

**STATE OF NEW YORK
COURT OF APPEALS**

THE PEOPLE BY LETITIA JAMES,
Plaintiff-Respondent-Appellant,

v.

DONALD J. TRUMP, *et al.*,
Defendants-Appellants-Respondents.

**BRIEF OF THE STATES OF OREGON, ARIZONA, CALIFORNIA,
CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW
JERSEY, NEW MEXICO, VERMONT, VIRGINIA, AND
WASHINGTON AS *AMICUS CURIAE***

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INTRODUCTION AND INTEREST OF AMICI CURIAE

The States of Oregon, Arizona, California, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Vermont, Virginia, and Washington (the *Amici* States) seek to appear as *amici curiae* in another state’s courts because this case presents an exceptionally important question about the power of state attorneys general to police economic fraud.

Under the Constitution, *Amici* States (like all of the states) retain extensive police powers, including broad authority to protect against fraud, especially in the businesses of insurance and banking. *See, e.g., People of State of Cal. v. Zook*, 336 U.S. 725, 734 (1949); *California State Auto. Ass’n Inter-Ins. Bureau v. Maloney*, 341 U.S. 105, 109–10 (1951). Under that authority, *Amici* States have enacted laws that authorize their attorneys general to police and prevent fraud, including within purely private transactions. Those laws serve an important public purpose even—indeed, especially—when used to root out fraud among sophisticated counterparties who choose not to pursue their own remedies when defrauded. Although those out-of-state laws are not now before this Court, accepting defendants’ construction of New York law might affect enforcement efforts in other states as well. Accordingly, *Amici* States urge this Court to hold that the

New York Attorney General’s undisputed authority to police fraud extends equally to fraud occurring between non-objecting, sophisticated private parties.

SUMMARY OF ARGUMENT

State attorneys general play an important role in policing and preventing fraud, as authorized by the enactments of their respective state legislatures. Those enactments recognize that a substantial public interest is served when attorneys general can investigate and eradicate financial fraud, which can have direct and indirect effects on the public even when that fraud takes place in entirely private transactions where no participant objects. Indeed, those effects are only magnified when the entity being defrauded is a sophisticated large corporate or financial institution. This Court should reject defendants’ argument that the New York Legislature did not intend to create such broad fraud-policing authority when they enacted Executive Law § 63(12).

ARGUMENT

In this case, the New York Attorney General prevailed in an action to hold defendants liable under Executive Law § 63(12). *See People by James v. Trump*, 249 A.D.3d 21, 237 N.Y.S.3d 443 (2025). That law generally authorizes the Attorney General to seek judicial remedies for “repeated fraudulent or illegal acts” or “persistent fraud or illegality in the carrying on, conducting or transaction of business,” with available relief including an “order enjoining the continuance of

such business activity or of any fraudulent or illegal acts” and “cancelling any certificate” of incorporation under which the fraudster had been operating. Executive Law § 63(12).

On appeal to this Court, defendants argue in part that the New York Attorney General lacked authority to bring this action under Section 63(12) because that law provides no “standing” for her to “step into the shoes of private, ultrasophisticated parties that are fully capable of litigating their own disputes, and that have never complained about or suffered any harm from the highly profitable transactions at issue.” (App. Br. 42).

Defendants are wrong to suggest that state attorneys general have no role to play in policing fraud committed upon a private party who declines to pursue the remedies available to them at law. To the contrary, as explained below, states have a well-recognized sovereign interest in preventing all kinds of fraud. For that reason, many states have enacted laws that contemplate precisely that role for their attorneys general in certain contexts. Those laws serve a legitimate public interest generally, and also in the specific context here—when applied to “ultrasophisticated” parties. For that reason, this court should reject defendants’ argument that the Legislature did not intend to create such a law when they enacted Section 63(12)’s broad statutory text.

A. States have a sovereign interest in eradicating all kinds of fraud from their economies.

The law has long recognized that states have a sovereign interest in preventing misconduct among purely private commercial actors, because such misconduct can create a “blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams.” *State of Ga. v. Pennsylvania R. Co.*, 324 U.S. 439, 450 (1945). That is, “a State’s interests in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 609 (1982).¹

To protect those interests, all states retain extensive police powers under the Constitution, including broad authority to protect against fraud, especially in the businesses of insurance and banking. *See, e.g., People of State of Cal. v. Zook*, 336

¹ Although the two cases cited above both considered sovereign authority within the scope of a state’s ability to claim *parens patriae* standing, this case does not require *parens patriae* standing because Section 63(12) provides the Attorney General “with a legislative mandate” or affirmative cause of action unique to her. *See Trump*, 249 A.D.3d at 39 (Moulton, J., concurring). That is, her standing is entirely statutory, rather than based on the common-law concept of *parens patriae*—just as it is in any regulatory action (such as proceedings to enforce tax or environmental laws) brought by a state under a statute authorizing that type of action. But the cited cases are nevertheless instructive because, if a state has a sufficient sovereign interest to support *parens patriae* standing, then it follows even more strongly that the state has a sufficient sovereign interest to support legislation creating an affirmative cause of action to protect that interest.

U.S. 725, 734 (1949) (observing that “protection against fraud” is one of the “oldest” evils “within the ambit of the police power”); *California State Auto. Ass’n Inter-Ins. Bureau v. Maloney*, 341 U.S. 105, 109–10 (1951) (observing that broad formulations of the police power are “peculiarly apt when the business of insurance is involved,” just “as in the banking field”).

At bottom, such authority is merely one aspect of a state’s more general interest in “creat[ing] and enforc[ing] a legal code, both civil and criminal.” *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 601.

B. Many states have enacted laws that contemplate a role for their attorneys general to prevent fraud between private parties who decline to pursue their own remedies.

States thus have broad authority to enact and enforce antifraud laws to protect their sovereign interests in a well-functioning and fraud-free economy. Consistently with that authority, state laws in at least two contexts empower state attorneys general to prevent and police fraud occurring even between private parties who decline to pursue remedies available to them.

1. Attorneys general are authorized to prevent fraud between private parties in transactions involving charitable trusts.

The first context is in transactions involving charitable trusts. In Oregon, for example, the Oregon Attorney General has broad authority to investigate “transactions” of charitable organizations “for the purpose of ascertaining whether or not the purposes of the charitable organization are being carried out in

accordance with the terms and provisions of the articles of incorporation or other instrument,” as well as to ascertain whether a person or organization “has breached a fiduciary duty arising under the common law.” Or. Rev. Stat. § 128.680. In connection with that investigatory authority, the Oregon Attorney General has authority to sanction such violations. *See* Or. Rev. Stat. § 128.6757, .710.

Similar laws are common in other states, where “[a]ttorneys general typically bear responsibility for bringing lawsuits against responsible fiduciaries and third parties, to halt and seek restitution for conduct” including “self-dealing, fraud, . . . imprudent investment, excessive fiduciary fees or compensation, or any other conduct that harms a charitable trust or asset.” *See generally*, National Association of Attorneys General, *State Attorneys General Powers and Responsibilities* 224 (Emily Myers, ed., 4th ed. 2019);² *see also, e.g.*, N.M. Stat § 57-22-9 (“The attorney general may, on behalf of the state, examine and investigate any charitable organization . . . to ascertain the conditions of its affairs and to what extent, if at all, it fails to comply with the trusts that it has assumed or if it has departed from the purposes for which it was formed.”); *see also* Ariz. Rev. Stat. § 10-11430(A) (allowing for the Arizona Attorney General to bring suit to dissolve a nonprofit corporation for fraudulent formation or abuse of authority);

² Available at: <https://www.naag.org/issues/powers-and-duties/state-attorneys-general-powers-and-responsibilities-chapters/>.

Vt. Stat. tit. 11B, § 14.30(a)(1)(C) (allowing Vermont Attorney General to bring action to dissolve a public benefit corporation when its “corporate assets are being misapplied or wasted”).

Under such laws, state attorneys general have an important role to play in preventing fraud that can arise in self-dealing transactions between a charitable trust and an insider—even, or especially, when both the trust’s officers and any counterparty are both highly sophisticated. Consider, for example, a situation where a trust manager pays compensation for personal services rendered by a substantial donor to the trust. Fraud can arise in that situation if the personal services are compensated at an inflated or excessive price, yet neither the donor nor the trust manager may object. The problem is common enough that the Internal Revenue Service has promulgated rules and guidance specifically constraining this kind of abuse for tax purposes. *See generally* 26 C.F.R. § 53.4941(d)-2 (providing explanation and definition of self-dealing).

But leaving aside the tax consequences of such fraudulent self-dealing, state attorneys general also play a role in preventing and policing such conduct because of the harm that it causes to the trust itself. Even if the trust manager is sophisticated and does not object, this kind of abuse reflects a misalignment of fiduciary interest. And in some instances, the charitable trust will have no uninterested donors who would pursue remedies on behalf of the trust itself. For

example, this kind of fraud can arise in small family-run trusts where the person receiving inflated compensation is connected to the only donor, such that any harm is limited to the trust itself and not to anyone else in the general public. *Cf., e.g., Internal Revenue Service, Press Release : Texas man sentenced to prison for promoting abusive tax shelter*, (Sept. 11, 2026) (discussing illegal tax-avoidance scheme involving private family foundation used to pay for creator's personal expenses).³ The attorney general may be the only actor with the means to prevent such misuse of the charitable assets.

2. Attorneys general are authorized to prevent fraud between private parties in transactions involving for-profit corporations.

State attorneys general wield this kind of authority in a second context as well, involving for-profit corporations that can present fiduciary misalignment problems similar to those arising in the context of charities. In corporate entities, majority shareholders and corporate managers have opportunities to engage in similar self-dealing, once again, by using corporate funds to pay fraudulently inflated or excessive prices for goods or services provided by outside parties in which those insiders hold an interest. *See, e.g., Hickey v. Hickey*, 344 P.3d 512, 515 (Or. App. 2015) (describing allegations where majority shareholder of closely-

³ Available at: <https://www.irs.gov/compliance/criminal-investigation/texas-man-sentenced-to-prison-for-promoting-abusive-tax-shelter>.

held family corporation engaged in self-dealing when managing that corporation's ranch by "systematically creating false charges for cattle feed provided by" a feed company wholly owned by majority shareholder).

In that context as well, states have authorized their attorneys general to prevent fraud. In Oregon, for example, the Oregon Attorney General can in certain situations dissolve a corporation or challenge its power to act in a particular transaction. *See* Or. Rev. Stat. §§ 60.084(2)(c), 60.661. Those remedies are available in situations including when "the corporation was used or incorporated for an illegal purpose, was used or incorporated to defraud or deceive a person . . . or was used or incorporated to fraudulently conceal any business activity from another person" Or. Rev. Stat. § 60.661(a)(C)(i). Here as well, that authority is available even when private shareholders can, but do not, pursue their own remedies.

Attorneys general in other states have similar authority. In New Mexico, for example, the New Mexico Attorney General may file an action to involuntarily dissolve a corporation that either "procured its articles of incorporation through fraud" or "has continued to exceed or abuse the authority conferred upon it by law." N.M. Stat. § 53-16-13. Arizona law similarly gives the Arizona Attorney General explicit legal authority to dissolve corporations or challenge their power to act in a specific transaction. Ariz. Rev. Stat. § 10-304(B)(3) (allowing for

proceedings by the attorney general to challenge the validity of corporate action and to seek to dissolve the corporation or enjoin it “from the transaction of unauthorized business”); *see also* Ariz. Rev. Stat. § 10-1430(A) (allowing for the Arizona Attorney General to bring suit to dissolve a for-profit corporation for fraudulent formation or abuse of authority). And the Vermont Attorney General likewise has authority to challenge a corporation’s acts as *ultra vires*, Vt. Stat. tit. 11A, § 3.04(b)(3), as well as to initiate proceedings to dissolve a corporation that has “exceed[ed] or abuse[d] the authority conferred upon it by law,” Vt. Stat. tit. 11A, § 14.30(1)(B). The Delaware Attorney General, too, may ask a court “to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises.” 8 Del. C. § 284; *see also* 6 Del. C. § 18-112 (similar for limited liability companies).

Even if those statutes do not have precisely the same reach as Section 63(12), they demonstrate that states can, and often do, authorize their attorneys general a supervisory role over even purely private transactions. Indeed, some states, like New York, do not limit an attorney general’s anti-fraud powers to policing misconduct only of corporations. For example, in Mass. Gen. Laws ch. 93A, § 4, the Massachusetts Legislature has authorized its attorney general to bring an action to restrain any practice declared to be “unlawful” under § 2 of that same chapter, which provides that “[u]nfair methods of competition and unfair or

deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Similarly, the Vermont Legislature has authorized its attorney general to bring action to enjoin any person from performing “unlawful acts,” defined to include “[u]nfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.” Vt. Stat. tit. 9, §§ 2458(a), 2453(a). Likewise, the California Legislature has prohibited “any unlawful, unfair or fraudulent business act or practice,” Cal. Bus. & Prof. Code § 17200, and it has authorized its attorney general to pursue actions to enjoin such conduct, Cal. Bus. & Prof. Code §§ 17203, 17204.

Indeed, those California and Vermont laws (and other similar laws in other states, including the very New York law at issue in this case) are one basis for a multistate lawsuit seeking to enjoin Amazon from secretly and unlawfully inflating advertising prices paid by other business, many of which are sophisticated parties that have not sought their own remedies. *See* Federal Trade Commission, *FTC, States Sue Amazon Over Secret Ad Surcharge Scheme* (Press Release, August 31, 2026), available at <https://www.ftc.gov/news-events/news/press-releases/2026/08/ftc-states-sue-amazon-over-secret-ad-surcharge-scheme>.

C. Those laws serve a legitimate public interest even—indeed, especially—when applied to “ultrasophisticated” parties.

The foregoing laws, and others like them, serve a number of legitimate public interests. To start, they insure that, when an entity is being managed or

dominated by individuals whose interests have become aligned with a fraudulent counterparty instead of with the entity itself, a state official can protect the entity's interests on behalf of other stakeholders who lack any practical ability to do so.

See Trump, 249 A.D.3d at 39 (Moulton, J., concurring) (explaining that attorney-general authority is necessary because “[i]t might be too costly for the counterparty to pursue a claim” or because “a counterparty may have little incentive to pursue a claim because its interests are aligned with the fraudster’s”).

That concern is only magnified when the entity being defrauded is an “ultrasophisticated” large corporate or financial institution. When an entity’s managers stand idly by while being defrauded—whether they actively encourage and profit from it or whether they merely fail to recognize and object to the fraud—the resulting financial harm creates a risk to everyone with a stake in the entity’s continued operations and financial solvency. For a large public corporation or financial institution, that group of stakeholders will be broad indeed, as fraud to that kind of institution endangers employees’ livelihoods and depositors’ savings. Those are all interests that a state attorney general can protect through laws similar to those discussed above; indeed, the breadth of those interests justifies intervention before risks become too great, as waiting for substantial risk invites substantial consequence. *See Trump*, 249 A.D.3d at 39

(Moulton, J., concurring) (recognizing the need for “prophylactic intervention in markets” to “avert harm to the public at large”).

Those laws also serve another legitimate purpose as well: They level the playing field for others who must compete with those who are willing to commit and benefit from fraud. When a market participant can commit fraud with impunity, it enjoys a competitive advantage that other participants do not. Here, for example, defendants obtained favorable loan terms that allowed them to access capital more easily or more cheaply than their competitors could. *See Trump*, 249 A.D.3d at 73 & n.29 (Moulton, J., concurring); *cf. also Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251, 262 (1972) (observing that a “free-enterprise system . . . depends on strong competition for its health and vigor, and strong competition depends, in turn, on compliance with” laws governing business, such as the antitrust legislation at issue in that case). Such unfair competitive advantage may, just like antitrust abuses, harm consumers in the long run by driving competitors out of business and leaving the fraudster free to exploit its resulting monopoly.

And leaving aside that obvious competitive benefit to the fraudster, unchecked fraud can also counterintuitively provide competitive advantage to the party being defrauded, often at an expense to competitors and the public. Consider the growing practice of corporations who outsource labor-intensive, dangerous, or environmentally sensitive work to smaller firms, as a way to manage or mitigate

responsibility for compliance with regulations governing workplace management, worker safety, or environmental protection. *See generally* Catherine Ruckelshaus et al., *WHO'S THE BOSS: Restoring Accountability for Labor Standards in Outsourced Work*, 4–5 (National Employment Law Project 2014).⁴ But if those smaller firms fraudulently misstate their regulatory compliance and do little more than insulate their client corporations from liability for regulatory violations—at a fraction of the price those corporations would have to pay to properly achieve compliance—the result will be a competitive advantage for those client corporations over other market participants who pursue good-faith compliance. Given that competitive advantage, the client corporations will have little incentive to object to any fraudulent misstatements about regulatory compliance. Only by empowering attorney generals to object to such fraud can states avoid the damage such practices can cause both to competitive markets and to public safety. *See Trump*, 249 A.D.3d at 40 (Moulton, J., concurring) (recognizing a public interest in an “honest marketplace” that “adheres to standards of fairness”).

⁴ Available at: <https://www.nelp.org/insights-research/whos-the-boss-restoring-accountability-for-labor-standards-in-outsourced-work/>.

D. This Court should reject defendants’ argument that the New York Legislature did not intend to create such a law when they enacted Section 63(12)’s broad statutory text.

In short, then, a state legislature would have good reason to empower its attorney general to police and prevent fraud among private parties—even sophisticated ones who do not themselves object to being defrauded. And that is precisely what the New York Legislature did here when enacting Section 63(12)’s broad text, just as Justice Moulton explained below, *Trump*, 249 A.D.3d at 40–41 & nn.10–11 (Moulton, J., concurring), and just as the New York Attorney General argues on appeal to this court, (Resp. Br. 8–10, 55–56).

Indeed, the facts of this case demonstrate precisely how that law serves those purposes. The victims of defendants’ fraud here were “financial giants.” *Trump*, 249 A.D.3d at 199 (Friedman, J., concurring in part and dissenting in part). Those financial giants included, for example, Deutsche Bank. *Trump*, 249 A.D.3d at 55–56 (Moulton, J., concurring). Deutsche Bank was in 2026 Europe’s eighth largest bank by assets, *see* Deza Mones et al., S&P Global, *Europe’s 50 largest banks by assets*, 2026,⁵ and it is a public corporation with shares listed in Germany and the United States, *see* Deutsche Bank, Investor Relations, Share Information.⁶ Indeed,

⁵ Available at: <https://www.spglobal.com/market-intelligence/en/news-insights/research/2026/04/europes-50-largest-banks-by-assets-2026>.

⁶ Available at: <https://investor-relations.db.com/share/share-information/share-information>.

it has been designated a “global systemically important bank” by the Financial Stability Board. Financial Stability Board, *2025 List of Global Systemically Important Banks* (Nov. 27, 2025).⁷ Even a decline in profits for that financial giant—as necessarily resulted when defendants used fraud to obtain lower interest rates for loans from Deutsche Bank, *see Trump*, 249 A.D.3d at 73 & n.29 (Moulton, J., concurring)—would at least somewhat increase the risk of insolvency, and even a small risk of its insolvency is substantial because the consequence of such insolvency would be far reaching, affecting countless depositors, employees and other stakeholders. The same is true for any other sophisticated financial giant—especially in a state like New York, which of course contains the finance capital of the world and thus has a significant interest in maintaining market health and stability by promoting basic market hygiene. That is precisely why the New York Legislature created Section 63(12) to allow the New York Attorney General to protect all those public interests, as the Appellate Division correctly held.

CONCLUSION

For the foregoing reasons, this Court should reject defendants’ argument that Section 63(12) does not authorize enforcement actions for fraud committed against

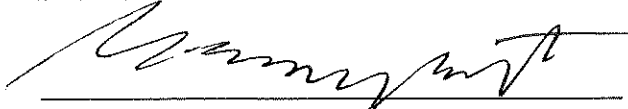
⁷ Available at: <https://www.fsb.org/2025/11/2025-list-of-global-systemically-important-banks-g-sibs/>.

non-objecting, sophisticated private parties, and it should affirm the judgment of the Supreme Court.

Dated: October 28, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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I, Benjamin Gutman, an attorney admitted to practice before the Courts of the State of New York, being duly sworn, affirm the following under penalty of perjury:

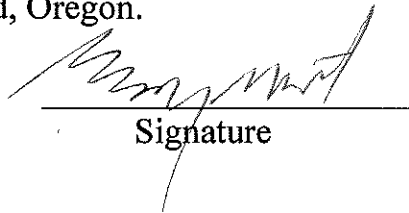
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2. I am employed by the Oregon Department of Justice. My business address is: Office of Attorney General, 1162 Court Street NE, Salem, OR 97301-4096
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**BRIEF OF THE STATES OF OREGON, ARIZONA,
CALIFORNIA, CONNECTICUT, DELAWARE,
HAWAII, ILLINOIS, MAINE, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY,
NEW MEXICO, VERMONT, VIRGINIA, AND
WASHINGTON AS *AMICUS CURIAE***

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Executed on October 28, 2026, at Portland, Oregon.

Benjamin Gutman
Declarant


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