In the Supreme Court
State of Arizona

EFG AMERICA, LLC; DOUGLAS ELROY FIMRITE; MARK BOYD AND GINGER BOYD; DONALD CARROLL AND SONIA CARROLL Petitioners, v. ARIZONA CORPORATION COMMISSION; COMMISSIONERS JIM O'CONNER, LEA MARQUEZ PETERSON, ANNA TOVAR, KEVIN THOMPSON, and NICK MYERS Respondent.	Case No. CV-25-0134-PR Court of Appeals Division One No. 1 CA-SA 25-0016 Arizona Corporation Commission No. S-21131A-20-0345 (Filed with consent of the parties)

BRIEF OF *AMICUS CURIAE* THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION IN SUPPORT OF THE RESPONDENT

Daryl Manhart, SBA #005471
Burch & Cracchiolo, P.A.
Firm #00016600
1850 N. Central Ave., Suite 1700
Phoenix, AZ 85004
(602) 234-9908
dmanhart@bcattorneys.com

Dylan White (Of Counsel)
Associate General Counsel
North American Securities Administrators Association, Inc.
750 First Street, NE, Suite 900
Washington, DC 20002
Tel: 202-683-2309
dwhite@nasaa.org

Attorneys for *Amicus Curiae* North American Securities Administrators Association, Inc.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Formed in 1919, the North American Securities Administrators Association, Inc. ("NASAA") is the non-profit association of state, provincial, and territorial securities regulators in the United States, Canada, and México. NASAA has 68 members, including the Arizona Corporation Commission (the "Commission"), as well as the securities regulators in all 49 other U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA and its members seek to protect investors from fraud and abuse, educate investors, support responsible capital formation, and help ensure the integrity and efficiency of financial markets.[2]

NASAA has a substantial interest in preserving the enforcement authority granted to NASAA-member state securities regulators across the country by state legislatures. The ability to bring administrative enforcement actions – including antifraud enforcement actions seeking monetary penalties – is an essential component of state securities laws, and the abilities of states to protect their investors. NASAA members rely on their administrative enforcement authority to

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[1] This brief is being filed separately from any other *amicus* brief and is appropriate because NASAA has a unique perspective and expertise on the relevant legal issues that will assist the Court in determining the matter before it. No person or entity other than NASAA and its counsel authored this brief, in whole or in any part, and no person or entity other than NASAA or its counsel has made a monetary contribution to the preparation and submission of this brief.

[2] *See* NASAA.org, *About*, https://bit.ly/49Stdrm.

ensure they are fulfilling their core missions. An adverse decision from this Court on the issues raised in this case could have ripple effects that materially impair how other state securities regulators serve their citizens, both investors and businesses alike.

ARGUMENT

I. State securities regulators rely on their administrative enforcement authorities to protect investors, support responsible capital formation, and ensure the integrity of financial markets.

State and federal securities laws, including the Arizona Securities Act (the "Act"), are remedial statutes, intended to broadly protect the public from fraud, deception, and other wrongdoing in connection with securities transactions, and they require a "liberal" or "flexible" construction to fulfill their purposes. *See*, *e.g.*, *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128, 151 (1972); *Sell v. Gama*, 231 Ariz. 323, 325-26, ¶ 8 (2013); 1951 Ariz. Sess. Laws, ch. 18, § 20. These laws prohibit a broad range of deceptive and dishonest conduct,[3] and their securities registration requirements help to ensure that all investors have access to the information necessary to assess the risks and merits of investments and make informed decisions before they part with their money. *See*, *e.g.*, A.R.S. §§ 44-1991(A), 44-1841, 44-1872, 44-1892 to -1898; Unif. Sec. Act (2002), § 501, 301,

[3] As will be explained below, these prohibitions were consciously designed *not to* mimic common-law fraud claims, which were inadequate to effectively police the securities markets.

304, 305, https://bit.ly/49ElhGy;[4] 15 U.S.C. §§ 77q(a), 77f, 77g, 77j, 78j(b), 78*l*; 17 C.F.R. § 240.10b-5.

Just as legislatures created the causes of action necessary to address the unique nature of securities violations, they also created the procedures necessary to pursue those causes of action effectively. As relevant here, these laws empower regulators to enforce them in administrative proceedings, including by issuing orders to cease and desist from engaging in unlawful conduct, and imposing monetary penalties for violations. *See*, *e.g.*, A.R.S. §§ 44-2032, 44-2036; Unif. Sec. Act. (2002), § 604; 15 U.S.C. §§ 77h-1, 78u-2, 78u-3.

The administrative forum is an essential tool for state regulators like the Commission to protect the public.[5] State regulators typically bring substantially more enforcement actions in the aggregate than the Securities and Exchange Commission ("SEC"), and their proximity to their citizens makes them "better situated than federal counterparts to detect highly localized frauds and to work

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[4] Although the Act is not based on a version of the Uniform Securities Act, the Act's three core components – antifraud protections, securities registration, and registration of firms and professionals – are materially identical to the other state and federal securities laws.

[5] Although Petitioners do not appear to argue that Commission enforcement proceedings create an unconstitutional risk of bias or unfairness, it is worth noting that the person making such a claim must overcome a presumption of honesty and integrity by showing actual bias, not mere speculation. *See*, *e.g.*, *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *Berenter v. Gallinger*, 173 Ariz. 75, 82 (Ct. App. 1992).

directly with the victims of those frauds." *See* Andrew K. Jennings, *State Securities Enforcement*, 47 B.Y.U L. Rev. 67, 70, 129 (2021). According to data reported annually by NASAA members, administrative proceedings consistently make up the vast majority of state enforcement actions initiated in a given year. *See*, *e.g.*, 2025 NASAA Enforcement Report, 5 (Oct. 2025), https://bit.ly/4ouFVRb (853 administrative actions out of 1,183 total enforcement actions initiated in 2024); 2024 NASAA Enforcement Report, 3 (Oct. 2024), https://bit.ly/4oG9vnK (909 administrative actions out of 1,186 total enforcement actions initiated in 2023).

Many regulators must make difficult choices about how to allocate limited resources. Administrative enforcement authorities enable state securities regulators to move quickly to stop ongoing frauds, *see* Jennings, *supra*, at 92, and to pursue cases that might otherwise fall into an "enforcement gap" when there are insufficient investor losses to interest the SEC and insufficient economic incentive to interest private attorneys, *id.* at 127-28. A decision upholding the Commission's express administrative enforcement authority would preserve the Commission's ability to efficiently and effectively carry out its statutory responsibilities to protect investors and legitimate market participants by stopping misconduct and preventing investor harm. The Court should faithfully apply Arizona law and hold that the Commission's antifraud enforcement actions are constitutionally sound.

II. The Arizona Constitution does not guarantee a jury trial in actions by the Commission to enforce A.R.S. § 44-1991(A) because such claims are unlike any causes of action that existed at common law prior to Arizona statehood.

The Arizona Constitution, Art. II, § 23, preserves the right to trial by jury to the extent that such a right existed at common law prior to Arizona statehood. *Derendal v. Griffith*, 209 Ariz. 416, 419, ¶ 10 (2005). In order to determine whether the right attaches to a modern statutory cause of action, Arizona courts consider whether the modern cause of action has a "common law antecedent" in which a trial by jury was guaranteed. *Derendal*, 209 Ariz. at 419, ¶ 10.[6] A "common law antecedent" is a cause of action that is similar in "character" to, and shares "substantially similar" elements with, the modern cause of action. *Id*. at 419-20, ¶¶ 10-11.

This is a materially different test from that applied by federal courts interpreting the Seventh Amendment of the U.S. Constitution. The Seventh Amendment test focuses on whether the cause of action is legal or equitable in nature, and the remedy sought "is all but dispositive." *SEC v. Jarkesy*, 603 U.S. 109, 123 (2024). *See also Tull v. U.S.*, 481 U.S. 412, 421 (1987) (stating that

[6] The court of appeals did not reach this question, focusing instead on the Commission's status as a "constitutional body." *EFG America, LLC v. Ariz. Corp. Comm.*, 259 Ariz. 564, ¶¶ 10-13 (Ct. App. 2025). For purposes of this brief, NASAA takes no position on merits of the court of appeals' rationale, and assumes that Arizona courts must apply *Derendal*.

"characterizing the relief sought is more important than finding a precisely analogous common-law cause of action" (punctuation cleaned up)). "[Whether] the subject matter of a modern statutory action and an 18th-century English action are close equivalents is irrelevant for Seventh Amendment purposes, because that Amendment requires trial by jury in actions unheard of at common law." *Tull*, 481 U.S. at 420.[7] Thus, decisions interpreting the Seventh Amendment or applying the Seventh Amendment test to state constitutional provisions are of negligible value in this case.

Petitioners have not met the *Derendal* standard. They identify no pre-statehood common-law causes of action that match the scope and substance of A.R.S. § 44-1991(A), nor do they identify any comparable causes of action brought by the government at common law to protect the public from investment fraud generally. The closest analogue identified by Petitioners is common-law fraud. However, as more fully explained below, A.R.S. § 44-1991(A) is substantially different from common-law fraud, as the statute (1) targets different conduct from common-law fraud claims, (2) the elements for common-law fraud are not "substantially similar" to the elements required of the Commission in an action to

[7] The focus on remedy under the Seventh Amendment is due to the fact that the words "common law" in that provision are meant to distinguish cases adjudicated in courts of law from those adjudicated in equity, admiralty, and maritime courts, *Jarkesy*, 603 U.S. at 122, rather than serving as a reference to law developed through judicial interpretation and application, as under Arizona law.

enforce A.R.S. § 44-1991(A), and (3) the statutory cause of action serves a regulatory purpose that did not (and does not) exist in common-law fraud claims. These differences give A.R.S. § 44-1991(A) a materially different "character" from common-law fraud claims, and common-law fraud is therefore no "antecedent" to A.R.S. § 44-1991(A) for purposes of Art. II, § 23.[8] In short, A.R.S. § 44-1991(A) is a different kind of action meant to serve different purposes. Nothing in *Jarkesy* changes that conclusion or the significance of that analysis under Arizona law. Therefore, this Court should not "create a right where none existed before," *Smith v. Ariz. Citizens Clean Elections Comm.*, 212 Ariz. 407, 416, ¶ 43 (2006), by extending the Art. II, § 23 jury trial right to respondents in Commission enforcement actions.

A. A.R.S. § 44-1991(A) targets different conduct from common-law fraud.

This Court has recognized nine elements for a common-law fraud claim:

> (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) the speaker's intent that it be acted upon by the recipient in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) the listener's

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[8] In the underlying enforcement action, the Commission also alleged registration violations and sought additional relief, including a cease-and-desist order and restitution. Notice of Opp. for Hrg., 11-13, *EFG America, LLC et al.*, Docket No. S-21301A-24-0076 (Apr. 5, 2024), https://bit.ly/49TDjZ6. Petitioners have identified no purported "common law antecedent" to the registration requirements under A.R.S. §§ 44-1841 and 44-1842, nor do they contend that the Commission cannot pursue remedies other than penalties administratively. *See* Petitioners' Supplemental Brief, 10 (Nov. 24, 2025). Accordingly, this brief focuses exclusively on A.R.S. § 44-1991(A) and monetary penalties.

> reliance on its truth; (8) the right to rely on it; and (9) his consequent and proximate injury.

Wells Fargo Credit Corp. v. Smith, 166 Ariz. 489, 494 (1990). However, state and federal legislatures consciously chose not to codify common-law fraud in the securities laws because common-law remedies had proven inadequate to police the securities markets. *See*, *e.g.*, *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389 (1983) ("Indeed, an important purpose of the federal securities statutes was to rectify perceived deficiencies in the available common law protections by establishing higher standards of conduct in the securities industry."); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 744-45 (1975) ("[T]he typical fact situation in which the classic tort of misrepresentation and deceit evolved was light years away from the world of commercial transactions to which Rule 10b-5 is applicable.").[9]

Instead, state and federal legislatures enacted statutes prohibiting "distinct categor[ies] of misconduct," *Aaron v. SEC*, 446 U.S. 680, 697 (1980), that were tailored to fulfill their regulatory purpose. Like its state and federal counterparts, the Act makes it unlawful for "a[ny] person" to:

> (1) Employ any device, scheme or artifice to defraud[;] (2) Make any untrue statement of material fact, or omit[ting] to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading[; or] (3)

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[9] For a thorough discussion of the deficiencies in preexisting common law remedies, *see generally* Roy L. Brooks, *Rule 10b-5 in the Balance: An Analysis of the Supreme Court's Policy Perspective*, 32 Hastings L. J. 403, 403-10 (1980) and Harry Shulman, *Civil Liability and the Securities Act*, 43 Yale L. J. 227, 227-42 (1933).

> Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit,

A.R.S. § 44-1991(A). *Accord* Unif. Sec. Act (2002), § 501; 15 U.S.C. § 77q(a). Thus, a securities regulatory enforcement action "is much different from a common law action for damages[.]'" *Geman v. SEC*, 334 F.3d 1183, 1191 (10th Cir. 2003).

On its face, A.R.S. § 44-1991(A) targets different conduct from common-law fraud. Clauses (1) and (3) broadly target conduct which does not have to include any "representation." Several common types of market manipulation, including matched orders and wash sales, are examples of hidden conduct that "injects false pricing signals into the market" without the need for any affirmative representation. *See*, *e.g.*, *SEC v. Lek Secs. Corp.*, 276 F. Supp. 3d 49, 59 (S.D.N.Y. 2017). While common-law fraud generally requires both falsity and scienter, *e.g.*, *Wells Fargo*, 166 Ariz. at 494, clause (2) of A.R.S. § 44-1991(A) reaches statements that were unintentionally false, as well as statements that are technically true but nonetheless misleading without additional information. Clause (3) provides a remedy for conduct that "*operates or would operate* as a fraud or deceit," (emphasis added), focusing on the actual or potential effect of the conduct instead of the nature of the conduct itself.

A.R.S. § 44-1991(A) also eschews the common-law requirement that plaintiffs establish privity with the defendant (*i.e.*, a buyer-seller or other direct relationship). *See* Harry Shulman, *Civil Liability and the Securities Act*, 43 Yale L.

J. 227, 238-40 (1933). This requirement effectively prevented investors who purchased securities on exchanges or in other secondary transactions from maintaining a suit based on false statements in a prospectus or against third parties involved in preparing a fraudulent prospectus. *See id*. at 239-40. It likely would have also prevented the Commission from bringing any action at common law, since the Commission would not be the victim of the fraud. However, misconduct is actionable under A.R.S. § 44-1991(A) regardless of whether it is done "directly or indirectly," as long as it is done "in connection with" a securities transaction, meaning simply that it "touches upon or has some nexus with any securities transaction." *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993). Although there must be an offer, purchase, or sale that has some nexus to the violative conduct, the offer or transaction "need not be, or even result from, an act of the accused." *State v. Agnew*, 132 Ariz. 567, 579 (Ct. App. 1982).

Thus, state and federal securities antifraud statutes, including A.R.S. § 44-1991(A), were calibrated to reach a wide variety of conduct that could not have been actionable at common law. Put another way, A.R.S. § 44-1991(A) is of a different "character" than common law fraud because it needs to accomplish different purposes.

B. The elements for common-law fraud are not "substantially similar" to the elements required of the Commission in an action to enforce A.R.S. § 44-1991(A).

It is well-established today that securities regulators are not required to prove all of the elements of common-law fraud in regulatory enforcement actions brought pursuant to securities antifraud statutes. By proscribing specified conduct instead of codifying common-law fraud, the Arizona legislature made most, if not all, of the basic elements of common-law fraud unnecessary under A.R.S. § 44-1991(A).

Regulators are often not required to show scienter to establish a violation of a securities antifraud statute, and they are never required to show reliance. *See*, *e.g.*, *Aaron*, 446 U.S. at 695-97 (holding that the U.S. Securities and Exchange Commission ("SEC") need not prove scienter under section 17(a)(2) and (3) of the Securities Act of 1933); *State v. Gunnison*, 127 Ariz. 110, 113 (1980) (following *Aaron* and holding that scienter is not required in civil action to enforce A.R.S. § 44-1991(A)(2)); *Harrington v. Sec'y of State*, 129 So. 3d 153, 163-64, 169-70 (Miss. 2013) (reviewing federal and state precedents that show scienter is usually not required and reliance never is). *See also* Unif. Sec. Act (2002), § 501, Official Comment 6 ("The culpability required to be pled or proved under Section 501 is addressed in the relevant enforcement context," including "civil and administrative enforcement actions [by a securities regulator], where no culpability is required to be pled or proven."). The lack of a shared *mens rea*, in particular, has been sufficient

for Arizona courts to distinguish modern statutory offenses from purported "common law antecedents." *See*, *e.g.*, *Derendal*, 209 Ariz. at 425, ¶¶ 38-39 (distinguishing statutory offense of drag racing from common-law reckless driving because the former does not include the element of "reckless disregard"); *Mack v. Dellas*, 235 Ariz. 64, 67-68, ¶¶ 11-12 (Ct. App. 2014) (distinguishing statutory offense of obstructing a highway from common-law public nuisance of highway obstruction based on the lack of a shared *mens rea*).

Regulators are also not required to show damages and can therefore charge inchoate frauds, potentially stopping frauds before they harm anyone. *See*, *e.g.*, *Hirsch v. Ariz. Corp. Comm.*, 237 Ariz. 456, 462, ¶¶ 20-21 (Ct. App. 2015) (holding that loss causation is not required);[10] *Geman*, 334 F.3d at 1191 (holding that reliance and injury are not required); *Berko v. SEC*, 316 F.2d 137, 143 (2d Cir. 1963) (holding that loss causation is not required because the "[SEC's] duty is to enforce the remedial and preventive terms of the statute in the public interest, and not merely to police those whose plain violations have already caused loss or injury").

In sum, the Act requires the Commission to prove only three elements in an action to enforce A.R.S. § 44-1991(A): (1) that the respondent engaged, directly or

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[10] *Hirsch* was superseded in part by statute on other grounds. *See Simms v. Simms*, 144 Ariz. Cases Digest 18, ¶¶ 32-33 (Ct. App. 2025) (discussing impact of amendments to A.R.S. § 12-910(F) on judicial review and deference to agency factual findings).

indirectly, in any of the enumerated conduct, (2) that they did so "in connection with" an offer, purchase, or sale of securities, and (3) that the transaction happened within or from Arizona.[11] Accordingly, the elements required in a Commission enforcement action are not "substantially similar" to common-law fraud.

C. Unlike private plaintiffs asserting common-law fraud claims, the Commission enforces A.R.S. § 44-1991(A) to protect the public.

Regulators are not required to prove all of the elements of common-law fraud in their antifraud enforcement actions because regulators occupy a unique position in relation to their securities statutes. Securities regulators have a critical role in fulfilling the statutes' remedial purposes. *See*, *e.g.*, *Sec'y of State v. Tretiak*, 22 P.3d 1134, 1140-42 (Nev. 2001) (explaining the court's rationale for not requiring scienter, reliance or damages in an action by the state's securities regulator and noting the regulator's role in fulfilling the act's remedial purpose).

Courts have long recognized that the harms addressed by the securities laws are harms inflicted "upon the community," notwithstanding that "[t]he first incidence of any evil from a business or conduct is upon some individual." *Merrick v. N.W. Halsey & Co. et al.*, 242 U.S. 568, 585 (1917). Securities regulators therefore enforce the securities laws not as representatives of harmed investors, but as

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[11] In *Gunnison*, the Court observed, but did not decide, that scienter "*may* be an element of A.R.S. § 44-1991[(A)](1)" in a civil enforcement action. 127 Ariz. at 113 (emphasis added).

representatives of the public interest. "The violation for which the remedy is sought is committed against the [government] rather than an aggrieved individual" and "a securities-enforcement action may proceed even if victims do not support or are not parties to the prosecution." *Kokesh v. SEC*, 581 U.S. 455, 463 (2017).

This distinction is reflected in the available remedies. While private plaintiffs are generally limited to damages and rescission, *see*, *e.g.*, A.R.S. §§ 44-1991(B), 44-2001, 44-2002, 44-2082, 44-2085, regulators have access to a much wider array of tools from which they can choose the remedies that most effectively protect the public's right to fair, transparent, and orderly markets. The latter includes remedies like industry bars and suspensions, fines, and injunctions against violative conduct. *See*, *e.g.*, A.R.S. §§ 44-1961 to 44-1964, 44-2032, 44-2036. *Accord* Unif. Sec. Act (2002), §§ 412, 603, 604. These remedies are exclusively government prerogatives, intended to protect investors and the markets generally by deterring and preventing conduct that has been deemed unacceptable by the government on behalf of the public.

An action by the government to protect the public and prevent harm has a materially different "character" than private actions seeking damages for common-law fraud. State courts have held that government fraud claims brought under remedial state laws similar to the Act are equitable in nature, and therefore not entitled to a jury trial, even when the state seeks monetary penalties. This is because

they are not designed simply to punish, but to protect the public interest and prevent a defendant's unjust enrichment.

In *Nationwide Biweekly Admin., Inc. v. Superior Ct. Alameda Cnty.*, 462 P.3d 461 (Cal. 2020), the Supreme Court of California held that fraud claims brought by the California Department of Business Oversight ("DBO") under that state's unfair competition law ("UCL") and false advertising law ("FAL") are equitable in nature, regardless of the remedy. *Id*. at 488. The court observed that, notwithstanding the possible "punitive or deterrent aspect" of monetary penalties, their "primary purpose" is to protect the public, emphasizing that "[t]he focus of both statutory schemes is *preventative*." *Id.* (cleaned up, emphasis original). Many other state courts have held likewise. *See*, *e.g.*, *In re Investigation Pursuant to V.S.A. Sec. 30 & 209*, 327 A.3d 789, 807 (Vt. 2024) (holding that monetary penalties obtained by the state against a public utility were "equitable in nature in that they seek primarily to promote the public welfare rather than [to] punish"); *Comm'r of Env. Prot. v. Conn. Bldg. Wrecking Co*., 629 A.2d 1116, 1123 (Conn. 1993) (finding the state's action for monetary penalties under an environmental protection statute was equitable given that the purpose of the statute was to protect the environment, a "restitutionary" goal); *State v. Schroeder*, 384 N.W.2d 626, 629-30 (Neb. 1986) (holding that monetary penalties under the Nebraska Consumer Protection Act are equitable because the act seeks to prevent prejudicial conduct "rather than merely

compensate such damage as may flow therefrom"); *State v. Sailor*, 810 A.2d 564, 568-69 (N.J. Super. Ct. App. Div. 2001) (holding that monetary penalties sought by the state in an action to enforce the state's insurance fraud statute are equitable, as part of a "distinctive legislative initiative designed to aggressively confront insurance fraud").

This Court should interpret Arizona law similarly and hold that the Commission's enforcement actions are equitable in light of the remedial objectives of the Act. Such a holding would effectuate the legislature's intent that the Act be interpreted liberally in the hands of the Commission to protect investors.

D. Courts have distinguished statutory causes of action like A.R.S. § 44-1991(A) from analogous, yet different common-law fraud claims when assessing constitutional jury rights.

States have adopted a variety of consumer protection laws in addition to state securities laws. These statutes empower state agencies, like the Commission, to sue businesses and others who defraud citizens or engage in other harmful commercial conduct. Available remedies typically include injunctions and monetary penalties. Courts have repeatedly held that their states' respective constitutional rights to jury trial do not extend to civil actions brought by the government to enforce these statutes.

In *Nationwide*, discussed above, the court held that there was no constitutional right to a jury trial when the California DBO brought a fraud claim under the UCL

or FAL because the state's causes of action were "not of like nature or of the same class as any common law action." 462 P.3d at 485-86. Similar to A.R.S. § 44-1991(A), the court explained that "[t]he UCL and the FAL were enacted for the specific purpose of creating new rights and remedies that were not available at common law," "deliberately broaden[ed] the types of business practices that can properly be found to constitute unfair competition," and "eliminate[d] a number of elements that were required in common law actions for fraud." *Id*. at 485. The court explained further that none of the preexisting statutes addressing similar subject matter authorized the government to obtain the same remedies that it could obtain in an action under the UCL or the FAL. *Id*. at 486. Notably, Petitioners in this case have identified no common-law cause of action through which the Commission or any other government body could have brought an action for investment fraud to obtain injunctive relief, monetary penalties, and other relief authorized by the Act. *See* A.R.S. §§ 44-2032, 44-2036 to -2038.

In another case, the Supreme Court of New Hampshire upheld the Bureau of Securities Regulation's authority to seek monetary penalties, restitution, and disgorgement in an administrative proceeding for alleged violations of a statute analogous to A.R.S. § 44-1991(A). *Ridlon v. N.H. Bur. Sec. Reg.*, 214 A.3d 1198 (N.H. 2019). As is true for the Commission under A.R.S. § 44-1991(A), the Bureau was not required to prove scienter, reliance, damages, or loss causation. *Id*. at 1203.

Accordingly, the court held that the Bureau's statutory antifraud claim "is not analogous to common law fraud or deceit because it require[s] proof of significantly different elements and satisfaction of a different standard of proof." *Id*. at 1204. *See also Consumer Prot. Div. v. Morgan*, 874 A.2d 919 (Md. 2005)[12] (upholding administrative monetary penalties for fraud under the Maryland Consumer Protection Act); *Kugler v. Mkt. Dev. Corp.*, 306 A.2d 489, 492 (N.J. Super. Ct. Ch. Div. 1973) (finding that summary adjudication of state action to enforce the state Consumer Fraud Act and the available relief "are foreign to the common law, being modern day creations of the Legislature for the relief and cure of a current mischief"); *Blue Beach Bungalows DE, LLC v. Delaware Dep't of Just. Consumer Prot. Unit*, 2024 WL 4977006, at *14 (Del. Super. Ct. Dec. 4, 2024), amended 2024 WL 5088688 (Del. Super. Ct. Dec. 12, 2024) (finding that a state antifraud claim under the state's Consumer Fraud Act is "not known at common law," "is significantly different than common law fraud," and "has salutary purposes very different than common law fraud"); *State ex rel. Darwin v. Arnett*, 235 Ariz. 239, 245, ¶¶ 36-37 (Ct. App. 2014) (holding that there is no right to jury trial in state

[12] At the time of this decision, Maryland's highest court was known as the Maryland Court of Appeals. It was renamed the Supreme Court of Maryland in December 2022. *See* Press Release, Maryland Judiciary, *Voter-approved constitutional change renames high courts to Supreme and Appellate Court of Maryland* (Dec. 14, 2022), https://bit.ly/4pe0S3x.

action for monetary penalties under state environmental statute because the "statutory claims did not exist prior to statehood").

E. *Jarkesy* is inapposite and its persuasive value is negligible in this case.

In sum, the many fundamental differences between common-law fraud claims and Commission actions to enforce A.R.S. § 44-1991(A) give the latter a materially different "character" from the former. Common-law fraud is therefore no "antecedent" to A.R.S. § 44-1991(A) for purposes of Art. II, § 23. *Jarkesy* does not affect that conclusion because the *Jarkesy* court employed a different test to answer a different legal question under a different constitution. It is therefore inapposite to the question before this Court.

As explained above, courts applying the Seventh Amendment must determine whether the claim is "legal" in nature, as determined by the remedy sought. *See supra* pages 5-6 and n.7. Since that test is not concerned with the elements of the applicable causes of action, *see Tull*, 481 U.S. at 420-21, the *Jarkesy* court understandably omitted any meaningful comparison of the targeted conduct, elements, or purposes of common-law fraud and regulatory antifraud claims, *see* 603 U.S. at 125-26. The *Jarkesy* court's superficial identification, in dicta, of a "close relationship" between the two causes of action served merely to "confirm" the conclusion it had already reached based on the remedy, that the SEC's antifraud claims in that case were "legal in nature." 603 U.S. at 123-26.

Under *Derendal*, Arizona law requires a more fulsome analysis of the many differences between common-law fraud claims and Commission actions to enforce A.R.S. § 44-1991(A). That analysis should include a comparison of the conduct targeted by the two causes of action, the elements required in each, and the regulatory purpose of Commission enforcement actions. As explained above, common-law fraud is no "antecedent" to A.R.S. § 44-1991(A) and the Arizona Constitution does not entitle Petitioners to a jury trial.

Conclusion

For the reasons stated above, the Court should uphold the Commission's authority to enforce A.R.S. § 44-1991(A) in administrative proceedings, and affirm the court of appeals' denial of special-action relief.

Respectfully Submitted December 9, 2025,

Daryl Manhart
Burch & Cracchiolo, P.A.
1850 N. Central Ave., Suite 1700
Phoenix, AZ 85004

Dylan White (Of Counsel)
Associate General Counsel
North American Securities
Administrators Association, Inc.
750 First Street, NE, Suite 900
Washington, DC 20002

By: _____
Daryl Manhart (SBA #005471)
Co-Counsel for *Amicus Curiae* North American Securities Administrators Association, Inc.