



IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY HAGEN, AN INDIVIDUAL;  
AND JAHA ARCHITECTURE, INC., A  
CALIFORNIA CORPORATION,  
Appellants,  
vs.  
MONICA HARRISON, EXECUTIVE  
DIRECTOR; AND NEVADA STATE  
BOARD OF ARCHITECTURE,  
INTERIOR DESIGN AND  
RESIDENTIAL DESIGN,  
Respondents.

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No. 90455

Appeal from a district court order denying a petition for judicial review of an administrative decision. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

*Affirmed.*

Pacific Legal Foundation and Cameron M. Halling, Sacramento, California;  
Hutchings Law Group and Mark H. Hutchings and John B. Lanning, Las Vegas,  
for Appellants.

Ling Ltd. and Louis Ling, Reno,  
for Respondents.

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BEFORE THE SUPREME COURT, EN BANC.<sup>1</sup>

*OPINION*

By the Court, CADISH, J.:

Article 1, Section 3 of the Nevada Constitution guarantees the right to a jury trial in certain civil proceedings. The question here is whether that right extends to administrative agency proceedings in which the administrative agency or governing board may impose civil monetary penalties pursuant to statute. We hold that it does not where the statutory violations at issue have no common law analog for which a jury trial was historically available. Because appellant Jeffrey Hagen has not identified such an analog for any of the statutory violations underlying the penalties the State Board of Architecture imposed against him, Hagen was not entitled to a jury trial. We affirm the district court's order denying judicial review of the Board's decision.

*FACTS AND PROCEDURAL HISTORY*

Hagen is an architect licensed in California through his firm JAHA Architecture, Inc. (collectively, Hagen). The Nevada State Board of Architecture, Interior Design and Residential Design regulates the practice of architecture for the state of Nevada. The Board issued a notice of charges against Hagen, subsequently holding an administrative hearing and finding that Hagen violated NRS 623.360(1)(c) by practicing architecture in Nevada without a license and NRS 623.360(1)(a) and/or NRS 623.360(1)(b) by holding himself out as an architect without having a Nevada license. The Board fined Hagen \$20,000 under NRS 623.365.

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<sup>1</sup>The Honorable Lidia S. Stiglich, Justice, did not participate in the decision of this matter.

Hagen petitioned the district court for judicial review of the Board's decision. The district court remanded the petition to the Board to determine whether the two violations involve a common law issue that would allow Hagen to demand a jury trial. On remand, the Board held a hearing and determined that Hagen did not have a right to a jury trial. Hagen petitioned the district court for judicial review a second time, which the district court denied. Hagen appeals.

### *DISCUSSION*

Hagen raises a single issue on appeal: whether Nevada Constitution Article 1, Section 3 guarantees a right to a jury trial in proceedings initiated by the Board for civil monetary penalties.<sup>2</sup> We conclude that it does not.

*It is appropriate for us to address the jury trial right in this case*

As a threshold matter, we disagree with the Board that Hagen waived the jury-trial argument by failing to raise it in the initial administrative proceedings before the Board. Hagen raised the issue in his initial petition for judicial review, and on remand, the Board considered and rejected his claim that he was entitled to a jury trial. Hagen then sought judicial review of that decision, which the district court denied. Thus, the issue

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<sup>2</sup>Hagen also argues that he has a right to a jury trial under the Seventh Amendment to the United States Constitution. But Hagen acknowledges that the Seventh Amendment does not apply to the states. *See In re Parental Rights as to M.F.*, 132 Nev. 209, 212, 371 P.3d 995, 998 (2016) (“The Seventh Amendment to the United States Constitution protects the right to a jury trial in civil cases in certain circumstances, but that Amendment does not apply to the states.”). The Seventh Amendment therefore cannot provide a basis for Hagen's claimed right to a jury trial in this case. Accordingly, we need not address this argument further.

was ultimately presented to and decided by the Board before the district court denied his petition for judicial review, which is now before us.

Moreover, even assuming the issue was not preserved before the Board in the first instance, waiver does not preclude our consideration of it. Admittedly, “judicial review of administrative decisions is limited to the record before the administrative body,” and we have therefore recognized that a party may “waive[ ] an argument made for the first time to the district court on judicial review.” But we have also explained that exceptions exist “for purely legal or constitutional issues.” *State Bd. of Equalization v. Barta*, 124 Nev. 612, 621 & n.24, 188 P.3d 1092, 1098 & n.24 (2008); *see also In re Guardianship of Jones*, 139 Nev. 139, 145, 531 P.3d 1236, 1243 (2023) (“[T]his court can consider constitutional issues for the first time on appeal’ when appropriate.” (quoting *Tam v. Eighth Jud. Dist. Ct.*, 131 Nev. 792, 798, 358 P.3d 234, 239 (2015))). Because Hagen’s claimed right to a jury trial presents a purely constitutional question, we may consider it notwithstanding his failure to raise it during the initial administrative proceedings.

*We adopt the historical analog approach to evaluating a jury trial right for a new cause of action*

Hagen asserts that, because the regulation of architect licensure did not exist by name at common law in 1864, we should determine whether the statutory prohibitions at issue nonetheless fall within the constitutional jury-trial guarantee by comparing them to historical causes of action. Although our prior cases have not expressly adopted this approach, neither have they foreclosed it. *Cf. In re Parental Rights as to M.F.*, 132 Nev. at 215, 371 P.3d at 999 (rejecting argument that a jury trial right exists for termination of parental rights actions in part because “no such action existed in 1864”). As explained below, we agree that historical analogy is an

appropriate means to determine whether a novel statutory cause of action falls within the scope of the jury-trial right preserved by Article 1, Section 3, albeit under a different analysis than that proposed by Hagen.

We review de novo whether there is a constitutional right to a trial by jury. *In re Parental Rights as to M.F.*, 132 Nev. at 212, 371 P.3d at 997. The right to a civil jury trial is a fundamental right under the Nevada Constitution and has historically served as an important “check against unbridled despotism.” *Taylor v. Colon*, 136 Nev. 434, 438, 482 P.3d 1212, 1216 (2020). Specifically, Article 1, Section 3 states that “[t]he right of trial by Jury shall be secured to all and remain inviolate forever.” Consistent with this constitutional guarantee, we have explained that the right to a jury trial extends to those causes of action for which the right existed at common law, as statutorily modified in this country as of 1864 when Nevada adopted its constitution. *Cheung v. Eighth Jud. Dist. Ct.*, 121 Nev. 867, 870-71, 124 P.3d 550, 553 (2005) (citing *Aftercare of Clark Cnty. v. Just. Ct. of L.V. Twp.*, 120 Nev. 1, 6, 82 P.3d 931, 933 (2004)).

The approach of looking to historical analogs follows from the historical nature of Nevada’s civil jury trial right. Moreover, the historical nature of the right is not unique to Nevada. As the United States Supreme Court recognized nearly two centuries ago, “[t]he right to such a trial is, it is believed, incorporated into, and secured in every state constitution in the union.” *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 446 (1830), *overruled on other grounds by NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). Thus, in interpreting state constitutional jury trial guarantees, courts have generally looked to the common law existing when their constitution was adopted to determine the scope of the right preserved, similar to Nevada’s approach. *See, e.g., Nationwide Biweekly Admin., Inc. v. Superior*

*Ct.*, 462 P.3d 461, 480-81 (Cal. 2020); *Blue Beach Bungalows DE, LLC v. State*, 351 A.3d 1007, 1031, 1033 (2025). And when examining a statutory cause of action that did not exist at common law, courts in several states utilize historical analogs to determine whether the modern cause of action is sufficiently analogous to a common law action that carried a right to a jury trial. *See, e.g., Nationwide Biweekly*, 462 P.3d at 481 (citation modified); *Ball v. Dep't of Health*, 256 N.Y.S.3d 430, 435 (App. Div. 2026); *Blue Beach*, 351 A.3d at 1040-41. For example, in *Blue Beach*, the Delaware Supreme Court determined that no right to a jury trial in enforcement actions under Delaware's Consumer Fraud Act (CFA) existed because the CFA did not descend from or codify common law fraud, did not duplicate or modify common law fraud, eliminated several elements required to establish common law fraud, and authorized the state to enforce the law through civil penalties as deterrents rather than permit an individual to recover damages to make that person whole. 351 A.3d at 1040-45.

The holistic nature of the *Blue Beach* inquiry distinguishes it from the federal analysis urged by Hagen. Hagen asserts that we should apply the same comparison test the United States Supreme Court used in *SEC v. Jarkesy*, 603 U.S. 109 (2024). We decline to do so. *Jarkesy* addressed the right to a jury trial under the Seventh Amendment, which does not apply to the states. *Id.* at 120; *In re Parental Rights as to M.F.*, 132 Nev. at 212, 371 P.3d at 998. More importantly, Nevada's Article 1, Section 3 inquiry focuses on preserving the historical common law jury trial right, whereas the federal approach "does not limit trial by jury to the common-law forms of action recognized when the Seventh Amendment was ratified," instead attaching a jury trial to any claim that is legal—as opposed to equitable—in nature, with a particular focus on the nature of the remedy sought. *Blue Beach*, 351 A.3d

at 1039 (citing *Jarkesy*, 603 U.S. at 122) (internal quotation marks omitted). “[T]he remedy is all but dispositive.” *Jarkesy*, 603 U.S. at 123. *Jarkesy* therefore addresses a different constitutional question under a different constitutional framework.

On the other hand, our approach is consistent with the public rights doctrine<sup>3</sup> discussed in the *Jarkesy* dissent and outlined in *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442 (1977), under which Congress may enact new statutory obligations, prescribe consequences for the breach of those obligations, and authorize administrative agencies or bodies to adjudicate those violations and impose the appropriate penalty on behalf of the public without a jury trial. *Jarkesy*, 603 U.S. at 174 (Sotomayor, J., dissenting); *Atlas Roofing*, 430 U.S. at 450-55, 461. Our precedent likewise acknowledges that the legislature may empower a newly created tribunal to adjudicate violations of the statutes that tribunal enforces without a jury trial. *Cheung*, 121 Nev. at 873, 124 P.3d at 555. In *Cheung*, we held that the creation of new courts within the governmental structure did not implicate the right to a jury trial in holding that there was no jury trial right in small claims court cases. 121 Nev. at 873, 124 P.3d at 555. Accordingly, Nevada’s existing jurisprudence and the reasoning in *Atlas Roofing* provide additional support for concluding that *Jarkesy*’s Seventh Amendment analysis does not govern the question presented here.

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<sup>3</sup>In this context, public rights “refer to ‘rights of the public—that is, rights pertaining to claims brought by or against the United States.’” *Jarkesy*, 603 U.S. at 174 (Sotomayor, J., dissenting) (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 68 (1989) (Scalia, J., concurring in part and concurring in judgment)).

Other state courts have likewise declined to extend *Jarkesy*'s federal jury trial right analysis to state constitutional jury trial questions involving administrative civil penalties. *See Reguli v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.*, \_\_\_ S.W.3d \_\_\_, 2026 WL 2082926, at \*28 (Tenn. July 20, 2026); *Ball*, 256 N.Y.S.3d at 434 n.4; *Blue Beach*, 351 A.3d at 1039; *Par. of Jefferson v. Fayard*, 407 So. 3d 879, 890 (La. Ct. App. 2025); *In re Investigation Pursuant to 30 V.S.A. SEC. 30 & 209*, 327 A.3d 789, 805 n.7 (Vt. 2024).

We therefore adopt Delaware's historical analog comparison approach for purposes of Article 1, Section 3. When a statutory cause of action does not stem from common law existing in 1864, courts must determine whether the cause of action, considered as a whole, is sufficiently analogous to a common law cause of action for which a jury trial was available at that time. This inquiry requires consideration of the statutory cause of action's historical lineage, purpose, substance, and elements, and the nature of the relief and enforcement mechanism provided by the legislature. No single characteristic is necessarily dispositive. Rather, the question is whether, taken together, these features establish the requisite historical analogy to a common law cause of action with a jury trial right protected by Article 1, Section 3.

As the party challenging the constitutionality of a statute assigning a proceeding to an administrative agency without benefit of a jury, Hagen bears the burden of identifying a historical analog to the new cause of action. *Blue Beach*, 351 A.3d at 1031; *see also Powers v. Eighth Jud. Dist. Ct.*, 142 Nev., Adv. Op. 35, 589 P.3d 638, 645 (2026) ("Statutes are presumed to be constitutional, and the petitioner bears the burden of showing a statute is unconstitutional by making a clear showing of invalidity."). If the asserted statutory cause of action did not exist at common law and the party fails to demonstrate that it is sufficiently analogous to a common law cause of action

for which a jury trial was available in 1864, the statutory cause of action does not implicate the jury-trial right preserved by Article 1, Section 3. With that framework established, we turn to the causes of action challenged in this case. *The statutory violations here are not sufficiently analogous to common law claims with a jury trial right*

We now turn to whether the statutory violations alleged against Hagen are sufficiently analogous to any common law cause of action for which a jury trial was available in 1864. Hagen first asserts that NRS 623.360(1)(a) (holding oneself out as an architect without a license) and (b) (advertising as an architect without a license) are akin to fraudulent misrepresentation. As a threshold matter, Hagen has not established that fraudulent misrepresentation existed as a cause of action at common law in this country in 1864. Hagen relies on *Gregory v. Frothingham*, but that case concerned a fraudulent conveyance, not fraudulent misrepresentation. 1 Nev. 253, 256 (1865) (“The defendants aver that the deed from McFarland was only made to hinder and delay creditors, and was therefore fraudulent and void as against them, they being creditors.”). Hagen also cites *In re Bailey*, which does not address whether fraudulent misrepresentation existed as a cause of action in 1864, but instead only addressed attorney disbarment. 40 Nev. 139, 139, 161 P. 512, 512 (1916). Because Hagen bears the burden of identifying a historical analog and has not established that fraudulent misrepresentation was itself an available common law cause of action in 1864, it cannot serve as the historic analog necessary to establish a constitutional jury-trial right.

In any event, NRS 623.360(1)(a) and (b) bear little resemblance to common law claims for fraudulent misrepresentation when considered as a whole. The provisions serve a distinct statutory purpose: NRS Chapter 623 seeks “to safeguard life, health and property, and to promote the public welfare

by improving the quality of human environmental design.” NRS 623.010. Neither provision at issue modernizes or replicates a common law fraud action; instead, each regulates who may practice or advertise architecture in the interest of public protection. The elements likewise differ materially. Fraudulent misrepresentation requires clear and convincing evidence that (1) the defendant made a false representation, (2) the defendant knew or believed the representation was false or that defendant lacked sufficient information to make the representation, (3) the defendant intended to induce the plaintiff to act or refrain from acting upon the misrepresentation, and (4) the plaintiff suffered damage from relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 446-47, 956 P.2d 1382, 1386 (1998) (citing *Bulbman Inc. v. Nev. Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992)). By contrast, NRS 623.360(1)(a) and (b) do not require falsity, knowledge or recklessness, an intent to induce reliance, actual reliance, or damages. At most, the provisions overlap with fraudulent misrepresentation in their potential regulation of an implied false representation regarding the ability to legally practice architecture in Nevada. That limited overlap is insufficient to establish the requisite historical analogy.

The nature of the rights and remedies further distinguishes the two. Only the Board can impose civil penalties for violations of NRS Chapter 623, and NRS 623.365 authorizes a civil penalty of up to \$10,000 for each violation. A fraudulent misrepresentation claim, by contrast, permits a person injured by the misrepresentation to seek damages caused by the reliance on said misrepresentation. The statutory provisions therefore protect and enforce a public regulatory interest through an administrative penalty, whereas fraudulent misrepresentation claims provide a private remedy for an individual’s injury. Considered together, these differences in purpose,

elements, parties, and remedy demonstrate that NRS 623.360(1)(a) and (b) are not sufficiently analogous to fraudulent misrepresentation to require a jury trial.

Hagen next asserts that NRS 623.360(1)(c) (engaging in the practice of architecture without a license) is analogous to common law professional negligence. Unlike his argument regarding fraudulent misrepresentation, Hagen has identified authorities indicating that the professional negligence cause of action existed at common law in this country in 1864 and carried a right to a jury trial. *See, e.g., Pennington's Ex'rs v. Yell*, 11 Ark. 212, 212 (1850) ("He is liable only for gross negligence or gross ignorance in the performance of his professional duties."). Professional negligence can therefore be a potential historic analog. But establishing the existence of a historical cause of action does not end the inquiry. NRS 623.360(1)(c) must still be sufficiently analogous to professional negligence when the statutory cause of action is considered as a whole.

It is not. NRS 623.360(1)(c) does not share a direct lineage with professional negligence, and the two causes of action differ despite a partial overlap in purpose. Both may serve the general interest of protecting the public from substandard professional work, but that shared objective is insufficient here because the substance of the statutory obligation is fundamentally different from the historical cause of action. The violation of NRS 623.360(1)(c) turns on whether the person practiced architecture and whether the individual had a license to do so. Professional negligence by contrast requires proof that (1) the professional had a duty to use the same skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) the professional breached that duty; (3) the negligent conduct proximately caused injury; and (4) actual loss or damage resulting

from the professional's negligence. *Boesiger v. Desert Appraisals*, 135 Nev. 192, 194-95, 444 P.3d 436, 439 (2019). NRS 623.360(1)(c) does not require proof of negligent conduct, causation, injury, or damages. Indeed, the statutory provision asks whether the individual is authorized to practice architecture, whereas a claim for professional negligence presupposes that the defendant is a professional and instead examines whether that professional performed below the applicable standard of care. Professional negligence claims also generally require expert testimony to establish the applicable standard of professional care, an evidentiary requirement absent from NRS 623.360(1)(c). *Boesiger*, 135 Nev. at 195, 444 P.3d at 439. Accordingly, the substance of the two causes of action differs significantly.

The parties and remedies differ as well. Only the Board may enforce NRS 623.360(1)(c) through civil penalties as authorized by NRS 623.365. In contrast, any aggrieved party can seek damages for the professional's negligent conduct. The two causes of action therefore vindicate different interests through different enforcement mechanisms: one regulates who may practice architecture in order to protect the public, while the other provides a private remedy for injury caused by substandard professional services. While NRS 623.360(1)(c) and professional negligence share the general objective of protecting the public from substandard professional work, they differ in historical lineage, elements, the interests they protect, the parties who may enforce them, and the remedies available. Their overlapping purpose, considered in light of these substantial differences, is not sufficient to establish the requisite historical analogy. NRS 623.360(1)(c) therefore does not carry a constitutional right to a jury trial.

Finally, Hagen asserts that the Board’s claim for a civil penalty is akin to a common law action in debt. Hagen cites several cases to show that an action in debt existed at common law in this country in 1864. *See, e.g., United States v. Allen*, 24 F. Cas. 772, 772 (C.C.D. Conn. 1810) (No. 14,431) (“The action of debt will lie at the suit of the United States to recover the penalties and forfeitures imposed by statutes.”). An action in debt is therefore a potential historic analog. But NRS 623.365 does not share a direct lineage with a common law action in debt, and the two are not sufficiently analogous in purpose and substance.

An action in debt and NRS 623.365 serve fundamentally different purposes. NRS Chapter 623 authorizes civil penalties to enforce the legislature’s regulatory scheme and protect the public welfare. NRS 623.010. By contrast, an action in debt, as the name implies, historically provided a means to recover a debt owed by one individual to another. *Henry v. Confidence Gold & Silver Mining Co.*, 1 Nev. 619, 620-21 (1865). The former is a regulatory enforcement mechanism; the latter is a judicial action to recover an existing obligation.

The distinction is also apparent from the nature of the remedy. NRS 623.365 permits the Board to *impose* civil penalties for a violation of NRS Chapter 623. An action in debt, by contrast, concerns the *recovery* of a sum already owed. The Supreme Court recognized this distinction in *Tull v. United States* in the context of the federal Seventh Amendment, explaining that “[a]ctions by the Government to recover civil penalties under statutory provisions [had] historically . . . been viewed as . . . action[s] in debt requiring trial by jury.” 481 U.S. at 418-19. Here, the Board is not bringing an action to recover a debt owed to it. It is enforcing a statutory obligation created by the legislature and imposing a penalty for its violation. NRS 623.365 therefore

does not replicate or modernize an action in debt, and the differences in purpose, function, and enforcement mechanism preclude the requisite historical analogy.

Accordingly, none of Hagen's proposed common law analogs establishes a right to a jury trial for the Board's imposition of civil penalties. Fraudulent misrepresentation was not shown to have existed as a relevant common law cause of action in 1864 and, in any event, bears little substantive resemblance to NRS 623.360(1)(a) and (b). Professional negligence existed historically but differs substantially from NRS 623.360(1)(c) in its elements, protected interests, parties, and remedies. And although an action in debt existed historically, NRS 623.365 does not replicate an action to recover a debt; it authorizes the Board to impose a regulatory civil penalty. Considering each statutory provision as a whole, none is sufficiently analogous to a common law cause of action carrying a jury trial right in 1864. Hagen therefore has no constitutional right to a jury trial on the Board's charges pursuant to NRS 623.360(1)(a)-(c) and NRS 623.365.

### *CONCLUSION*

We conclude that Hagen has no constitutional right to a jury trial on the Board's imposition of civil penalties under NRS 623.360(1)(a)-(c) and NRS 623.365. Article 1, Section 3 of the Nevada Constitution preserves the right to a jury trial as it existed at common law in 1864, and a novel statutory cause of action carries that right only when it is sufficiently analogous to a common law cause of action for which a jury trial was available. Here, none of Hagen's proposed historical analogs—fraudulent misrepresentation, professional negligence, or an action in debt—is sufficiently analogous to the statutory violations or the Board's civil penalty authority to invoke a jury trial

right. We therefore affirm the district court's order denying Hagen's petition for judicial review.



Cadish, J.

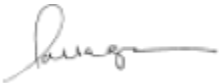
We concur:



Herndon, C.J.



Pickering, J.



Parraguirre, J.



Bell, J.



Lee, J.