NO. _____

In the Supreme Court of the United States

CENTER FOR EXCELLENCE IN HIGHER EDUCATION, INC., a Not-for-Profit Company, ET AL.,

Petitioners,

v.

STATE OF COLORADO, EX REL. PHILIP J. WEISER, Attorney General, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should the Seventh Amendment right to civil jury trial apply in state courts?

PARTIES TO THE PROCEEDINGS

Petitioners and Defendants/Appellants/ Cross-Appellees below

- Center for Excellence in Higher Education, Inc., a Not-for-Profit Company ("CEHE")
- CollegeAmerica Denver, Inc. and CollegeAmerica Arizona, Inc., Divisions Thereof, d/b/a CollegeAmerica
- Stevens-Henager College, Inc., a Division Thereof, d/b/a Stevens-Henager College
- CollegeAmerica Services, Inc., a Division Thereof
- The Carl Barney Living Trust
- Carl Barney, Chairman of CEHE and Trustee of the Carl Barney Living Trust
- Eric Juhlin, Chief Executive Officer of CEHE

Respondents and Plaintiffs/Appellees/ Cross-Appellants below

- State of Colorado, Ex Rel. Philip J. Weiser, Colorado Attorney General
- Martha Fulford, Administrator, Uniform Consumer Credit Code

CORPORATE DISCLOSURE STATEMENT

Petitioner Center for Excellence in Higher Education, Inc. is a not-for-profit corporation that has no parent corporation and issues no stock. Petitioners CollegeAmerica Denver, Inc., CollegeAmerica Arizona, Inc., Stevens-Henager College, Inc., and CollegeAmerica Services, Inc. were divisions of Center for Excellence in Higher Education, Inc. when this action was filed but closed during the long pendency of this case before the trial court. No publicly held corporation owns 10% or more of the stock of any Petitioner.

LIST OF PROCEEDINGS

Supreme Court of Colorado

No. 2026 SC 60

Center for Excellence in Higher Education, Inc. v. Colorado, Ex. Rel. Weiser

Order Denying Petition: Aug 17, 2026 (App.1a-2a)

Supreme Court of Colorado

No. 2021 SC 781

Colorado, Ex. Rel. Weiser v. Center for Excellence in Higher Education, Inc.

Opinion: May 15, 2023 (App.112a-145a) reported at 529 P.3d 599

Colorado Court of Appeals

No. 20CA1692

Colorado, Ex. Rel. Weiser v. Center for Excellence in Higher Education, Inc.

Initial Opinion: Aug 26, 2021 (App.146a-189a) reported at 499 P.3d 1081

Opinion Following Remand: December 24, 2025 (App.3a-77a)

Denver (Colorado) District Court

No. 2014-cv-34530

Colorado, Ex. Rel. Weiser v. Center for Excellence in Higher Education, Inc.

Original Judgment: Aug 21, 2020 (App.190a-485a)

Judgment Following Remand: Feb 5, 2025 (App.78a-111a)

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PETITION FOR A WRIT OF CERTIORARI

This is the ideal vehicle for deciding whether the Seventh Amendment's civil jury trial guarantee applies in state courts. Petitioners were denied a jury trial because of the 1916 holding, contrary to modern cases, in *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916). Last year, Justice Gorsuch said this Court "should confront [*Bombolis*'s] Seventh Amendment holding soon." *Thomas v. Humboldt Cnty., Cal.*, 146 S. Ct. 27, 28 (2025) (statement respecting denial of certiorari). But there were "a number of 'vehicle' problems" in *Thomas*. *Id.* at 27.

This Seventh Amendment issue is squarely presented here, in a case that is now final after completion of all state proceedings. The trial judge struck Petitioners' jury demand because he was "bound by" *Bombolis*. App.488a & n.1. Then, after a bench trial, he issued a long-delayed judgment (largely copied from the State) that imposed $3 million in civil penalties. The Colorado Supreme Court affirmed the jury trial denial by rejecting Seventh Amendment case law. App.128a-135a, 529 P.3d 599, 607-10.

There will be no better case for making the Seventh Amendment a full part of the Bill of Rights. While *Thomas* was a poor vehicle, this Colorado Supreme Court case was the first state case cited in that petition as "deny[ing] juries in cases that would likely require one under this Court's Seventh Amendment jurisprudence." Cert. Pet., No. 24-1180, at 20, 2025 WL 1448713 (U.S. filed May 15, 2025).

OPINIONS BELOW

The Colorado Supreme Court denied certiorari in an unpublished order on Aug. 17, 2026 (App.1a-2a), which declined to review an unpublished Colorado Court of Appeals opinion issued on Dec. 24, 2025 (App.3a-77a). Prior opinions denying a jury trial were issued by the Colorado Supreme Court (App.112a-145a, 529 P.3d 599); the Colorado Court of Appeals (App.146a-189a, 499 P.3d 1081); and the Denver District Court (App.486a-495a) (unreported).

JURISDICTION

The opinions and orders denying a jury trial became final when the Colorado Court of Appeals affirmed the judgment on December 24, 2025, and the Colorado Supreme Court denied certiorari on August 17, 2026. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1257(a). *See Johnson v. Cal.*, 541 U.S. 428, 429-30 (2004).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VII provides:

> 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. XIV, § 1 provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

The State sued Petitioners under the Colorado Consumer Protection Act ("CCPA") for allegedly deceiving students at the now-closed CollegeAmerica. The State targeted advertising of national wage data, accurately sourced to federal agencies, showing the financial benefits of a college degree. The State did not call a single witness who was deceived into believing that this *national* data was specific to CollegeAmerica. *See* Cert. Pet. 2 (Colo. filed 1/23/26). The FTC's former consumer chief, whose scholarship has been relied on by this Court, testified that the deficiencies in the State's case made this lawsuit "a colossal waste of resources." *Id.* (citing *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 73 (2021), which cited Howard Beales & Timothy Muris, *Striking the Proper Balance: Redress under Section 13(b) of the FTC Act*, 79 ANTITRUST L.J. 1 (2013)).

Petitioners sought a jury to protect them from the State. Their jury demand cited Seventh Amendment precedent, including *Tull v. United States*, 481 U.S. 412 (1987). Over Petitioners' objections and at the State's request, however, the trial judge struck that jury demand. The trial judge acknowledged that recent Seventh Amendment decisions "may signal" the "willingness" of the United States Supreme Court to "re-examine" whether the Seventh Amendment applies in state courts. App.488a n.1. But Colorado state courts are "bound by" this Court's 1916 decision in *Bombolis*. *Id.*

The case proceeded to a bench trial that concluded in 2017. Nearly three years later, the trial judge still had not ruled. Petitioners complained to the Colorado Commission on Judicial Discipline. The trial judge finally issued his bench-trial ruling imposing $3 million in civil penalties *at 4:46 a.m.* on August 21, 2020 (which was the day the Commission was meeting to consider imposing sanctions on him). App.190a.

The appeals court later wrote: "Much of the court's order was copied verbatim from the Attorney General's proposed order, and one of the reasons we know this is because the same typographical errors that appear in the trial court's order are also found in the Attorney General's proposed order." App.149a-150a, 499 P.3d at 1087. The state supreme court acknowledged the "'extreme' and 'extraordinary' circumstances," including the "long delay in issuing the judgment, the timing thereof, and the fact that the court adopted, almost verbatim, the State's proposed findings." App.138a-139a, 529 P.3d at 612.

The Court of Appeals ordered a new bench trial because the trial judge had not required proof of the significant public impact element. App.168a. The Colorado Supreme Court suggested this error might be remedied without a new trial (App.139a), so the case was remanded to a new trial judge for further findings. App.81a-82a. After a new judge ruled on limited remand, the Court of Appeals affirmed the original and supplemental judgments. App.3a-77a. The Colorado Supreme Court then denied certiorari. App.1a-2a.

REASONS FOR GRANTING THE PETITION

I. The Court should decide whether the Seventh Amendment applies in both state and federal courts.

A. Petitioners were denied jury trial rights solely because this was a state case.

Had these claims been filed in federal court, Petitioners would have been entitled to a jury trial. The Seventh Amendment analysis would have been "straightforward" under *SEC v. Jarkesy*, 603 U.S. 109, 120 (2024).

The "all but dispositive" Seventh Amendment point is that the State sought and recovered $3 million in civil penalties—a "remedy at common law that could only be enforced in courts of law." *Id.* at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)). The "close" relationship between the statutory claim and common-law fraud claims "confirms" this action was one at law. *Id.* at 123-26; *see also Full Spectrum Software, Inc. v. Forte Auto. Sys., Inc.*, 858 F.3d 666, 676 (1st Cir. 2017) (state consumer protection act "claim for 'deception' . . . is analogous to 18th-century actions at law, such as fraud, deceit, or misrepresentation"); *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 2014 WL 103660, *2 (D. Colo. Jan. 10, 2014) ("right to a jury trial is assured by the Seventh Amendment" where party "is seeking legal relief—in the form of statutory damages—under the CCPA").

The Colorado Supreme Court denied a jury trial because it was "unpersuaded by the Seventh Amend-

ment-based case law." App.134a-135a, 529 P.3d at 610. It rejected *Tull*'s holding that civil penalties are legal punishments rather than equitable remedies. *Id.*

The state supreme court denied a jury trial to Petitioners by contravening this Court's teaching that "only courts of law issued monetary penalties to 'punish culpable individuals.'" *Jarkesy,* 603 U.S. at 123 (quoting *Tull*). As *Tull* explained, "Remedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo, were issued by courts of law, not courts of equity." *Tull,* 481 U.S. at 422.

The court also turned common law upside down. It reasoned, contrary to the legal history documented in *Tull* and *Jarkesy*, that the "noncompensatory nature of the CCPA's civil penalty remedy distinguishes that remedy from the primarily compensatory forms of relief offered in courts of law." App.131a, 529 P.3d at 609.

State courts cannot normally reject this Court's constitutional cases. Colorado courts deny jury trial rights only "[b]ecause Colorado has no such constitutional right" (App.135a, 529 P.3d at 610) and "[t]he United States Constitution's guarantee of a civil jury trial provided for in the seventh amendment does not apply to the states." *Firelock Inc. v. Dist. Ct.*, 776 P.2d 1090, 1096 (Colo. 1989).

B. This Court should overrule the 1916 case diminishing the Seventh Amendment.

The Seventh Amendment is one of "[o]nly a handful of the Bill of Rights protections [to] remain unincorporated." *McDonald v. City of Chicago*, 561 U.S. 742, 765 (2010). Cases limiting "the Seventh Amendment's civil jury requirement long predate the era of selective incorporation." *Id.* n.13.

The main case declining to apply the Seventh Amendment to state courts is *Bombolis*. That 1916 decision held that "the first ten Amendments, including, of course, the 7th, are not concerned with state action." 241 U.S. at 217 (citing *Barron v. Baltimore*, 7 Pet. 243, 247-51 (1833)). It reasoned "as a necessary corollary" that the Seventh Amendment applies only to federal, not state, trials. *Id.*

Bombolis, which relied on *Barron*, contravenes this Court's modern holdings that "the Due Process Clause of the Fourteenth Amendment 'incorporates' the great majority" of "rights guaranteed by the first eight Amendments." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022) (recognizing that the Fourteenth Amendment superseded this aspect of *Barron*). Yet this Court has never overruled *Bombolis*, so the trial court here was "bound by [*Bombolis* as] existing precedent." App.488a n.1; *accord Ball v. Dep't of Health*, 256 N.Y.S.3d 430, 433 (N.Y.A.D. 2026); *Gebert v. Sears, Roebuck & Co.*, 543 P.3d 409, 417-18 (Colo. Ct. App. 2023).

C. The Seventh Amendment is a fundamental right.

The Seventh Amendment undoubtedly would bind states under the Fourteenth Amendment were this Court writing on a clean slate. True, "debates exist around the edges" of Fourteenth Amendment incorporation analysis. *Thomas*, 146 S. Ct. at 27 (statement of Gorsuch, J.). Justices debated in 2019 whether incorporation analysis should rely on the Due Process Clause or the Privileges or Immunities Clause. *Compare Timbs v. Ind.*, 586 U.S. 146, 149-50 (2019) (majority opinion relying on former), *with id.* at 157-70 (Thomas, J., concurring in judgment) (relying on latter); *see id.* at 157 (Gorsuch, J., concurring) (writing that Justice Thomas may be correct as an original matter, but case does not turn on that issue). But there was unanimous agreement that the Fourteenth Amendment incorporated the Eighth Amendment's prohibition on excessive fines. *Id.* at 150 (majority), 157 (Gorsuch, J., concurring), 157 (Thomas, J., concurring in judgment).

Modern constitutional case law addressing Fourteenth Amendment incorporation would not relegate the Seventh Amendment below all the other Bill of Rights protections that states must honor. *Timbs* held that a "Bill of Rights protection is incorporated . . . if it is fundamental to our scheme of ordered liberty, or deeply rooted in this Nation's history and tradition." *Id.* at 150 (internal quotations omitted). This Court's recent jurisprudence affirms the fundamental importance and deep roots of Seventh Amendment civil jury trial rights.

The Chief Justice recently wrote for the Court, "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 has always been and should be scrutinized with the utmost care." *Perttu v. Richards*, 605 U.S. 460, 467 (2025) (internal quotations omitted). Other cases granting a jury trial right over governmental objections have quoted commentators describing "the right as 'the glory of the English law'" and one so "prized by the American colonists" that "they 'embedded' the right in the Constitution, securing it against the passing demands of expediency or convenience." *Jarkesy*, 603 U.S. at 121-22 (some internal quotations omitted; citing and quoting historical authorities, including Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND (8th ed. 1778), as well as Supreme Court cases).

Civil jury trial rights remained deeply rooted when the Fourteenth Amendment was adopted in 1868. A scholarly work, cited in *Timbs* (586 U.S. at 152-53), calls it "quite odd" that the Seventh Amendment has not been incorporated given that "[f]ully 98% of all Americans in 1868 lived in jurisdictions where they had a fundamental state constitutional right to jury trial in all civil or common law cases." Steven Calabresi & Sarah Agudo, *Individual Rights under State Constitutions when the Fourteenth Amendment was Ratified in 1868*, 87 TEX. L. REV. 7, 77-78 (2008) (detailing eighteen state constitutions explicitly protecting civil jury trials and eighteen others protecting jury trials generally, while only Louisiana did not protect civil jury trials).

Civil jury trials remain fundamental today, in state courts no less than federal courts. In calling "jury trials" a "bedrock of fairness in our system of

justice," Chief Justice Roberts recognized that "[s]tate courts [are] responsible for the vast bulk of judicial proceedings across the Nation." Chief Justice's *2020 Year-End Report on the Federal Judiciary* (Dec. 31, 2020). The Chief Justice's point remains true six years later, as there were only 1,596 total federal civil trials (1,114 jury and 482 non-jury) in the twelve-month period ending June 30, 2026. *See* Admin. Office of the U.S. Courts, Federal Judicial Caseload Statistics, Tbl. C-4 (2026), available at https://www.uscourts.gov/sites/default/files/document/stfj_c4_630.2026.xlsx (last visited Nov. 6, 2026).

Freed from constitutional requirements, the Colorado Supreme Court has diminished civil jury trial rights. Unfortunately, it is not alone; other states increasingly are denying jury trials by rejecting this Court's Seventh Amendment cases. *See, e.g.*, *Blue Beach Bungalows DE, LLC v. State*, 351 A.3d 1007, 1037-39 (Del. 2025) (rejecting *Jarkesy*); *Nationwide Biweekly Admin., Inc. v. Super. Ct.*, 462 P.3d 461, 489-93 (Cal. 2020) (rejecting *Tull*); *Ridlon v. N. H. Bur. of Securities Reg.*, 214 A.3d 1196, 1199-1202 (N.H. 2019) (same); *State v. Irving Oil Corp.*, 955 A.2d 1098, 1106-07 (Vt. 2008) (same).

Only this Court can restore the Seventh Amendment as a full part of the Bill of Rights. The Court should overrule *Bombolis*, so that the Seventh Amendment once again protects all Americans.

II. This case is the ideal vehicle for restoring Seventh Amendment rights.

The present case is the ideal vehicle for ending a historical anomaly and restoring the Seventh Amendment as "one of the most important rights"—if not "*the* most important of all individual rights" in the Constitution. *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.) (quoting law review article with original emphasis). There are none of the "'vehicle' problems" that hindered review of the issue last Term (*id.* at 27).

The $3 million penalty judgment against Petitioners could not stand if the Seventh Amendment applied to states. Petitioners have twice been through all three levels of Colorado courts, so the federal constitutional violation in denying a jury trial is final and cannot be ameliorated by "further proceedings in the lower state courts." *Johnson*, 541 U.S. at 430.

Petitioners lost their arguments that Colorado courts should at least grant civil jury trial rights consistent with this Court's Seventh Amendment jurisprudence. All Petitioners could do in state court was "preserve" their Seventh Amendment argument for this Court's review. Cert. Reply 6 n.2 (Colo. filed 2/26/26) (stating that Petitioners "preserve for U.S. Supreme Court review their right to a jury trial under the Seventh Amendment (one of the few Bill of Rights guarantees not yet made binding on states)") (citing *McDonald*, 561 U.S. at 765).

This Court is the only body capable of addressing arguments to make the Seventh Amendment binding in Colorado and other states. Colorado courts have made clear that, absent action by this Court, they have no "discretion" to enforce the Seventh Amendment. *See*

Gebert, 543 P.3d at 417-18. And other appellate courts have reversed trial courts enforcing the Seventh Amendment according to this Court's modern approach rather than its dated precedent. *See Ball*, 256 N.Y.S.3d at 432-35.

This case cries out for review and correction. "For those in the government's crosshairs," such as these two individuals and other Petitioners, Seventh Amendment protections are crucial. *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.). As explained in a Sixth Amendment criminal jury trial case cited in *Jarkesy*, American colonists objected to the "enforcement" of English laws assigned "to vice-admiralty courts where crown-appointed judges, rather than local juries, decided the defendant's fate." *Erlinger v. United States*, 602 U.S. 821, 829-30 (2024). And "when the English continued to try Americans without juries, the Founders cited the practice as a justification for severing our ties to England." *Jarkesy*, 603 U.S. at 121; *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 340 & n. 3 (1979) (Rehnquist, J., dissenting) ("The extensive use of vice-admiralty courts by colonial administrators to eliminate the colonists' right of jury trial was listed among the specific offensive English acts denounced in the Declaration of Independence.").

Our case shows that "[n]o less than at the founding, civil juries today play a critical role in checking governmental overreach, holding public officials accountable, and ensuring a fair hearing for those who come before our courts." *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.). Each concern manifested itself here.

Begin with "governmental overreach." *Id.* The need for Seventh Amendment protections is strongest in governmental enforcement actions unlike the private

claims in *Bombolis*. Civil penalties are designed "to punish culpable individuals," which is why only courts of law could impose them. *Tull*, 481 U.S. at 422. And this Colorado statute is "intended to punish." App.131a, 529 P.3d at 608 (internal quotations omitted). When one state arm seeks punitive penalties and another state arm imposes them, there are no independent protections "[f]or those in the government's crosshairs." *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.).

To recover $3 million in civil penalties, the State should have borne the burden of proving to lay jurors that Petitioners deceived Colorado consumers by advertising national wage data. The FTC's standard applied by federal courts and most states requires showing that the "advertisements were either literally false or likely to mislead reasonable consumers." *Franco v. Chobani, LLC*, 184 F.4th 599, 607 (7th Cir. 2026). That would turn on how "a jury concludes a reasonable consumer would have" understood them. *Dunn v. Santa Fe Nat'l Tobacco Co.*, 185 F.4th 999, 1029 (10th Cir. 2026).

The jury trial denial allowed overreaching by Respondents freed from the burden of satisfying the FTC's reasonable consumer standard. App.37a-40a. Absent requiring objective "proof" of "reasonable consumer behaviors" that "can be tested at trial," a judge can only "speculate" about consumer perception. *See Kahn v. Walmart Inc.*, 107 F.4th 585, 595 (7th Cir. 2024) (internal quotations omitted); *cf. Johnson v. United States*, 576 U.S. 591, 598 (2015) (distinguishing a "principled and objective standard" from an "ad hoc test").

Next, consider "holding public officials accountable." *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.). Here, with no private citizen-jurors to check state

officials, one state official (a judge) egregiously "copied verbatim" other state officials' error-ridden proposals to impose $3 million in civil penalties. *See* App.149a-150a, 499 P.3d at 1087.

Finally, consider "ensuring a fair hearing." *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.). Had there been a jury trial in 2017, Petitioners' peers would have decided the factual disputes promptly and fairly. Instead, nearly three years after the bench trial, there still was no decision—so Petitioners filed a complaint that the Colorado Commission on Judicial Discipline upheld. The trial judge finally ruled at 4:46 a.m. on August 21, 2020 (which the full state court file shows was the very day the Commission was meeting to consider sanctions against the trial judge based on Petitioners' complaint). App.190a; *see* App.138a-139a, 529 P.3d at 612 (citing extraordinary "timing" of the decision).

Colorado courts held that the "'appearance of justice'" required judicial reassignment (App.188a-189a, 499 P.3d at 1102), yet they denied Seventh Amendment justice. A new state judge left the same $3 million penalties in place by "defer[ring] to the previous trial court's findings of facts," and the Court of Appeals affirmed. App.13a-15a, 83a.

The Framers did not trust sovereign judges to decide sovereign penalty claims. That distrust was fueled by the experience of eighteenth-century Americans who enshrined jury trial rights to protect future Americans. The Court should end an unfair system that "subjects ordinary Americans to a two-tiered system of justice." *Thomas*, 146 S. Ct. at 28 (statement of Gorsuch, J.).

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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