however, can attach without any intent to defraud: Section 401(c) reaches conduct that "operates or would operate as a fraud or deceit upon any person," 70 P.S. § 1-401(c), whether or not the actor set out to deceive. The determination that separates the inadvertent or technical violator from the willful wrongdoer—the finding that both justifies punishment and fixes its amount—is exactly the culpability judgment the jury was preserved to make. Committing that judgment to the body that collects the resulting penalty compounds, rather than answers, the structural concern.

Amicus does not contend—and need not, to answer the certified question—that the Department's process independently violated due process. *Cf. Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980). *Jerrico* upheld a scheme in which civil penalties were returned to the enforcing agency, but on grounds that sharpen rather than answer the concern here: the penalties in *Jerrico* reimbursed enforcement costs subject to a statutory cap, the official who assessed them had no personal stake, and the Court was addressing prosecutorial rather than adjudicative neutrality. *Id.* at 245–50. Here, by contrast, the same body that finds the facts and fixes the penalty receives the penalty into its own appropriation, uncapped, with no separation between prosecutor and judge. That is the *Ward* configuration, not the *Jerrico* one. The point is not that the arrangement is independently unconstitutional; it is that Article I, Section 6 already supplies the structural safeguard the framers chose for exactly this risk—a jury—and that this Court should be least willing to construe the guarantee out of existence in the very setting where its structural logic is most fully engaged. Nor is the concern that the Department seeks to fill its own coffers; it is that an enforcement structure in which the adjudicator retains what it collects erodes the confidence of the regulated community—the buy-in on which any securities regime depends—that the enforcer is neutral.

III. A JURY TRIAL PRODUCES THE PUBLIC, ADVERSARIAL, APPEALABLE RECORD THAT THE PENNSYLVANIA SECURITIES ACT DEMANDS OF EVERYONE ELSE

The Pennsylvania Securities Act is, at bottom, a transparency statute. It conditions market participation on disclosure and forbids fraud and deceit in connection with the offer, sale, and purchase of securities. *See* 70 P.S. § 1-401. Its premise is that markets function when information is public and verifiable. The federal securities laws rest on the same foundation—the Securities Act of 1933 is, in design, a disclosure statute—and Pennsylvania's Act shares that DNA. A jury trial serves that same premise from the enforcement side. It is an open, adversarial proceeding, tested by cross-examination, that yields a public verdict and a record subject to meaningful appellate review—information other investors, sponsors, and platforms can use in deciding whom to trust. *See* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Stud. 459 (2004).

In-house administrative adjudication supplies little of this. The proceeding unfolds within the agency; the agency's factual findings bind the reviewing court if supported by substantial evidence, 2 Pa. C.S. § 704, so appellate review cannot correct them; and the resulting order reflects the judgment of the enforcer rather than a neutral factfinder. That the Department reaches its decision through its own officials, on a transcribed record, does not close the gap. Agency adjudication is not a jury when the decisionmakers are not disinterested in the outcome, and a transcript is not review when the reviewing court must accept what the record is said to show so long as substantial evidence supports it. The considered judgment of the enforcer is no substitute for the verdict of citizens with no stake in the result. The upshot is an enforcement regime that demands transparency of everyone except the enforcer. Reading Article I, Section 6 to require a jury restores the symmetry the Act assumes: the same public, testable record the Commonwealth expects of the market, applied to the Commonwealth itself when it seeks to punish.

IV. MOVING PENAL SECURITIES ADJUDICATION INTO THE AGENCY IMPOSES ACCESS AND CAPITAL-FORMATION COSTS

THAT FALL HARDEST ON UNDERREPRESENTED INVESTORS AND ENTREPRENEURS

Finally, how this Court answers the certified question will shape who can raise and invest capital in the Commonwealth. Penalties of roughly $931,000 fell on Appellants for contested and largely technical violations,[4] though no note holder suffered any monetary loss.[5] An enforcement regime that can impose punishment of that magnitude—without a jury, and before the very body that will receive the proceeds—is a regime that rational sponsors of alternative-finance and small-issuer offerings will avoid. When they avoid Pennsylvania, the investors who lose most are those with the fewest options to begin with: retail and first-time investors, and the founders and small businesses who depend on precisely the kind of offerings at issue here.

The costs are not only borne by investors. A regulatory environment that attaches substantial consequences to technical compliance missteps may incentivize advisers and issuers to prioritize checklist-based

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[4]The contested violations included, among others, whether the securities Appellants offered were "federally covered securities," whether Appellants' accredited-investor verification process was adequate, and whether Appellants maintained "custody" of client funds without filing the required forms. *See Goldata Computer Servs., Inc. v. Dep't of Banking & Sec.*, 350 A.3d 278, 294, 297, 302 (Pa. Commw. Ct. 2025).

[5]*See id.* at 307 (Appellants' clients "ha[d] received all the [principal and interest] they were [promised] and, thus, . . . did not suffer any damages").

compliance, rather than focusing their efforts on the substantive fiduciary obligations they owe to investors and clients.

A jury check helps keep enforcement trained on genuine misconduct, and in doing so frees market participants to focus on substance rather than on managing technical exposure. The Department's own mandate points the same way: it is charged both with protecting investors and with fostering the capital formation on which Pennsylvania's businesses depend. An enforcement framework that discourages offerings from being conducted within the Commonwealth advances neither of those important objectives.

The Department will answer that in-house adjudication is efficient. But efficiency is not the measure Article I, Section 6 sets, and it is the Commonwealth's own citizens who would bear the cost of the trade the efficiency argument proposes. The jury is not an obstacle to a healthy market; it is part of the infrastructure that makes one possible—the public check that gives investors reason to trust that enforcement is neutral, that penalties are earned, and that the same rules bind the regulator and the regulated alike. Preserving it here protects not only Appellants but the market ICAN's constituents depend upon.

CONCLUSION

For the foregoing reasons, and those stated by Appellants, amicus curiae respectfully urges this Court to hold that Article I, Section 6 guarantees the right to a jury trial in this proceeding and to reverse the decision below.

Respectfully submitted,

Dated: August 18, 2026

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word-count limit of Pa.R.A.P. 531(b)(3). In reliance on the word-count feature of the word-processing system used to prepare this brief, and excluding the portions exempted by Pa.R.A.P. 2135(b), this brief contains 3,043 words, which does not exceed the 7,000-word limit for an amicus curiae brief filed during merits briefing.

I further 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. *See* Pa.R.A.P. 127.

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CERTIFICATE OF SERVICE

I certify that on August 18, 2026, I served a true and correct copy of the foregoing Brief of Amicus Curiae upon all counsel of record via the PACFile electronic filing system and/or in the manner required by Pa.R.A.P. 121 and 2187.

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