SUPREME COURT OF ARIZONA

EFG AMERICA, LLC, et al., Petitioners, v. ARIZONA CORPORATION COMMISSION, et al., Respondents.	Arizona Supreme Court No. CV-25-0134-PR Court of Appeals Division One No. 1 CA-SA 25-0016 Arizona Corporation Commission No. S-21301A-24-0076

AMICUS CURIAE BRIEF OF THE STATE OF ARIZONA IN SUPPORT OF RESPONDENTS

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INTRODUCTION

This Court very recently rejected a party's effort to graft one statutory scheme onto another comprehensive statutory scheme. *RNC v. Fontes*, No. CV-25-0089-PR (Ariz. Oct. 16, 2025) (holding "that the rule-making provisions of the Arizona Administrative Procedure Act … are inapplicable to the promulgation of the Elections Procedure Manual").

This case involves a similar gambit, but at the constitutional level. The Arizona Constitution created the Corporation Commission, gave it "the power of a court of general jurisdiction" to investigate securities violations, and vested it with the "authority to enforce its rules, regulations, and orders by the imposition of … fines." Ariz. Const. art. XV, §§ 4, 19.

Separately, the Arizona Constitution preserves the broad right to a jury trial in criminal and civil cases for claims that were triable by jury at common law. Ariz. Const. art. II, § 23. There is no jury right in a Commission administrative action, as Article XV's plain text and the implementing statutes make clear. Nor is there any jury right on equitable relief. Because the Commission seeks only constitutionally authorized and equitable relief in this action, there is no colorable basis for EFG's jury demand. And in any event, the statutory securities fraud action in this case is an administrative

action to protect the public, not the kind of common law tort claim to remedy an individual's harm for which a jury trial is guaranteed.

The Corporation Commission has been statutorily authorized to bring administrative securities fraud actions since 1951, nearly two-thirds of our State's history. The People revised Article II, § 23 in 1972, without touching this authority, while concurrently voting down a measure that would have abolished the Corporation Commission. This Court should reject EFG's request to rewrite our Constitution in a manner that the People chose not to.

ARGUMENT

I. The constitutional text precludes a jury trial right in this case.

As EFG acknowledges, "[w]hen interpreting the constitution, this Court 'begin[s] with the text' of the provision at issue 'because it is the best and most reliable index of a [provision's] meaning.'" Supp. Br. at 12 (quoting *Fann v. State*, 251 Ariz. 425, 441 ¶ 59 (2021)). Here, the Arizona Constitution created the Corporation Commission and explicitly vested it with the authority that the Commission is exercising in this case, including the power to impose fines. EFG is therefore not entitled to a jury trial.

A. The Corporation Commission has express constitutional authority to levy fines.

Arizona's Constitution provides that "[t]he corporation commission shall have the power and authority to enforce its rules, regulations, and orders by the imposition of such fines as it may deem just." Ariz. Const. art. XV, § 19.

Contrary to EFG's characterization (Supp. Br. at 15), this provision's primary import is not that it is "silen[t]" about the right to a jury trial. Rather, the provision establishes—in plain, affirmative language—that the Commission has authority to impose fines for the violation of "its rules, regulations, and orders." Ariz. Const. art. XV, § 19. This authority is crystal clear, and it shares equal footing with other constitutional provisions establishing legislative, executive, and judicial powers. Ariz. Const. art. II, § 32 ("The provisions of th[e] Constitution are mandatory, unless by express words they are declared to be otherwise."); *State v. Osborne*, 14 Ariz. 185, 204 (1912) ("each and every clause in a written Constitution has been inserted for some useful purpose").

The Commission's authority, moreover, reflects its special place in Arizona law. "While it is not so named, it is, in fact, another department of

government, with powers and duties as well defined as any branch of the government." *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 306 (1914). Thus, "where it is given exclusive power it is supreme," and "[i]ts exclusive field may not be invaded by either the courts, the legislative, or executive." *Id.*

Arizona's constitutional framers created the Commission to correct "evil[s]" they observed, *id.*, including that companies were coming to Arizona to "fleece the public by selling their stock." *The Records of the Arizona Constitutional Convention* 972 (John S. Goff ed., 1991) (statement of Michael Cunniff).[1] The framers therefore vested the Commission with the "power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public." Ariz. Const. art. XV, § 4.

And while EFG asserts (Supp. Br. at 18) that the framers did not "vest the Commission with any part of '[t]he judicial power,'" that is not quite

[1] *Available at* https://azmemory.azlibrary.gov/nodes/view/271077?keywords=the+records+of+the+arizona+constitutional+convention&highlights=WyJ0aGUiLCJyZWNvcmRzIiwib2YiLCJ0aGUiLCJhcml6b25hIiwiY29uc3RpdHV0aW9uYWwiLCJjb252ZW50aW9uIl0%3D&lsk=4a689bb9a4473c48985aeb89bbf29378.

right. Rather, the Commission has "the *power of a court of general jurisdiction* to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state." Ariz. Const. art. XV, § 4 (emphasis added); *Tucson Gas*, 15 Ariz. at 306 (the Constitution empowers the "Corporation Commission … to exercise not only legislative but the judicial, administrative, and executive functions of the government").

B. Related constitutional provisions and implementing statutes confirm the Commission's authority.

Paralleling section 19's provision permitting the Commission to levy fines, section 16 provides for "[f]orfeitures for violations" by "public service corporation[s]." Section 16 limits forfeitures to between $100 and $5000 per violation, and section 19 incorporates that limitation for fines.

Section 16 provides that amounts forfeited by public service corporations may "be recovered before any court of competent jurisdiction." EFG argues (Supp. Br. at 16) that this provides contextual support for its claimed entitlement to a jury trial, but that is simply wrong. Under the provision that immediately follows, a public service corporation has "the right of appeal *to* the courts of the state from the rules, regulations, orders,

or decrees *fixed by* the corporation commission." Ariz. Const. art. XV, § 17 (emphases added). An appeal to the courts from orders and decrees "fixed by" the Commission would make no sense if the Commission were required to seek forfeiture (or section 19 fines) before a jury in the first instance.

Rather, within this context, section 16's allowance for recovery "before any court of competent jurisdiction" necessarily refers to the Commission's right to *enforce* its orders in the courts. *See* A.R.S. § 44-2036(C) (the Commission may file an order for "administrative penalties" in the superior court, and this "has the same effect as a judgment of the superior court"). And contrary to EFG's mischaracterization (Supp. Br. at 16), that is exactly what the Attorney General determined in the 1959 opinion that EFG cites. Att'y Gen. Op. 59-61 (stating that a "fine may be *collected*" by the Commission in a court of competent jurisdiction) (emphasis added).

EFG also argues (Supp. Br. at 16-17) that the Legislature "enacted confirmatory statutes" establishing the right to a jury trial, but this is also dead wrong. To start, Article XV vests the Legislature with "[t]he law-making power [to] enlarge the powers and extend the duties of the corporation commission, and [to] prescribe rules and regulations to govern proceedings instituted by and before it." Ariz. Const. art. XV, § 6. In accord

with this constitutional authority, the Legislature has enacted statutes that codify Article XV's provisions, as well as statutes that expand on those provisions.

Under A.R.S. § 44-2036(A), "[a] person who, in an administrative action, is found to have violated any [securities law] or any rule or order of the commission may be *assessed an administrative penalty by the commission*, after a hearing, in an amount of not to exceed five thousand dollars for each violation." (Emphasis added.) This provision plainly codifies Article XV, §§ 16 and 19.

Separately, § 44-2037(A)-(B) provides that "[t]he commission, or the attorney general … may bring an action in Maricopa county in the same manner as the filing of other such actions" to recover "a civil penalty." If the Commission or Attorney general brings a civil action under § 44-2037, then there is no limitation on "the right of a party in an action under this section to a trial by jury." A.R.S. § 44-2037(B).

EFG's assertion (Supp. Br. at 17) that the Legislature "views trial by jury to be the norm when the Commission initiates enforcement actions" is therefore false. Rather, the Legislature codified the constitutional provision establishing that administrative penalties are "assessed … by the

commission" as § 44-2036(A). And then—under its constitutional charge to expand the Commission's powers—the Legislature also established that the Commission (or the Attorney General) may alternatively bring a civil action under § 44-2037.

There was no constitutional *requirement* that the Legislature provide for this civil action. Rather, the Legislature chose to establish the § 44-2037 enforcement path as an alternative to the Commission's constitutional enforcement right. EFG simply ignores § 44-2036—an omission that speaks volumes about the atextual gravamen of its arguments—and then misleadingly portrays § 44-2037 as exclusive.[2]

Further negating any suggestion that § 44-2037 holds a place of supremacy in the State's securities-enforcement scheme is that § 44-2037(C) expressly provides for an offset against any "administrative penalty [that] has been imposed pursuant to section 44-2036 for violation of the same provision, rule or order arising out of the same circumstances"—which

[2] In service of this mischaracterization, EFG also fails to acknowledge that it is implicitly asking the Court to find at least A.R.S. § 44-2036 unconstitutional. In the alternative to appearing as an amicus, the Attorney General therefore also has the right to intervene in this case as a party. A.R.S. § 12-1841(D).

would make no sense if all fines were to be levied by a jury in a civil action. Additionally, as discussed above, Commission monetary orders are to be "filed" in the superior court. A.R.S. § 44-2036(C). And consistent with Article XV, § 17's appeal provision, § 44-1981 provides that "[d]ecisions of the commission pursuant to this chapter shall be subject to judicial review in the Maricopa county superior court" by appeal.

Far from being "confirmatory" of any right to a jury trial, Arizona's statutes seamlessly implement a constitutional scheme that empowers *the Commission* to enforce the State's securities laws and to impose administrative fines that are filed with, and appealed to, the superior court.

C. There is no tension between Article II and Article XV.

This Court reads separate constitutional provisions "to harmonize" them. *Burns v. Ariz. Pub. Serv. Co.*, 254 Ariz. 24, 31 ¶ 30 (2022); *Knight v. Fontes*, No. CV-24-0220-T/AP, 2025 WL 3482753, at *7 ¶ 32 (Ariz. Dec. 4, 2025) (same). One constitutional provision does not "prevail[] over" another. *Knight*, 2025 WL 3482753 at *7 ¶ 32 (cleaned up).

If there were a conflict between Article II's jury provision and Article XV's enumeration of the Commission's powers, this Court would therefore likely apply the "established axiom of constitutional law that where there

are both general and specific constitutional provisions relating to the same subject, the specific provision will control." *Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 199 ¶ 11 (2001) (cleaned up). Because Article II provides generally for jury rights and Article XV provides specifically that the Commission has authority to conduct investigations and to impose fines, the latter provision would necessarily control in this case.

But that analysis is unnecessary because there is no conflict here at all. The Corporation Commission has always been constitutionally empowered to levy fines, and Arizona's first governor "urged the Arizona legislature to enact securities laws to stop wildcat promoters and others from selling worthless stock" immediately after the Constitution's enactment. *See* Richard G. Himelrick, *A Historical Introduction to Arizona's Securities Laws*, 7 Ariz. Summit L. Rev. 679, 694 (2014).[3] The resulting "blue-sky law"—one of the first in the nation—"gave the Corporation Commission general supervision and control over all investment companies (i.e., corporations selling stock to the public) including the right to inspect and investigate the

[3] *Available at* https://www.tblaw.com/wp-content/uploads/2017/03/7arizsummitlrev679.pdf.

company's records." *Id.* at 696. "A hallmark of blue-sky laws like those enacted … in Arizona in 1912 was their use of administrative agencies to enforce securities compliance." *Id.* at 691.

Years later, when the People of Arizona, acting on a legislative referral, revised Article II, § 23 in 1972, they did not include any revisions aimed at stopping the Commission's accepted practice. *See Referendum and Initiative Publicity Pamphlet* (1972), at 11-12.[4] On the contrary, the People concurrently *rejected* a measure to abolish the Corporation Commission. *Id.* at 13-19. Thus, the People chose to preserve the Commission's longstanding use of administrative proceedings for securities fraud cases at exactly the same time they separately amended Article II, § 23's jury trial provision.

Further, as amended, Article II, § 23 guarantees juries only for "cases." Ariz. Const. art. II, § 23 ("In all criminal *cases* the unanimous consent of the jurors shall be necessary…. In all other *cases*, the number of jurors, not less than six, and the number required to render a verdict, shall be specified by law.") (emphases added). As this Court has previously recognized, the word

[4] *Available at* https://azmemory.azlibrary.gov/nodes/view/102824?keywords=&type=all&lsk=f6ed71f6b8c3cefda339b2e2b6f57bbe.

"case" has a specific meaning in Arizona's Constitution: "[a] disputed matter … does not become a 'case or proceeding' until the law provides for a hearing *before a court*." *State ex rel. O'Neil v. Hall*, 57 Ariz. 63, 68 (1941) (emphasis added). If the Commission is itself imposing a fine through its own proceedings, which Article XV expressly authorizes, there is no "case" because nothing is "before a court."

Of course, the Legislature may not evade the jury trial right by purporting to authorize agencies to bring criminal prosecutions or common law claims for civil damages in administrative tribunals. But here, the Court need not figure out what is properly an administrative action (as opposed to a case) since the Constitution (and not just the Legislature) authorizes the Corporation Commission to administratively enforce its rules related to publicly trade corporations (and public service corporations). Ariz. Const. art. XV, §§ 4, 16, 19.

And EFG's failure to cite *any* authority holding that an Arizona administrative action has previously implicated issues triggering the constitutional right to a jury trial further reflects the degree to which it is seeking relief that is both extraordinary and ahistorical.

II. EFG otherwise has no right to a jury trial.

This Court has "long interpreted" the jury provisions of Article II, § 23 "as preserving, rather than creating, the right to jury trial as it existed in Arizona prior to statehood." *Derendal v. Griffith*, 209 Ariz. 416, 419 ¶¶ 8, 10 (2005) (looking to whether a statutory action has a common law "antecedent" guaranteeing a jury trial); *see also Bowden v. Nugent*, 26 Ariz. 485, 488 (1924) ("purpose is to preserve, not to create, rights"). EFG does not contest this point, but instead acknowledges (Supp. Br. at 4) that the Constitution preserves a right to a jury trial only "if such a right existed at common law prior to" its adoption.

Even if Article XV did not preclude a jury trial right here, EFG's jury demand would also fail under this standard, for two reasons.

A. There is no right to a jury trial on equitable claims.

Purely equitable claims were not triable to a jury at common law. *Henry v. Mayer*, 6 Ariz. 103, 114 (Ariz. Terr. 1898) ("the cause being one of equitable jurisdiction, the court below was not bound to submit any issue of fact to a jury"); *Cole v. Bean*, 1 Ariz. 377, 378 (Ariz. Terr. 1878) (in equity proceedings, "there seems to be no reason for the intervention of a jury" unless the court desires one).

And as every practicing judge and lawyer knows, there is no constitutional requirement that equitable claims be tried before a jury. *See, e.g.*, *Davis v. First Nat'l Bank*, 26 Ariz. 621, 626 (1924) (rejecting the suggestion that Arizona does not distinguish between law and equity; "[t]hat is not the law of this state and has never been"—"[t]he Constitution does not assume to create any … right" to a jury trial in equity); *State v. Wilkinson*, 202 Ariz. 27, 29-30 ¶¶ 11, 13 (2002) (jury trial not required for restitution focused on "reparation to the victim and rehabilitation of the offender").

There is therefore no part of the Commission's action here that even arguably belongs in front of a jury. In this unique context, the Court does not need to decide whether the Commission's fines are legal or equitable, because the Commission has express constitutional authority to impose such fines. Ariz. Const. art. XV, § 19; Argument § I(A), above. And the other relief that the Commission may order, such as a cease-and-desist order and "restitution," A.R.S. § 44-2032(1), is unequivocally equitable in nature. *See, e.g.*, *Wilkinson*, 202 Ariz. at 29-30 ¶¶ 11, 13; *Caruthers v. Underhill*, 235 Ariz. 1, 9 ¶¶ 31, 33 (App. 2014) (no jury trial for rescission because it "is governed by equitable principles whether it is the object of a suit in equity or a claim for rescission at law"). That resolves the matter, and the Court need not

analyze whether statutory securities fraud is sufficiently similar to common law fraud to trigger a jury trial right under *Derendal*.

B. Common law fraud and statutory securities fraud are very different in character.

If the Court does reach the *Derendal* question, it should conclude that statutory securities fraud is not so similar to common law fraud as to require a jury. Under *Derendal*, it is not enough for the modern statute and the purported common law antecedent simply to relate to the same subject matter. Rather, they must share "the same character or grade." 209 Ariz. at 419 ¶ 10 (cleaned up).

Statutory causes of action often differ in character from even the most analogous common law claims. *See, e.g.*, *State ex rel. Darwin v. Arnett*, 235 Ariz. 239, 245 ¶ 37 (App. 2014) (no jury trial where the Arizona Department of Environmental Quality brought a civil suit in superior court seeking "civil penalties, remediation costs, and other relief" for violation of environmental regulations, and the "statutory claims did not exist prior to statehood"); *Life Invs. Ins. Co. of Am. v. Horizon Res. Bethany, Ltd.*, 182 Ariz. 529, 532 (App. 1995) ("Since the deed of trust statute was enacted in 1971, there was no provision

for this type of statutory action in 1910, and, hence, no issue exists regarding preservation of a nonexistent right.").

Here, the Commission alleged three violations by EFG: (1) violation of A.R.S. § 44-1841, which prohibits the sale of unregistered securities; (2) violation of § 44-1842, which prohibits the sale of securities by unregistered dealers; and (3) violation of § 44-1991, which prohibits securities fraud. *See* Notice of Opportunity for a Hearing ¶¶ 59-66.[5] The first two alleged violations therefore do not bear even a superficial connection to common law fraud.

And there is a manifest difference in character between a common law fraud claim and an action under Arizona's securities fraud statute. As EFG acknowledges (Supp. Br. at 8), a common law fraud claim allows an injured party to recover *his damages*. *See, e.g.*, *Aaron v. Fromkin*, 196 Ariz. 224, 227 ¶ 13 (App. 2000). By contrast, a statutory securities fraud action is meant to protect *the public as a whole*. *See* 1951 Ariz. Sess. Laws, ch. 18, § 20 (1st Reg. Sess.) (stating that the purpose of the Act was to be "a remedial measure"

[5] *Available at* https://docket.images.azcc.gov/E000034753.pdf?i=1765232218212.

for the "protection of the public, the preservation of fair and equitable business practices, [and] the suppression of fraudulent or deceptive practices in the sale or purchase of securities").

As this Court has put it, the "[t]he Act is designed to be prophylactic if possible, remedial … if necessary." *Jackson v. Robertson*, 90 Ariz. 405, 409-10, (1962); *see also, e.g.*, *Rose v. Dobras*, 128 Ariz. 209, 212 (App. 1981) ("[T]he securities laws were designed to protect the public from speculative or fraudulent schemes of promoters.").

Because the two claims have fundamentally different purposes, they also have fundamentally different structures, both in their elements and remedies. Whereas a plaintiff alleging common law fraud must prove nine elements, a party alleging statutory securities fraud need only show that a person, in connection with the purchase or sale of securities, engaged in "any" of three prohibited activities:

> 1. Employ any device, scheme or artifice to defraud[;]
>
> 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made … not misleading[; or]
>
> 3. 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).

There are important differences here. Because the focus is on stopping harms to the public, rather than remedying an individual wrong, "damage is not an element" of statutory securities fraud. *Aaron*, 196 Ariz. at 228 ¶ 20. Nor is "[t]he speaker's knowledge of the falsity." *Id.* at 227 ¶ 15. Nor is "reliance upon a misrepresentation," *Rose*, 128 Ariz. at 214, or the materiality of a "statement or omission … to [a] particular buyer" involved in the case, *Aaron*, 196 Ariz. at 227 ¶ 14 (securities statute requires showing of "actual significance in the deliberations of the reasonable buyer").

In short, "[t]he nine elements of common-law fraud … are not essential to establishing statutory securities fraud." *Aaron*, 196 Ariz. at 227 ¶ 13. And laws with materially different elements directed at disparate harms "do not share the same fundamental character." *Phx. City Prosecutor's Off. v. Nyquist*, 243 Ariz. 227, 232 ¶ 17 (App. 2017) (common law prohibition against endangerment with motor vehicle is not an antecedent to statute directed at "serious physical injury or death by a moving violation"); *see also* EFG Supp. Br. at 7 (conceding that the elements of the respective actions must be "substantially similar") (quoting *Derendal*, 209 Ariz. at 425 ¶ 36).

The remedies are also different, illustrating the laws' different purposes. The remedies for common law fraud include compensatory and

punitive damages. *See, e.g.*, *Goldstein v. MWM Vicsdale Magic, LLC*, No. 2 CA-CV 2023-0021, 2023 WL 7412286, at *2 ¶ 9 (Ariz. App. Nov. 9, 2023) (unpublished). By contrast, in statutory securities actions, the Commission may issue a cease-and-desist order, require restitution, and impose an administrative penalty capped at $5,000 per violation. A.R.S. §§ 44-2032(1), 44-2036. As discussed previously, the Constitution has never required equitable relief to be tried to a jury and expressly provides for the Commission to impose administrative fines.

These differences distinguish this case from *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109 (2024). Central to the holding in *Jarkesy* was that the federal securities fraud statute pegs civil penalties to "the culpability of the defendant and the need for deterrence." *Id.* at 124 (listing six statutory factors bearing on a penalty's size and describing "tiers" of culpability under federal law). Thus, the Supreme Court determined that there was a "close relationship between federal securities fraud and common law fraud." *Id.* at 126. By contrast, Arizona's maximum penalties have been fixed at the same amount ($5,000) since 1912 and are not pegged to the culpability of the defendant. Ariz. Const. art. XV, §§ 16, 19; A.R.S. § 44-2036(A); 1951 Ariz. Sess. Laws, ch. 18, § 20 (1st Reg. Sess.). And critically, there is no federal

constitutional analogue to Arizona's constitutional provision vesting the Commission with authority to levy fines. *See* Ariz. Const. art. XV, § 19.

CONCLUSION

EFG brought this challenge in response to *Jarkesy*—but *Jarkesy* has no application to State law, so EFG has scrounged for alternative rationales. The Arizona Constitution, however, confers express authority on the *Corporation Commission*—not on a court or jury—to impose administrative fines in connection with enforcing the State's securities laws, and there has never been any constitutional right to a jury trial on the equitable relief that the Commission seeks. And in any event, Arizona's securities fraud statute is not sufficiently similar to common law fraud to trigger the constitutional guarantee of a jury trial.

This Court should therefore affirm the court of appeals' decision holding that EFG has no right to a jury trial in the underlying administrative action.

RESPECTFULLY SUBMITTED this 9th day of December, 2025.

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