No. 26-473

In the Supreme Court of the United States

SLIGO CREEK CENTER,
Petitioner,
v.
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

The questions presented are:

1. Whether, under a proper application of *Jarkesy*, Sligo Creek was entitled to have its case decided by a jury in an Article III court.

2. Whether the Court should overrule *Atlas Roofing*.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the Constitution and its principles, which are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual Cato Supreme Court Review, and files amicus briefs.

This case interests Cato because it involves the right to a civil jury trial in conflicts between individuals and administrative agencies. Cato has an interest in this Court properly enforcing that right, a right supported by both the Seventh Amendment and *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109 (2024).

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[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

The Constitution's Seventh Amendment guarantees the right to a civil jury trial: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. CONST. amend. VII. The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935).

But the approach taken by the Fourth Circuit in this case weakens the protection of that right. At issue is a $1.4 million fine levied by the U.S. Department of Health and Human Services (HHS). HHS imposed this fine against Sligo Creek Center, a nursing facility, for alleged violations of HHS regulations. And HHS assessed Sligo Creek's liability through its own administrative hearings—without a jury and without a trial before an Article III court. The Fourth Circuit upheld the fine, theorizing that it was unrelated to any common-law prohibition because it dealt with a "public right." Pet. App. 9a–12a.

Regrettably, this case marks merely the latest judicial invocation of the "public rights" doctrine—a doctrine of indistinct nature and scope that administrative agencies regularly exploit to deny litigants a jury trial. And this exploitation can largely be traced back to a single case. Nearly half a century ago, this Court held that "when Congress creates new statutory 'public rights,' it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment's injunction that a jury trial is to be 'preserved' in 'suits at common law.'" *Atlas Roofing Co. v.*

Occupational Safety & Health Rev. Comm'n, 430 U.S. 442, 455 (1977) (holding that fines issued under the Occupational Safety and Health Act ("OSH Act") may be assessed by an administrative tribunal rather than through a jury trial).

The Court has recognized that this vague exception for "public rights" "has no textual basis in the Constitution," and must instead be based on historical "background legal principles." *SEC v. Jarkesy*, 603 U.S. 109, 131 (2024). And without "close attention to the basis for each asserted application of the [public rights] doctrine, the exception would swallow the rule." *Id.*

The public rights exception is not the only doctrinal defect of *Atlas Roofing*. That decision also held that Congress may assign adjudication to an agency "even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead of an administrative agency." 430 U.S. at 455. In other words, even if the public rights exception does not apply, *Atlas Roofing* allows Congress to circumvent the guarantee of a jury trial simply by shifting the forum of adjudication. *Jarkesy* did not fully repudiate this remarkable notion, which treats the Bill of Rights as a matter of congressional discretion. *Jarkesy*, 603 U.S. at 136–38. *Atlas Roofing* was wrongly decided, and it should be overruled. And this is the case to do so.

The Court should grant review and bring clarity to Seventh Amendment doctrine in three respects. First, this Court should end the encroachment on Seventh Amendment protection that the public rights doctrine has produced. Second, this Court should eliminate any prospect that Congress, through legislation, could do away with Seventh Amendment rights merely by creating a new regulatory scheme. Third and finally, this

Court should clarify that participation in a federal program does not waive the fundamental civil jury right. By overruling *Atlas Roofing*, the Court can accomplish all three.

ARGUMENT

I. NOVEL STATUTORY CAUSES OF ACTION, SUCH AS THOSE INVOLVING SAFETY REGULATIONS, FALL WITHIN THE SCOPE OF THE SEVENTH AMENDMENT JURY RIGHT.

A. The Seventh Amendment Protects Defendants in Forms of Actions that Originated After the Amendment Was Ratified.

The Framers included the Seventh Amendment in the Bill of Rights partly as a response to Anti-Federalist concerns: The Anti-Federalists feared that federal judges who were unaccountable to the public would abuse their official powers. *See* Martin H. Redish & Samy Abdelsalam, *The Seventh Amendment Right to Jury Trial in the Administrative State: Recognizing the Dangers of the Constitutional Moment*, 99 NOTRE DAME L. REV. 1743, 1748 (2024). A jury composed of litigants' peers would "dilute [judges'] authority and control." *Id.*

The fear of biased adjudicative proceedings unaccountable to the people goes back to the colonial era. In 1765, John Adams wrote that the expansion of distant admiralty courts—courts that lacked juries and that enforced the complex statutory scheme of the Stamp Act through enormous penalties—fundamentally changed the jury system and violated the Magna

Carta itself.[2] Adams's grievances were echoed in the Declaration of Independence, which charged the King with "depriving us in many cases, of the benefits of Trial by Jury." THE DECLARATION OF INDEPENDENCE para. 20 (U.S. 1776).

The Seventh Amendment thus guarantees the right to a jury trial in "suits at common law." In other words, the Seventh Amendment preserved the option of a jury trial in all federal suits with analogues in English courts of law (as opposed to courts of equity). The Seventh Amendment's guarantee thus depended on the type of relief sought: a suit for monetary damages would require a jury trial, whereas a case for mere equitable relief would not. Redish & Abdelsalam, *supra*, at 1748. As this Court put it nearly 200 years ago, "suits at common law" include "not merely suits, which the *common* law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered." *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830).

The Court has repeatedly confirmed *Parsons*'s principle: A new statutory cause of action that contains a legal remedy also includes a jury guarantee. In *Curtis v. Loether*, the Court called the applicability of the jury right "in actions enforcing statutory rights" "a matter too obvious to be doubted," and held that "[t]he Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if

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[2] John Adams, *Instructions of the Town of Braintree on the Stamp Act* (Oct. 10, 1765), *in* 1 PAPERS OF JOHN ADAMS 141–42 (Robert J. Taylor et al. eds., 1977), *reprinted in* 5 THE FOUNDERS' CONSTITUTION, amends. V & VI, doc. 12 (Philip B. Kurland & Ralph Lerner eds., 1987).

the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 193–94 (1974). Likewise, *Pernell v. Southall Realty* held that the Amendment "requires trial by jury in actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law." *Pernell v. Southall Realty*, 416 U.S. 363, 375 (1974).

The Court has likewise refused to let new procedural devices or artful pleading erode the jury right. In *Beacon Theatres*, the Court held that a party entitled to a jury on a statutory antitrust treble-damages claim "cannot be deprived of that right merely because [its opponent] took advantage of the availability of declaratory relief to sue [it] first," and that "only under the most imperative circumstances . . . can the right to a jury trial of legal issues be lost through prior determination of equitable claims." *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 504, 510–11 (1959). In *Ross v. Bernhard*, the Court held that the jury right extends to legal issues in shareholder derivative suits, a procedural device that equity developed in the nineteenth century, because "[t]he Seventh Amendment question depends on the nature of the issue to be tried, rather than the character of the overall action." 396 U.S. 531, 538 (1970); *see id.* at 533 (quoting *Parsons*, 28 U.S. (3 Pet.) at 447); *id.* at 534. Nor may a litigant avoid a jury by recharacterizing a legal claim: in *Dairy Queen v. Wood*, the Court rejected an attempt to recast a claim for money owed as an equitable "accounting," holding that "the constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings." *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477–78 (1962).

This standard was also affirmed after *Atlas Roofing*. For example, in *Tull v. United States*, the Court held that when the government sues in court for statutory civil penalties, the Seventh Amendment guarantees a jury trial on liability, because a civil penalty is also a punitive legal remedy that historically has been enforced through an action in debt. *Tull v. United States*, 481 U.S. 412, 417–18, 422 (1987).

B. Safety Regulations Were Not Historically Part of the Public Rights Exception.

Despite extensive historical precedent supporting a jury right, the Fourth Circuit in this case held that Sligo Creek's adjudication involved a "public right"—that is, a realm of law that falls outside the Seventh Amendment jury guarantee. Pet. App. 9a–10a. That was error, and the original sin that caused this error lay in *Atlas Roofing*. *Atlas Roofing* misconstrued prior case law and expanded the "public rights" exception beyond its historical justification. Indeed, the very notion of a "public rights exception" is a misnomer that has led lower courts astray ever since. Safety regulations, even those enforced by newly created agencies, are not exempt from the jury guarantee.

Jarkesy properly identifies the recognized public-rights categories: the collection of revenue, some aspects of customs law, immigration law, relations with Indian tribes, the administration of public lands, and the granting of public benefits. Each domain rests on historically evolved, common law-like judicial practice, not on congressional discretion to create new exceptions. *Jarkesy*, 603 U.S. at 128–30; *id.* at 153 (Gorsuch, J., concurring) (traditionally recognized public rights share "a serious and unbroken historical pedigree").

Atlas Roofing traced the doctrine of "public rights" back to this Court's decision in *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272 (1856). To be sure, this Court used that term in its opinion. As *Atlas Roofing* noted, the *Murray's Lessee* Court "referred to 'matters, involving public rights [that] congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.'" *Atlas Roofing*, 430 U.S. at 457 (quoting *Murray's Lessee*, 59 U.S. (18 How.) at 284). However, *Murray's Lessee* never treated matters involving public rights as exceptions to the Constitution's guarantee of a jury trial in common law actions for legal monetary remedies. In the same paragraph that discussed matters of public rights, the Court underscored their quite limited scope: "To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee*, 59 U.S. (18 How.) at 284. Adjudications involving public rights do not constitute exceptions to other legal categories; rather, such matters embody a distinct legal category of their own.

Furthermore, *Murray's Lessee* focused on how governments may lawfully collect debts—a category which traditionally is an executive function of government that does not require a judicial proceeding. *Id.* at 281. English law long allowed summary collection of debts owed to the Crown by revenue collectors through auditors, inquiries without notice, and writs of extent. *Id*. at 277–78. American colonies and states used similar distress warrants (as, for example, Massachusetts

did in 1786). *Id.* at 278–79. Indeed, Congress itself adopted these principles as early as 1798. *Id.* at 279.

Despite the narrow focus of *Murray's Lessee* on government debt collection, the Court in *Atlas Roofing* insisted that *Murray's Lessee* "did not appear to confine its holdings" to the "exercise of sovereign powers" such as tax collection. *Atlas Roofing*, 430 U.S. at 456–57. But the only additional example that *Murray's Lessee* provided of adjudicating a public right was equitable claims to land by inhabitants of territories ceded to the United States in treaties. *Murray's Lessee*, 59 U.S. (18 How.) at 284. These claims concerned the disposition of public lands, which is a distinct category *Jarkesy* expressly recognizes. 603 U.S. at 130. And because such claims were equitable claims, they entailed no jury right in any event. In other words, *Atlas Roofing*'s broad pronouncement of a "public rights" doctrine rests on a thin base: The two distinct historical categories provided in *Murray's Lessee* do not justify *Atlas Roofing*'s extrapolation to entirely unrelated statutory schemes involving categorically different exercises of sovereign power. Much less do they support any inference that such statutory schemes might become severed from jury trials.

Atlas Roofing also attempted to recruit *Helvering v. Mitchell*, 303 U.S. 391 (1938), to support its broad conception of public rights. But that attempt also rests on a narrow foundation. In *Helvering,* the Court stated as dictum that the determination of facts underlying liability "may be by an administrative agency instead of a jury." *Id.* at 402; *Atlas Roofing*, 430 U.S. at 451. However, *Helvering* was another case involving tax collection, and the sum of money at issue represented the "remedial" amount necessary to reimburse the government for the heavy expense of investigation and the

loss resulting from a taxpayer's fraud. 303 U.S. at 401. In *Helvering*, the government functioned less as an adjudicator than as a bill collector. In contrast, the penalties in *Atlas Roofing*, and those imposed on Sligo Creek, are punitive, and punitive civil penalties function as a legal remedy. *Tull*, 481 U.S. at 422.

Ultimately, *Atlas Roofing* assigns more precedential weight to several of the Court's previous opinions than they can reasonably be understood to bear. Consider *Atlas Roofing*'s discussion of *Oceanic Steam Navigation Co. v. Stranahan*, a case which rested on Congress's plenary power over foreign commerce and the admission of aliens. 214 U.S. 320, 334–35, 339–40 (1909). *Atlas Roofing* quotes *Oceanic*'s statement that the imposition of administrative fines was also proper for "'internal revenue, taxation and other subjects.'" *Atlas Roofing*, 430 U.S. at 457 (quoting *Oceanic*, 214 U.S. at 339). But *Oceanic*'s observation does not extend public rights beyond the scope contemplated by *Murray's Lessee* and *Helvering*. And this Court in *Jarkesy* further rejected any broader readings of *Oceanic* by explaining that *Oceanic* "expressly confines its analysis to the exercise of Congress's power over foreign commerce." *Jarkesy*, 603 U.S. at 129 n.1. *Atlas Roofing* also cites *Crowell v. Benson* to bolster its case for expansion of public rights, 430 U.S. at 452, 460, but *Crowell* deals with admiralty, which historically fell outside the common law courts. *Crowell v. Benson*, 285 U.S. 22, 45 (1932) (citing *Waring v. Clarke*, 46 U.S. (5 How.) 441, 459–60 (1847)).

Atlas Roofing is thus at sharp variance with the rule of law that *Parsons* laid down, and that so many decisions of this Court then followed—namely, that a statutory cause of action that includes a legal remedy implies a Seventh Amendment jury guarantee. In

establishing its exemption from the Seventh Amendment, the *Atlas Roofing* Court cited no cases falling under the *Parsons* standard of "common law" involving a legal, non-equitable remedy. *Atlas Roofing* therefore marked the first time the Court approved the administrative imposition of punitive civil penalties, without a jury, on private parties under a domestic regulatory scheme. The precedents it cited support administrative adjudication only for core sovereign functions or for equitable and compensatory remedies, and the statutory schemes of both *Atlas Roofing* and this case fit neither category.

II. LEGISLATION CANNOT OVERRIDE CONSTITUTIONAL PROTECTIONS.

A. *Atlas Roofing*'s Forum-Shifting Rule Lets Congress Override the Seventh Amendment.

As the previous discussion shows, *Parsons* was correct from the beginning: A new statutory cause of action that contains a legal remedy also includes a jury guarantee. Only a few discrete, historically grounded categories of adjudication are exempt from that guarantee. But how then did the *Atlas Roofing* Court justify its departure from that historically clear rule? As a partial answer, *Atlas Roofing* cites one of the same rationales this Court relied on in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937): that a new statutory proceeding is one unknown to the common law, and so it follows that the right to a jury trial is not applicable. *Atlas Roofing*, 430 U.S. at 453 (citing *Jones & Laughlin*, 301 U.S. at 48–49).

But that rationale cannot be squared with *Parsons*, nor with the Court's later decisions in *Beacon Theatres* and *Ross*, which applied the jury right to claims and

procedural devices unknown to the courts of England at the time of the Founding. And after *Atlas Roofing*, *Tull* confirmed that a government suit for statutory civil penalties under the Clean Water Act is a suit at common law, despite the novelty of that statute. *Tull*, 481 U.S. at 422.[3]

And indeed, the novelty of a statute alone is not enough to exempt adjudication from the Seventh Amendment even under this Court's modern precedents. Three years before *Atlas Roofing*, the Court distinguished *Jones & Laughlin* in *Curtis v. Loether*, 415 U.S. 189 (1974). In *Curtis*, the Court ruled that the Seventh Amendment applied to suits in federal court brought under the housing discrimination provisions of the Civil Rights Act of 1968. The Court distinguished *Curtis* from *Jones & Laughlin* by asserting that there is a "congressional power to entrust enforcement of statutory rights to an administrative process or specialized court of equity free from the strictures of the Seventh Amendment." *Id.* at 194–95 (quoted in *Atlas Roofing*, 430 U.S. at 454). Or, as more cleanly stated by *Atlas Roofing*, Congress may assign adjudication to an agency "even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned to a federal court of law instead of an administrative agency." *Atlas Roofing*, 430 U.S. at 455.

In other words, *Curtis* and *Atlas Roofing* both recognize that the Seventh Amendment's common law

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[3] *Jarkesy* has since declined to decide whether *Tull* and *Granfinanciera* effectively overruled *Atlas Roofing*, 603 U.S. at 136–37 & n.3, noting that *Atlas*'s own author suggested as much. *See Granfinanciera v. Nordberg*, 492 U.S. 33, 79 (1989) (White, J., dissenting) ("Perhaps . . . *Atlas Roofing* is no longer good law after today's decision.").

domain extends to statutory schemes, and therefore that its jury protections extend to statutory schemes as well. However, those opinions also suggest that Congress has the power to strip away these protections just by changing the venue of litigation from the courts to an administrative agency. In sum, both opinions suggest that Congress may avoid the Seventh Amendment simply by creating a new statutory scheme *and* assigning enforcement of that scheme to an administrative agency.

But a constitutional protection that Congress can just do away with simply by passing a law is no protection at all. The guarantee that the Seventh Amendment provides in common-law actions cannot be contingent on atypical historical circumstances or legislative discretion. As the Court has previously recognized, Congress cannot simply "conjure away the Seventh Amendment by mandating that traditional legal claims be . . . taken to an administrative tribunal." *Granfinanciera*, 492 U.S. at 52. Exceptions to that protection must rest on the kind of deep historical pedigree that supports the traditional public-rights categories, not on Congress's choice of forum. *See Jarkesy*, 603 U.S. at 153 (Gorsuch, J., concurring).

Jarkesy has since limited any such problem of congressional discretion to statutory causes that lack a Founding Era common-law analogue; however, it failed to eliminate this problem entirely. *See id.* at 138 (majority op.) (*Atlas Roofing* "does not control here, where the statutory claim is 'in the nature of' a common law suit," because the OSH Act claims were "unknown to the common law," and "[t]he reasoning of *Atlas Roofing* cannot support any broader rule"); *id.* at 136–37 (the OSH Act "did not borrow its cause of action from the common law," and its standards "bring

no common law soil with them"). And although *Jarkesy* reaffirmed that the remedy is "all but dispositive" in determining whether a claim is legal in nature, *id.* at 123, its reading of *Atlas Roofing* allows punitive civil penalties, a quintessentially legal remedy, to escape the moderating influence of the jury whenever the underlying statutory duty lacks a close common-law analogue and Congress chooses to assign enforcement to an agency. That result cannot be reconciled with this Court's extensive interpretive tradition, extending from *Parsons* through *Tull*, which recognizes that the Seventh Amendment did not freeze the common law in 1791. Nonetheless, because of *Atlas Roofing*, the Fourth Circuit did away with jury protections in this case on the grounds that the statutory cause of action at issue here was not analogous to the common law. Pet. App. 8a–12a.

As it stands, a key provision of the Bill of Rights now appears to be governed by Congress. That turns the Constitution—which is meant to limit Congress's power—upside down. A constitutional guarantee cannot be subordinate to legislative choice. In much the same way that Britain abused its sovereign authority through the Stamp Act, Congress is still able to shift causes of action that were long understood to require a jury trial into an alternative forum where it may deny that right. In short, *Atlas Roofing* has led lower courts to allow the kind of oppression that the Seventh Amendment meant to prevent. Ultimately, this Court should restore the Seventh Amendment to its rightful place as a check on government power by expanding the limitations set by *Jarkesy* so as to overturn *Atlas Roofing*.

B. Petitioner Cannot Be Required to Shoulder an Unconstitutional Condition.

The lower court found that Sligo Creek effectively waived its right to a jury trial by opting into the statutory scheme under which it received benefits. Pet. App. 10a–11a. That finding overlooks the unconstitutional condition that the government placed on the petitioner. The lower court found that the action "arose from petitioner's choice to participate in a voluntary government program (Medicare) where public funds are spent to achieve public benefits." Pet. App. 10a. This attempt to frame voluntary acceptance of benefits under a statutory scheme cannot evade the requirements of the Seventh Amendment.

The Court has held that "[t]he Government has broad powers, but the means it uses to achieve its ends must be 'consist[ent] with the letter and spirit of the constitution.'" *Horne v. Dep't of Agric.*, 576 U.S. 351, 362 (2015) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819)). This means "that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). In particular, the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Id.* The "unconstitutional conditions" doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013); Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1421–22 (1989); RICHARD A. EPSTEIN, BARGAINING WITH THE STATE 5 (1993).

The unconstitutional conditions doctrine is not "anchored to any single clause of the Constitution." Richard A. Epstein, *Foreword: Unconstitutional Conditions, State Power, and the Limits of Consent*, 102 HARV. L. REV. 4, 10 (1988). Rather, this Court has applied the doctrine in many different domains. *See, e.g.*, *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994); *Koontz*, 570 U.S. at 604; *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013). One such domain is the Article III right of access to the courts. *See Terral v. Burke Constr. Co.*, 257 U.S. 529, 532 (1922) ("[A] State may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the State, exact from it a waiver of the exercise of its constitutional right to resort to the federal courts."). Similarly, the Court has applied closely related principles to the Sixth Amendment right to a jury in criminal cases, holding that a scheme that would "deter exercise of the Sixth Amendment right to demand a jury trial" may not be pursued "by means that needlessly chill the exercise of basic constitutional rights." *United States v. Jackson*, 390 U.S. 570, 581–82 (1968).

This Court's consistent pattern of rejecting conditions designed to infringe basic constitutional rights is instructive, and the Court should apply this doctrine to the Seventh Amendment as well. This argument was raised by AT&T and Verizon in *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026). There, the FCC issued forfeiture orders through an in-house process, thus leaving the carriers to choose between two unattractive alternatives: paying the penalty to obtain deferential court-of-appeals review without a jury or refusing to pay and awaiting a Department of Justice enforcement suit that might never come, suffering reputational and

perhaps legal consequences in the meantime. *Id.* at 1431. The carriers argued that this process was unconstitutional, because it made them face an impermissible choice: The cost of insisting on a jury was so high that they were effectively coerced into waiving that right. *Id*. However, the Court ultimately found that this did not amount to an unconstitutional condition because the statute did not actually put the carriers to this choice. The Court found that the FCC did not have statutory authority to punish the carriers based on only an unpaid order, because any fact at issue would have to be proven de novo to a jury "before [it could] be used to support a binding order to pay." *Id.* at 1431–32.

However, the case at hand is easily distinguished from *FCC v. AT&T* on the grounds that, in this case, Sligo Creek never had any opportunity for a jury trial. Unlike the statutory scheme in *FCC v. AT&T*, Sligo Creek Center did not have the option to decline to pay and receive de novo jury review. Rather, HHS has issued fines, and these fines are binding even in the absence of de novo review at jury trial. The decision to opt into receiving government benefits, as Sligo Creek did here, cannot justify the wholesale stripping of its Seventh Amendment constitutional rights. Eliminating the right to a jury trial would sharply contradict existing case law, which both treats the right to a jury trial as a fundamental right and regards placing conditions on benefits to strip away fundamental constitutional rights as unconstitutional.

III. STARE DECISIS CANNOT JUSTIFY THE PRESERVATION OF *ATLAS ROOFING*.

In deciding whether to overrule a precedent, the Court considers the quality of its reasoning, its

consistency with related decisions, the developments since it was decided, its workability, and all relevant reliance interests. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018). Each factor favors overruling *Atlas Roofing*.

First, the reasoning in *Atlas Roofing*, as discussed above, is not particularly strong. Its underlying holdings—that the cause of action at issue falls outside the scope of the Seventh Amendment, and, in the alternative, that even if that cause of action were within the Seventh Amendment's scope, Congress could simply decide otherwise—rest on shaky foundations. Notably, *Jarkesy* described *Atlas Roofing* as "a departure from our legal traditions" and charged that its definition of public rights was circular. *Jarkesy*, 603 U.S. at 138 & n.4, 139.

Second, and similarly, *Atlas Roofing* is inconsistent with related decisions. *Parsons*, *Curtis*, *Tull*, and *Jarkesy*, in aggregate, have rejected *Atlas Roofing*'s restrictive definition of common law and held that statutory fines define a legal claim and require a jury trial. *Parsons*, 28 U.S. (3 Pet.) at 447; *Curtis*, 415 U.S. at 193–94; *Tull*, 481 U.S. at 417–18, 422; *Jarkesy*, 603 U.S. at 138 & n.4. Again, *Atlas Roofing*'s inconsistency with our legal traditions is not just an inference drawn by the authors of this brief; rather, it is the judgment of the Justices who wrote and joined *Jarkesy*. *See* 603 U.S. at 138 & n.4.

Third, developments since *Atlas Roofing*—such as *Tull* and *Jarkesy*—have rolled back the breadth of its applicability, as explained above. More precisely, *Tull* held that the Seventh Amendment's definition of "common law" encompasses statutory schemes that include civil penalties, 481 U.S. at 417–18, 422, while *Jarkesy*

explicitly recognized *Atlas Roofing* as inconsistent with precedent. 603 U.S. at 138 & n.4.

Fourth, with respect to *Atlas Roofing*'s workability, the Court has already shown that it is willing to restrict the scope of *Atlas Roofing* significantly through its decision in *Jarkesy*. Of course, it is true that some aspects of *Jarkesy*'s implementation remain unsettled: Since *Jarkesy* was issued, federal courts have sometimes been divided on how to apply it. The Third and Fourth Circuits ask whether an enforcement action "more closely resembles" the common-law action in *Granfinanciera* or the action in *Atlas Roofing*. *Axalta Coating Sys. LLC v. FAA*, 144 F.4th 467, 475–77 (3d Cir. 2025); Pet. App. 8a. The Fifth Circuit instead begins from the presumption in favor of Article III courts and requires the government to show that the matter historically fell within the public-rights exception. *Tex. Tobacco Barn, L.L.C. v. U.S. Dep't of Health & Hum. Servs.*, 180 F.4th 229, 236–37 (5th Cir. 2026). There is a strong argument that overturning *Atlas Roofing* entirely would provide the most administrable solution to this problem: Its elimination would foreclose some interpretive practices that make principled application of the law in this area unnecessarily challenging and arduous. Overturning *Atlas Roofing* would end the circuit split described above and ensure that the Constitution functions as it is supposed to: The Constitution is meant to control the federal government, not to be controlled by it.

Fifth, and finally, there are no reliance interests with any weight. In her dissent in *Jarkesy*, Justice Sotomayor suggested that, in reliance on *Atlas Roofing*, Congress has enacted "more than 200 statutes authorizing dozens of agencies to impose civil penalties for violations of statutory obligations." 603 U.S. at 167–68

(Sotomayor, J., dissenting). But overturning *Atlas Roofing* would not invalidate any statutes or regulations at all. It would simply require penalty actions to proceed in court—the purpose for which the Seventh Amendment was passed. And *FCC v. AT&T* confirms that a jury-compatible model already exists: agency findings followed by a de novo jury trial before any obligation to pay is created.

When all five factors are considered, this reveals that the reasonable, practical, and constitutionally correct decision is to overrule *Atlas Roofing*.

CONCLUSION

For these reasons and those given by Sligo Creek Center, this Court should grant the petition and reverse the decision below.

Respectfully submitted,

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