THE ULTRA VIRES DOCTRINE: EVALUATING QUO WARRANTO PROCEEDINGS AND THE POWER OF STATE ATTORNEYS GENERAL

KI LEE O'BRIEN†

I. INTRODUCTION

The term "ultra vires" means "beyond the power."[1] Generally, this refers to "an act that is beyond the scope of power allowed or granted by a corporate charter,[2] articles of incorporation,[3] bylaw,[4] or law."[5] The exercise of power not reserved in the charter exposes the corporation to quo warranto challenges by the attorney general, which could lead to the dissolution of the corporation.[6] This Note will first discuss the origins of corporations and the development of charters in European and American

† B.A., 2018, *summa cum laude*, Wayne State University; J.D. Candidate, 2021, Wayne State University Law School. Thank you to Professor Sanjukta Paul for her invaluable guidance and insight in the Note-writing process, the Wayne Law Review editors for their assistance, and Zach Kilgore for his unwavering support.

1. 18B AM. JUR. 2D *Corporations* § 1712 (2020).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* (stating that ultra vires "applies to the acts of a fully organized corporation that are beyond its charter powers").
6. Charles E. Carpenter, *Should the Doctrine of Ultra Vires Be Discarded?*, 33 YALE L.J. 49, 64 (1923).

history.[7] From this understanding of corporations, it will then discuss the development of the English prerogative writ of quo warranto[8] and the historical context in which the doctrine of ultra vires arose in the United States.[9] While critics argue that the doctrine has lost its utility in light of broadened state incorporation statutes, this Note will explore recent actions by state attorneys general and will demonstrate how the doctrine acts as an enforcement mechanism to alter corporate behavior.[10]

II. BACKGROUND

A. History of Corporations and Charters

The concept of a corporation—a "group of people authorized by a sovereign to engage in a collective activity"—originated in the ancient Roman Empire.[11] In Roman times, towns, guilds, and colonies used this non-corporate form.[12] Beginning in the early Middle Ages, the corporate form functioned throughout Europe, where universities, religious orders, and other civil service organizations became corporations.[13]

Developing from the feudal system, the first corporations in Europe included obligations to work and restrictions on mobility.[14] For example, a guild (as a corporation) would provide a legal privilege that suspended members' requirements to do personal service to a feudal lord.[15] To expand cities and markets, guilds and other corporate forms developed in tandem with towns.[16] A defining characteristic of these corporate bodies was their "relative immortality"[17]—unlike partnerships, public charters allowed corporations to exist beyond the deaths of their founders.[18]

As early as the fifteenth century, courts in England established a second notable characteristic of the corporate form—the doctrine of "limited liability," which shielded individuals from liability in business ventures.[19] Investors were ecstatic: with limited liability, they would risk

---

7. *See infra* Part II.A.
8. *See infra* Part II.B.
9. *See infra* Parts II.C and D.
10. *See infra* Parts III.A and B.
11. JACK BEATTY, COLOSSUS: HOW THE CORPORATION CHANGED AMERICA 6 (2002).
12. *Id.*
13. *Id.*
14. DANIEL H. REDFEARN, PRACTICAL TREATISE ON THE LAW OF WILLS AND ADMINISTRATION OF ESTATES IN FLORIDA § 1:3 (2d ed. 1946).
15. *Id.*
16. *Id.*
17. *Id.*
18. BEATTY, *supra* note 11.
19. *Id.*

only the amount of their investments, rather than being held liable for the debts of the business should it go bankrupt.[20] It was at this time that the first corporations chartered to specifically engage in trade formed in England and in the Netherlands.[21] The availability of business charters for trade also led to the creation of the Muscovy Company in 1555, the Spanish Company in 1577, and the East India Company in 1601.[22]

These corporations were essentially extensions of the state, which provides a foundation for understanding the ultra vires doctrine and its enforcement at the state level. Throughout early corporate history, it was clear that corporations' abilities to act were explicitly granted and delineated by the government through a charter.[23] Without a charter, a corporation could not exist.[24]

With a charter as the cornerstone of a corporation, it became important to monitor the authority of corporations to act. The ultra vires doctrine originated from the prerogative writ of quo warranto in England, which allowed shareholders or parties dealing with corporations to invalidate corporate acts that were outside of the specifically authorized activities in a corporate charter.[25] Understanding the background on quo warranto is integral to understanding ultra vires and its place in modern corporate law.[26]

B. History and Legal Background of Quo Warranto in England

During the development of the early corporate form in Europe, the writ of quo warranto—a procedure for checking the abuse of governmental powers—arose in England.[27] Quo warranto (roughly translated "by what authority?") was based on an ancient writ created by

---

20. *Id.*

21. Adam Sulkowski, *Ultra Vires Statutes: Alive, Kicking, and a Means of Circumventing the Scalia Standing Gauntlet in Environmental Litigation*, 24 J. ENVTL. L. & LITIG. 75, 94 (2009).

22. *Id.*

23. THOM HARTMANN, UNEQUAL PROTECTION: HOW CORPORATIONS BECAME "PEOPLE" AND HOW YOU CAN FIGHT BACK 30 (2d ed. 2010).

24. *Id.*

25. Sulkowski, *supra* note 21, at 95.

26. *See infra* Part II.B.

27. Jed Shugerman, *State Attorneys General Can Enforce the Emoluments Clause with Quo Warranto vs. Trump's Hotels*, SHUGERBLOG (Feb. 9, 2017), https://shugerblog.com/2017/02/09/state-attorneys-general-can-enforce-the-emoluments-clause-with-quo-warranto-vs-trumps-hotels/ [https://web.archive.org/web/20201112052504/https://shugerblog.com/2017/02/09/state-attorneys-general-can-enforce-the-emoluments-clause-with-quo-warranto-vs-trumps-hotels/].

statute in 1189,[28] but it reappeared in the sixteenth century as a mechanism for royals to assert power over corporate entities.[29] With this common law remedy, states possessed the power to bring a chartered domestic corporation or a certified foreign corporation into their courts and to ask the corporation to justify "the use of its corporate privileges, subject to forfeiture."[30]

While Charles II used quo warranto to remodel municipal corporations by requiring them to use new charters,[31] the city of London resisted these reforms in the late seventeenth century, eventually losing against the crown.[32] Although the writ of quo warranto was originally intended to be used solely as a "royal weapon,"[33] a private person could use the writ by the process of "informing" the royal officials of an alleged violation.[34] Though "informations" became unpopular not long after,[35] individual private citizens made greater use of the writ during the eighteenth century.[36] However, claims by private citizens were not issued as a matter "of course"; rather, quo warranto was granted only with the court's permission, which allowed "any person or persons [desirous] to sue or prosecute the same."[37] Although limited in some ways, the scope of quo warranto was "at the same time extended to cover all usurpations of public functions of importance, though not judicial."[38]

In the early modern period, one of the main cases against business corporations was England's *Ashbury Railway Carriage & Iron Co. v. Riche* from 1875.[39] In *Ashbury*, an English corporation, whose charter authorized it to "sell, or lend . . . all kinds of railway plant . . . to carry on the business of mechanical engineers and general contractors[,]" bought a concession to build and run a railway line.[40] The corporation contracted with Riche to build the railway but repudiated the contract after Riche

---

28. Helen Cam, *Quo Warranto Proceedings in the Reign of King Edward I, 1278–1294*, 77 HARV. L. REV. 985 (1964).

29. J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 126 (2007).

30. Benjamin Woodring, Note, *Quo Warranto: The Structure and Strength of a Common Law Antitrust Remedy*, 96 U. DET. MERCY L. REV. 187, 188 (2019).

31. Shugerman, *supra* note 27.

32. *Id.*

33. Edward Jenks, D.C.L., *The Prerogative Writs in English Law,* 32 YALE L.J. 523, 527 (1923).

34. *Id.*

35. *Id.*

36. *Id.* at 528; *see* Shugerman, *supra* note 27.

37. Jenks, *supra* note 33, at 528.

38. BAKER, *supra* note 29.

39. Ashbury Ry. Carriage & Iron Co. v. Riche (1875) L.R. 7 H.L. 653 (Eng.).

40. MATTHEW DORÉ, *The Role of the Corporate Purposes Clause in the Ultra Vires Doctrine*, *in* 5 BUSINESS ORGANIZATIONS § 19:2, § 19.2 (Iowa Practitioner ed., 2019).

began construction.[41] Although the corporation repudiated the contract, it defended its reputation and argued that its corporate purposes did not include railway construction.[42] Because railway construction was not listed in the charter, Ashbury argued that it did not have to pay.[43] The House of Lords ruled against Riche, agreeing that the corporation lacked the power to "contract for railway construction without such a purpose clause in its articles."[44] Moreover, the corporation's legal authority to conduct business depended on its statement in its memorandum of association.[45]

Courts justified the doctrine as a means of protecting both the investment interests of the corporation's shareholders and the security interests of the corporation's creditors.[46] Because mandatory disclosures were not yet required, it was especially important to protect the investments of shareholders from abuse and misappropriation.[47] Based on a corporation's charter, investors could make risk-based assessments of the company and their ability to sue if the corporation mismanaged their assets.[48]

Although England abolished the writ of quo warranto in 1938, American state statutes use a similar doctrine to check abuses of power for both public and private corporations.[49]

C. Quo Warranto in America

The writ of quo warranto allowed individuals and governments to challenge the authority of an entity or individual to act.[50] The East India Company created the first colony in Jamestown, North America by deeding company-owned land to the Virginia Company in 1606.[51] Moreover, in colonial America, both Massachusetts and Virginia were corporations, where members voted based on their shares, colonists

41. *Ashbury*, L.R. 7 H.L. at 653.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*; *see also* Sulkowski, *supra* note 21, at 95.
46. Stephen J. Leacock, *The Rise and Fall of the Ultra Vires Doctrine in the United States, United Kingdom, and Commonwealth Caribbean Corporate Common Law*, 5 DEPAUL BUS. & COM. L.J. 67, 77 (2006).
47. Sulkowski, *supra* note 21, at 96.
48. *Id.*; *see also* Jonathan Fielding, *Enforcing International Labor Standards Through the Use of the Alien Tort Claims Act and Traditional Corporate Law*, 17 N.Y. INT'L L. REV. 77, 92–93 (2004).
49. *See infra* Part II.C.
50. Sulkowski, *supra* note 21, at 95.
51. HARTMANN, *supra* note 23, at 67.

elected officers, and shareholders decided policies.[52] At the time, shareholders could elect a board of directors under the model of one vote per shareholder—akin to the modern American idea of voting at the state and municipal level.[53]

With merchant and trade models in America, a corporation had a "special contractual relationship with the incorporating state" in exchange for substantial protections of its "vested" right.[54] However, colonists became suspicious of concentrated economic power[55] after subsequent battles with the East India Trading Company during the American Revolution over laws to eliminate competition.[56]

Following these struggles, it is not surprising that state laws of incorporation through the nineteenth century had stricter requirements for corporations.[57] State laws required corporations to "apply for charters from state legislatures, to renew these charters periodically, and to specify in these charters the corporation's authorized range of activities and the length of its legal existence."[58]

During the nineteenth and early twentieth centuries, a statement of purpose defined the limits of a corporation's activity.[59] When state legislatures created corporations, corporate charters typically had narrow purpose clauses, and if a corporation exceeded the purposes stated in its charter, it was acting "ultra vires," or "beyond the powers" of its charter.[60] State legislatures included specific language to allow state

52. *Id.*; *see also* BEATTY, *supra* note 11, at 18–19; Sulkowski, *supra* note 21, at 94.

53. KENNETH LIPARTITO & DAVID B. SICILIA, CONSTRUCTING CORPORATE AMERICA: HISTORY, POLITICS, CULTURE 73 (Oxford Univ. Press 2004). Now, shareholder votes for a board of directors are based on the number of shares per shareholder (as opposed to one vote per shareholder). *Id.*

54. Herbert Hovenkamp, *The Classical Corporation in American Legal Thought*, 76 GEO. L.J. 1593, 1659 (1988).

55. Sulkowski, *supra* note 21, at 96–97.

56. For example, the Tea Act exempted East India Trading Company from import duties on tea brought into England from India and then re-exported to America. Thomas Linzey & Daniel E. Brannen Jr., *A Phoenix from the Ashes: Resurrecting a Constitutional Right of Local, Community Self-Government in the Name of Environmental Sustainability*, 8 ARIZ. J. ENVTL. L. & POL'Y 1, 14–15 (2017). This preferential treatment of corporations enabled the Company to monopolize tea markets. *Id.* at 43–44. In 1773, colonists in New York and Philadelphia turned away shipments by East India Trading Company to rebel against parliamentary taxation. *Id.* This led to the Boston Tea Party, during which Boston colonists boarded the company's ships and dumped the shipment of tea into the Boston harbor. *Id.*

57. *Id.*

58. Sulkowski, *supra* note 21, at 97.

59. D. GORDON SMITH & CYNTHIA A. WILLIAMS, BUSINESS ORGANIZATIONS: CASES, PROBLEMS, AND CASE STUDIES 175 (4th ed. 2019).

60. *Id.*

attorneys general and shareholders to sue to dissolve or to enjoin the corporation for engaging in ultra vires activities.[61]

Per its delegated power, the attorney general may seek judicial dissolution of a corporation that engages in activities outside of its charter.[62] Additionally, it can enjoin—or restrain—the corporation from engaging in the relevant illegal activity.[63] The doctrine of ultra vires became a significant tool to protect state interests by restricting the power and size of a corporation while also protecting shareholders.[64]

Courts especially employed the ultra vires doctrine regarding trust violations and contracts. In an 1890 case, the highest court in New York revoked the charter of a sugar company for working under the control of the Sugar Trust, which eliminated competition in the market.[65] The court called this action "corporate death."[66] In another case, the U.S. Supreme Court held that a lease agreement was "not within the scope of the powers conferred on the corporation," and, therefore, ultra vires.[67] Additionally, states such as Michigan, Nebraska, New York, and Ohio revoked the charters of oil, match, sugar, and whiskey trusts in the 1800s.[68]

The doctrine also targeted corporate activity that went beyond the legal authority as stated in the charter. Courts through the nineteenth and twentieth centuries accepted that if a corporation's charter did not allow it to engage in an activity, then any contract related to that activity was void.[69] With these court rulings, corporations sought to avoid contractual obligations by enforcing the doctrine.[70]

For example, parties could avoid contractual obligations even when a party had partially performed. In *Middlesex Turnpike Corp.*, the

---

61. Sulkowski, *supra* note 21, at 83, 97.

62. This is not the case for all states. For a list of states that allow such a dissolution, see Michael A. Schaeftler, *Ultra Vires–Ultra Useless: The Myth of State Interest in Ultra Vires Acts of Business Corporations*, 9 J. CORP. L. 81, 85 (1983).

63. Sulkowski, *supra* note 21, at 93 n.92.

64. Kent Greenfield, *Ultra Vires Lives! A Stakeholder Analysis of Corporate Illegality (with Notes on How Corporate Law Could Reinforce International Law Norms)*, 87 VA. L. REV. 1279, 1281 (2001).

65. People v. N. River Sugar Refining Co., 24 N.E. 834, 841 (N.Y. 1890). *See also* Sulkowski, *supra* note 21, at 98.

66. *N. River Sugar Refining Co.*, 24 N.E. at 834.

67. Thomas v. R.R. Co., 101 U.S. 71, 82 (1879); *see also* Sulkowski, *supra* note 21, at 98.

68. Russell Mokhiber, *The Death Penalty for Corporations Comes of Age,* BUS. ETHICS (Nov. 1, 1998), http://www.corpwatch.org/article.php?id=1810 [https://web.archive.org/web/20201112052625/https://corpwatch.org/article/death-penalty-corporations-comes-age]; *see also* Sulkowski, *supra* note 21, at 98.

69. Sulkowski, *supra* note 21, at 99.

70. *Id.*

defendant avoided paying money that he owed for shares because the legislature only subsequently permitted a rerouting of the turnpike by charter amendment.[71] The court held that rerouting the turnpike was ultra vires at the time because the charter did not permit it; therefore, there was no obligation to pay any money.[72]

While the ultra vires doctrine was occasionally abused regarding contractual obligations, it still remains a powerful mechanism for states to protect governmental and shareholder interests.[73]

D. Evolution of Corporate Charters and the Ultra Vires Doctrine

As corporate law evolved, so did the breadth of corporate charters. The ultra vires doctrine, as applied to corporate transactions, describes "transactions which are outside the objects for which the corporation was created, and defined in the law of its organization, and therefore beyond the powers conferred upon it by the legislature."[74] Consequentially, corporate law evolved to allow corporations to list multiple purposes in their corporate charters, and by the end of the twentieth century, most corporations listed hundreds of chartered purposes to avoid the possibility of acting ultra vires.[75]

To remedy past issues where parties used the ultra vires doctrine to avoid contractual obligations, modern incorporation statutes eliminate most instances in which parties could use the doctrine in this manner.[76] For example, corporation statutes began allowing corporations to include a provision in the charter stating that the corporation may engage in "any lawful business or purposes."[77]

Although these broad provisions are common in modern corporate law, they did not gain immediate acceptance; even today, some corporate

---

71. Middlesex Turnpike Corp. v. Locke, 8 Mass. 268, 271–72 (1811); *see also* Sulkowski, *supra* note 21, at 99.

72. *Id.*

73. *See* Roth v. Robertson, 118 N.Y.S. 351 (Sup. Ct. 1909) (holding that the actions of corporate directors of an amusement park were illegal and ultra vires). Thus, the directors were personally liable for "hush money" paid to ensure that the corporation was not prosecuted for violating laws against operating its business on Sundays. *Id. See also* Schramm v. Bank of Cal., Nat. Ass'n, 20 P.2d 1093 (Or. 1933); Liggett Co. v. Lee, 288 U.S. 517 (1933).

74. PAUL J. GALANTI, *The Ultra Vires Doctrine in Perspective*, *in* 17 BUSINESS ORGANIZATIONS § 12.1, § 12.1 (Ind. Practice ed. 2020); *see also* 19 C.J.S. *Corporations* § 965 (2020).

75. SMITH & WILLIAMS, *supra* note 59.

76. *Id.*

77. *Id.* at 176.

charters limit corporate actions.[78] For example, corporations are most frequently limited by other regulations; for banks and insurance companies, state and federal laws create additional restrictions on their activities.[79] Another reason for limiting a corporation's actions may be a corporation founder's desire to restrict the activities of the corporation through its charter.[80]

Typically, when a corporation's charter expresses a limitation, there are three main ways to enforce it: (1) a shareholder suit against the corporation; (2) a suit by the corporation against directors or officers for actions beyond the purpose of the charter; or (3) an involuntary judicial dissolution by the attorney general.[81] This Note will explore the ultra vires doctrine through the third enforcement mechanism—the dissolution of a corporation's charter by state attorneys general.

The remedies for ultra vires activities are: (1) revoking or dissolving the corporate charter; (2) enjoining the corporation from exercising the illegal activity; (3) imposing a financial penalty on the corporation; or (4) a combination of these remedies.[82]

Additionally, the Model Business Corporation Act and the Revised Model Business Corporation Act establish boundaries for the chartered purposes. For example, the Model Business Corporation Act states that the articles of incorporation shall set forth "[t]he purpose or purposes for which the corporation is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act."[83] This Act also allows attorneys general to challenge a corporation's power to act.[84]

---

78. *Id.*

79. *Id.* For example, the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency have authority over the operations and disclosures of banks. *Id.* For insurance companies, federal and state agencies may handle licensing and regulations, standardization of insurance policies, and prevention of unfair trade practices. *Id.*

80. *Id.*

81. *Id.*

82. 74 C.J.S. *Quo Warranto* § 26 (2020); *see also* Comment, *Quo Warranto and Private Corporations*, 37 YALE L.J. 237, 242 (1927).

83. MODEL BUS. CORP. ACT § 54(c) (1969).

84. MODEL BUS. CORP. ACT § 3.04 (2002).

> (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
>
> (b) A corporation's power to act may be challenged:
>
> (1) in a proceeding by a shareholder against the corporation to enjoin the act;
>
> (2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an

Subsequently, the Revised Model Business Corporation Act states that "[e]very corporation incorporated under this Act has the purpose of engaging in any lawful business."[85]

Critics of the ultra vires doctrine and the writ of quo warranto argue that the expansion of a corporation's power to engage in any lawful activity has rendered the doctrines useless.[86] Pointing to studies that examined the "attitudes of and actions taken by state attorneys general" in the mid-twentieth century, critics contend that the doctrine of quo warranto is "inconsistent with modern corporate realities"; the state-provided mechanisms by which a corporation may engage in any lawful business or activity "evidences the state's abandonment of its interest in restraining or regulating corporate activities."[87] Some critics cite the potential for state abuse of corporations, where attorneys general use threats of injunction and dissolution to force corporations into regulatory compliance.[88] Other critics argue that the ultra vires statutes are "dead wood,"[89] that the operation of the doctrine creates "uncertainty and unfairness,"[90] and, finally, that the non-utilization of ultra vires statutes by attorneys general demonstrate that the states no longer have an interest in enforcement.[91]

While courts do not employ the doctrine of ultra vires as frequently as in the nineteenth and early twentieth centuries, especially with the expansion of charters for "any lawful business purpose," the doctrine remains a powerful enforcement mechanism in the United States. Laws in forty-seven states and the District of Columbia limit corporations to

---

incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the attorney general under section 14.30.

Id. § 3.04.

For judicial dissolution initiated by a state attorney general under § 14.30, a court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law.

Id. § 14.30.

85. *Id.* § 3.01(a).

86. Schaeftler, *supra* note 62, at 85.

87. *Id.* at 85, 90.

88. *Id.* at 93.

89. *Id.*

90. *Id.*

91. *Id.* at 91–92.

lawful activities.[92] Currently, forty-nine states have provisions in their incorporation statutes that allow the state to "dissolve a corporation or enjoin it from engaging in ultra vires activities."[93]

The limitations on illegal acts through state statutes and these corporate business acts are real constraints on the activities of corporations, and they recognize that states have an interest in ensuring that corporations stay within the boundaries of their stated power and authority.[94] With this in mind, this Note will explore the modern usage of the doctrine of ultra vires and the enforcement of corporate charters by state attorneys general.[95]

---

92. *See* Sulkowski, *supra* note 21, at 101; *see also* ALA. CODE § 10-2B-3.01 (2019); ALASKA STAT. § 10.06.005 (2019); ARIZ. REV. STAT. ANN. § 10-301 (2019); ARK. CODE ANN. § 4-26-103(a) (2019); CAL. CORP. CODE § 206 (West 2019); COLO. REV. STAT. § 7-103-101 (2019); CONN. GEN. STAT. § 33-645 (2005); DEL. CODE ANN. tit. 8, § 101(b) (2001); D.C. CODE § 29-301.04 (2001); FLA. STAT. § 607.0301 (2007); GA. CODE ANN. § 14-2-301 (2003); HAW. REV. STAT. § 414-41(a) (2004); IDAHO CODE § 30-1-301(1) (2005); 805 ILL. COMP. STAT. 5/3.05 (2004); IND. CODE § 23-1-22-1(a) (2005); IOWA CODE § 491.1 (1999); KAN. STAT. ANN. § 17-6001(b) (2007); KY. REV. STAT. ANN. § 271B.3-010 (West 2006); LA. STAT. ANN. § 12:1-301 (West 2015); ME. STAT. tit. 13-B, § 201(1) (2005 & Supp. 2007); MD. CODE ANN., CORPS. & ASS'NS § 2-101 (West 2002); MASS. GEN. LAWS ch. 156, § 6 (2005); MICH. COMP. LAWS § 450.1251 (2002); MISS. CODE ANN. § 79-4-3.01 (1999); MO. REV. STAT. § 351.386(1) (2001); MONT. CODE ANN. § 35-1-114(1) (2007); NEB. REV. STAT. § 21-2024 (1999); NEV. REV. STAT. § 78.030 (2004); N.H. REV. STAT. ANN. § 293-A:3.01 (1999); N.J. STAT. ANN. § 14A:2-1 (West 2000); N.M. STAT. ANN. § 53-11-3 (2003); N.Y. BUS. CORP. LAW § 201 (McKinney 2003 & Supp. 2009); N.C. GEN. STAT. § 55-3-01 (2003); N.D. CENT. CODE § 10-19.1-08 (2005); OHIO REV. CODE ANN. § 1701.03 (West 1994); OKLA. STAT. tit. 18, § 1005 (1999); OR. REV. STAT. § 60.074 (2008); 15 PA. CONS. STAT. § 1301 (1995); 7 R.I. GEN. LAWS § 7-1.1-3 (1999); S.C. CODE ANN. § 33-3-101 (2006); S.D. CODIFIED LAWS § 47-2-3 (2007); TENN. CODE ANN. § 48-13-101 (2002); TEX. BUS. ORGS. CODE ANN. § 2.001 (2008); UTAH CODE ANN. § 16-10a-301 (West 2005); VA. CODE ANN. § 13.1-626 (2007); WASH. REV. CODE § 23B.03.010 (1994); WIS. STAT. § 180.0301 (2002); WYO. STAT. ANN. § 17-16-301 (2007). The only two states that do not have such language are Minnesota and Vermont. *See* MINN. STAT. § 302A.101 (2004) ("A corporation may be incorporated under this chapter for any business purpose or purposes . . . ."). Vermont does not have such statutory language. It has specific purposes listed, but the general purposes section was repealed in 1971. VT. STAT. ANN. tit. 11, § 41 (repealed 1971).

93. North Dakota is the only state that does not give its attorney general the power to revoke charters. *See* N.D. CENT. CODE § 10-19.1-08 (2019); Schaeftler, *supra* note 62, at 127.

94. Greenfield, *supra* note 64, at 1319.

95. *See infra* Part III.

III. ANALYSIS

A. Modern Application of the Ultra Vires Doctrine in Case Law

Despite critics' arguments that the ultra vires doctrine has outlived its utility and has become a barrier to the modernization and continued development of economies, ultra vires acts are still challenged in courts today.[96] In the past few decades, the doctrine has been most commonly invoked when shareholders bring ultra vires causes of action against corporations for actions outside of their corporate charters.[97] Additionally, attorneys general have brought quo warranto actions against public corporations to remove officials from public office.[98] While these actions by attorneys general demonstrate the power and utility of the ultra vires doctrine, few cases actually detail attorneys general pursuing the dissolution or enjoinment of business corporations for their illegal acts. This Note will explore the power of attorneys general to enforce corporate charters and hold corporations accountable for actions outside of their prescribed charters and articles of incorporation, reinforcing the idea that corporations cannot circumvent the legal system.[99]

The use of the ultra vires doctrine is particularly prevalent in environmental law, where plaintiffs challenge corporate environmental actions.[100] While corporation laws typically state that the attorney general

---

96. *See, e.g.*, Citizens Utilities Co. of Cal. v. Superior Court, 56 Cal. App. 3d 399 (1976); People v. Council for Tobacco, Docket No. 107479/1998 (N.Y. Sup. Ct. Apr. 30, 1998).

97. *See* Sulkowski, *supra* note 21, at 105; *see* Multimedia Patent Tr. v. Microsoft Corp., 525 F. Supp. 2d 1200, 1216 (S.D. Cal. 2007) (declaring a board of director's decision to be ultra vires, and, although not acting upon that power, asserting that it could enjoin ultra vires acts); Amalgamated Sugar Co. v. NL Industries, Inc., 644 F. Supp. 1229, 1229–30 (S.D.N.Y. 1986) (bringing an ultra vires cause of action, shareholders prevented a company from adopting a poison pill provision that resulted in some shareholders being treated differently than other holders of the same class of shares); Tomhegan Camp Owners Ass'n v. Murphy, 754 A.2d 334, 335–36 (Me. 2000) (rejecting the argument that a nonprofit corporation lacked standing to sue where the dispute concerned unauthorized transactions); Total Access, Inc. v. Caddo Elec. Coop., 9 P.3d 95, 96–97 (Okla. Civ. App. 2000) (finding that a third party Internet service provider could not sue a cooperative for acting outside of its corporate charter and providing competing services).

98. Save Lake Calhoun v. Strommen, 928 N.W.2d 377, 380 (Minn. Ct. App. 2019), *aff'd in part, rev'd in part, and remanded* 943 N.W.2d 171 (Minn. 2020); State *ex rel.* Sviggum v. Hanson, 732 N.W.2d 312 (Minn. Ct. App. 2007); People *ex rel.* Hettleman v. Bd. of Cty. Comm'rs of Cook Cty., 243 N.E.2d 531, 532 (Ill. App. Ct. 1968).

99. *See infra* Part III.

100. *See generally* Sulkowski, *supra* note 21.

has the power to revoke a corporate charter for ultra vires acts, the Delaware statute differs in a significant way: it states that the attorney general *shall* revoke the charter of a corporation for illegal acts.[101] Like the Delaware statute, the California Code of Civil Procedure creates the same duty.[102] The following cases detail the interaction between attorneys general and the statutes that prescribe their mandatory duties.

1. Petition Against Unocal

In September 1998, a coalition of nearly thirty groups petitioned the California attorney general to revoke the corporate charter of the Union Oil Company of California ("Unocal") under California Corporations Code § 1801 and California Code of Civil Procedure § 803, which codify quo warranto.[103] Only five days after the petition was filed, the attorney general rejected the 127-page petition and brief without explanation.[104] In April 1999, a reorganized coalition—comprised of nearly 130 legal, environmental, and political groups and individuals[105]—filed a similar petition with the newly elected Attorney General Bill Lockyer, alleging decades of environmental destruction, unfair labor, and deceptive practices in California and other states.[106] The ten counts included: "unfair treatment of workers; hundreds of OSHA violations; usurpation

---

101. DEL. CODE ANN. tit. 8, § 284 (2018).

> (a) Upon motion by the Attorney General, the Court of Chancery *shall* have jurisdiction to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General *shall* proceed for this purpose by complaint in the Court of Chancery.

Id. (emphasis added).

102. CAL. CIV. PROC. CODE § 803 (West 1872).

103. Press Release, Nat'l Lawyers Guild, Coalition Petitions the New California Governor and Attorney General to Revoke Unocal's Corporate Charter (Apr. 15, 1999, 10:01 PM), https://www.burmalibrary.org/reg.burma/archives/199904/msg00212.html [https://web.archive.org/web/20201112052854/https://www.burmalibrary.org/reg.burma/archives/199904/msg00212.html]. According to the National Lawyers Guild letter to the attorney general, the code sections authorize the attorney general to:

> [B]ring an action in the name of the people upon a complaint of a private party to dissolve any corporation which unlawfully holds or exercises corporate power, which has seriously offended against any provision of the statutes regulating corporations, or which has fraudulently abused or usurped corporate privileges or powers . . . .

Id.

104. *Id.*

105. Petitioners included groups such as the Feminist Majority Foundation, the National Organization for Women, Alliance for Democracy, Rainforest Action Network, Surfers' Environmental Alliance, Action Resource Center, and the National Lawyers Guild, among others. *See id.*

106. *Id.*

of political power; deception of the courts, shareholders[,] and the public; and, complicity in gross human rights violations abroad against women, homosexuals, workers, villagers[,] and indigenous peoples."[107]

With Unocal as a repeat-offender,[108] the head of the National Lawyers Guild in Los Angeles urged the California attorney general to carry out his state law duty and seek a court order to challenge Unocal's charter for these violations.[109] Loyola Law School Professor Robert Benson—the lead attorney for the petition against Unocal—said: "There has to be a point which corporate repeat offenders are permanently prevented from doing further harm . . . . The state permanently revokes the licenses of hundreds of doctors, lawyers, accountants and others every year—why not corporations?"[110] However, a month after filing the new petition, Attorney General Lockyer declined to pursue a claim against Unocal and, like the previous attorney general, failed to explain his reasons for doing so.[111]

Much like the Delaware statute that creates mandatory authority for the attorney general to "revoke or forfeit the charter of any corporation for abuse, misuse, or nonuse of its corporate powers,"[112] the California Civil Procedure Code states that the attorney general "*must* bring the action, whenever he has reason to believe that any such [office or franchise] has been . . . unlawfully held or exercised by any person, or when he is directed to do so by the governor."[113] However, Attorney General Lockyer still declined to pursue the claims against Unocal.[114]

Although speculative, the National Lawyers Guild's letter cited a potential political motive for the previous attorney general's failure to bring the claims, stating that he "acted politically" and "violated the *quo warranto* statute as well as the jurisprudence of his own Opinion

---

107. *Id.*

108. Courts and academics suggest that repeated conduct, rather than an isolated act, or even "sporadic acts" of ultra vires activity, might trigger attorneys general to seek judicial dissolution of a corporation. *See* Leacock*, supra* note 46, at 96.

109. The National Lawyers Guild also directed the petition to the California governor who, under California law, has the "power to direct the Attorney General to act on such petitions." *See* Nat'l Lawyers Guild*, supra* note 103.

110. Christopher L. Avery, *Business and Human Rights in a Time of Change*, BUS. & HUM. RTS. RESOURCE CTR. (Nov. 1999), https://media.business-humanrights.org/media/documents/files/reports-and-materials/Chapter2.htm#2.2 [https://web.archive.org//web/20210113185729/https://media.business-humanrights.org/media/documents/files/reports-and-materials/Chapter2.htm].

111. *Id.*

112. *See* DEL. CODE ANN. tit. 8, § 284 (2018).

113. CAL. CIV. PROC. CODE § 803 (West 1872) (emphasis added).

114. *Id.*

Unit."[115] The petition does not detail potential motives, but it raises an interesting theory as to why attorneys general may not pursue claims against offending corporations—even when they have a duty to do so. Following the first filing of the petition, Unocal announced that it was withdrawing from its business dealings with the Taliban in Afghanistan.[116] Although unsuccessful with legal remedies for Unocal's violations, the coalition credited its charter revocation petition as a "significant factor prompting Unocal's decision," which was a win for human rights and civil liberties.[117]

Although both California state attorneys general defied their *duties* to bring an action against Unocal—which had been unlawfully exercising corporate power for its illegal actions—the public pressure for a quo warranto challenge may have forced Unocal to change its behavior. The petition against Unocal and the mounting public outcry against its various violations urged the corporation to implement changes that addressed its grievous violations. In this instance, even though the state attorneys general declined to bring suit, the call for a quo warranto action amidst public criticism held Unocal accountable for its actions and altered its corporate behavior.

2. Citizens Utilities Co. of California v. Superior Court

While the petition against Unocal was unsuccessful, a few petitions to revoke charters—although rare—have been successful. To analyze the use of the doctrine, two cases demonstrate the use of the quo warranto doctrine and detail the actions of the attorneys general and the courts' interpretations of their actions. The first case, *Citizens Utilities Co. of California v. Superior Court*, involves the same California statute under which Attorney General Lockyer failed to bring the quo warranto action against Unocal.

In 1976, the attorney general of California asked a court to dissolve a private water company for allegedly delivering contaminated water to its customers.[118] Procedurally, the attorney general filed the quo warranto action, which formed the basis for the petition to the court, in 1975.[119] A few months later, the court issued an alternative writ of prohibition and,

115. Nat'l Lawyers Guild, *supra* note 103.
116. *Id.*
117. *Id.*
118. *See* Citizens Utilities Co. of Cal. v. Superior Court, 56 Cal. App. 3d 399 (1976).
119. *Id.* at 403.

during the pendency of the proceedings, issued its decision.[120] The decision directed that hearings be held to consider:

> [W]hether a quo warranto action can be justified as a permissible means of obtaining enforcement of the findings and order of the Director and, if so, whether respondent court is precluded from assuming jurisdiction because the Commission has acted with respect to the subject matter of the quo warranto action.[121]

The court also stated that the authority for a quo warranto action derives from Code of Civil Procedure § 803, which allows the attorney general to bring an action "in the name of the people of his state, upon his own information, or upon a complaint of a private party . . . against any corporation . . . which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state . . . ."[122] The code additionally gives the attorney general the duty of bringing actions for the forfeiture of corporate franchises whenever he has reason to believe that they are unlawfully held or exercised.[123] Next, the court of appeals looked to constitutional provisions, statutes, and decisions that would question the attorney general's authority to bring such an action.[124]

Continuing its analysis, the court of appeals noted that the quo warranto action is concurrent with the Corporations Code § 4690, which authorizes the attorney general to bring an action to dissolve and forfeit the existence of a corporation for "seriously offending" a provision of the corporate statutes, for fraudulently "abusing or usurping corporate privileges or powers," or for violating "any provision of law by any act

---

120. *Id.* The decision provided, in pertinent part:

> This Commission is gravely concerned about the quality of water service provided in the Niles-Decoto district, and we propose to test our own jurisdiction, if necessary, in pursuit of a remedy . . . [We] reopen this proceeding for the purpose of determining whether there is a short-term solution whereby persons in that district can be furnished satisfactory water and if so, the procedure for accomplishing that result . . . .

Id. The decision also directed the hearings to consider: "(a) Whether there are alternative sources of water supply; (b) Terms and conditions under which alternative sources may be made voluntarily available; (c) Legal remedies whereby suppliers of alternative sources may be compelled to furnish water to the applicant." *Id.*

121. *Id.*

122. *Id.* at 405 (citing CAL. CIV. PROC. CODE § 803 (West 1872)).

123. *Id.* at 406 (citing Havemeyer v. Superior Court, 24 P. 121 (Cal.1890)); *see* People v. City of Riverside, 5 P. 350 (Cal. 1885).

124. *Id.* at 405 (stating that the "pertinent statutes in the Health and Safety Code are not inconsistent with the provisions of Code of Civil Procedure section 803, and even if they were, we would be bound to maintain the integrity of both statutes if they may stand together").

or default that is a ground of forfeiture of corporate existence."[125] As a proper remedy to protect the interests of the people, quo warranto is a proper state remedy to dissolve a corporation, notwithstanding that "the corporation might be punished by an assessment of the penalty provided by law in a criminal prosecution."[126] Moreover, with the California Public Utilities Code, the legislature gave specific authorization to the attorney general to sue "for the forfeiture of any franchise issued by a local government for noncompliance with any condition thereof."[127]

In sum, the court of appeals reviewed the authority of the attorney general to bring quo warranto claims against the water company under constitutional provisions, state laws, and local ordinances, but found none that would preclude judicial action. Finally, the court concluded that a quo warranto action could properly be invoked by the attorney general to "oust" the water company of its franchise for supplying contaminated water to consumers.[128] While the remedy of quo warranto cleared the first hurdle, the court of appeals held that the lower court was not entirely divested of jurisdiction in cases involving public utilities, and by considering the quality of the water furnished by the utility service, the Public Utilities Commission assumed jurisdiction over the operation of the company; therefore, the jurisdiction to determine quality of service was vested exclusively in the Commission.[129] After these court proceedings, the private water company settled the case, agreed to sell its assets to a public water company, and went out of business.[130]

Similar to the California attorneys general who failed to bring a quo warranto claim against Unocal, the courts in *Citizens Utilities* failed to formally act against the corporation. Also similar to Unocal, the corporation's behavior altered after continual public and private pressure. While the writ of quo warranto itself did not formally dissolve Citizens

---

125. *Id.*

126. *Id.* at 406 (citing Commonwealth *ex rel.* Woodruff v. Am. Baseball Club of Phila., 138 A. 497 (Pa. 1927); State *ex inf.* Hadley v. Standard Oil Co., 116 S.W. 902, 1009 (Mo. 1908), *aff'd sub nom*. Standard Oil Co. of Ind. v. Missouri *ex inf.* Hadley, 224 U.S. 270 (1912); State *ex rel.* Monnett v. Capital City Dairy Co., 57 N.E. 62, 64 (Ohio 1900), *aff'd sub nom*. Capital City Dairy Co. v. Ohio, 183 U.S. 238 (1902)).

127. *Id.*; *see* CAL. PUB. UTIL. CODE § 6016 (West 1951). The Public Utilities Code section 6016 states:

> The Attorney General, upon the complaint of any county or municipality, or, in his discretion, upon the complaint of any taxpayer, shall sue for the forfeiture of any franchise granted under this article, for the noncompliance with any condition thereof.

Id.

128. Citizens Utilities Co. of Cal. v. Superior Court, 56 Cal. App. 3d 399, 407 (1976).

129. *Id.* at 408.

130. *See* Avery, *supra* note 110.

Utilities, the proceedings, publicity, and settlement propelled the corporation toward dissolution; essentially, the corporation was held accountable for its illegal actions.

3. People v. Council for Tobacco Research, U.S.A., Inc. *and the Tobacco Master Settlement Agreement*

The second case that demonstrates the use of the quo warranto doctrine involves a tobacco company. Interestingly, unlike the mandatory language in California's law, which was discussed with Unocal and *Citizens Utilities*, New York law does not mandate that the state attorney general bring a quo warranto action for the dissolution of a corporation's charter.[131]

In April 1998, New York Attorney General Dennis Vacco filed a petition in New York state court against the Council for Tobacco Research, U.S.A., Inc. and the Tobacco Institute, Inc.—companies that had allegedly misused their tax-exempt statuses to spread misinformation about the safety of tobacco.[132] Calling the companies "shills" for tobacco

---

131. N.Y. BUS. CORP. LAW § 1101 (McKinney 2019).

> (a) The attorney-general *may* bring an action for the dissolution of a corporation upon one or more of the following grounds:
>
> > (1) That the corporation procured its formation through fraudulent misrepresentation or concealment of a material fact.
> >
> > (2) That the corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state has become liable to be dissolved.
>
> (b) An action under this section is triable by jury as a matter of right.
>
> (c) The enumeration in paragraph (a) of grounds for dissolution shall not exclude actions or special proceedings by the attorney-general or other state officials for the annulment or dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state.

Id. (emphasis added).

132. The author notes that the memorandum at law and subsequent filings and court orders from People v. Council for Tobacco, Docket No. 107479/1998 (N.Y. Sup. Ct. Apr. 30, 1998), although requested, are unavailable electronically. The case's court docket is available on bloomerglaw.com, but the site does not authorize academic users to dispatch couriers for on-site document retrieval (of the physical files). *See* Memorandum at Law, People v. Council for Tobacco, Docket No. 107479/1998 (N.Y. Sup. Ct. Apr. 30, 1998), Bloomberg Law. Therefore, this author has used various other sources to provide context for the case and insight into the quo warranto action. *See* Ann Davis, *New York Seeks to Close Two Groups That Receive Tobacco Industry Funds*, WALL ST. J. (May 1, 1998, 12:01 AM), https://www.wsj.com/articles/SB893977381992307000 [https://web.archive.org/web/20201112053133/https://www.wsj.com/articles/SB893977381992307000].

corporations,[133] Vacco had previously sought to dissolve the organizations as part of a New York state suit to recover public healthcare costs of treating smokers in hospitals.[134]

Although active since the 1950s when studies began linking smoking to cancer, the Council for Tobacco Research ("CTR") formally incorporated in 1971 with a mission "to aid and assist research into tobacco use and health and to make available to the public factual information on this subject."[135] Likewise, the Tobacco Institute, incorporated in 1958, pledged to "cooperate with government agencies and public officials" and "collect and disseminate scientific and medical treatment."[136] However, the organizations—funded by the tobacco industry—used their platforms to spread misinformation about the dangers of smoking to "advance the efforts of for-profit tobacco companies."[137]

Cited as violating its mission of providing "truthful information about the effects of smoking," CTR instead "fed the public a pack of lies in an underhanded effort to promote smoking and to addict America's kids."[138] Not long after Vacco announced the quo warranto actions against the corporations for violating their charters, a state court appointed a receiver for CTR, and the organizations closed and forfeited their assets in October of 1998.[139] Subsequently, their assets were turned over to a state university and a public institute.[140]

Later that year, in November 1998, the four largest tobacco companies—Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard—and forty-six state attorneys general entered into the Tobacco Master Settlement Agreement ("MSA").[141] Vacco was one of the forty-

133. Geov Parrish, *Killing Corporations*, SEATTLE WEEKLY (Oct. 9, 2006, 12:00 AM), https://www.seattleweekly.com/news/killing-corporations/ [https://web.archive.org/web/20201112053307/https://www.seattleweekly.com/news/killing-corporations/].

134. Davis, *supra* note 132.

135. *Id.*

136. *Id.*

137. *Id.*

138. TED NACE, GANGS OF AMERICA: THE RISE OF CORPORATE POWER AND THE DISABLING OF DEMOCRACY, 205 (2003).

139. *Id.*; *see also* Parrish, *supra* note 133.

140. *Id.*

141. Nat'l Ass'n of Att'ys Gen., *The ABCs of the Tobacco Master Settlement Agreement*, NAAGAZETTE (Nov. 6, 2007), https://www.naag.org/publications/naagazette/volume_1_number_2/the_abcs_of_the_tobacco_master_settlement_agreement.php [https://web.archive.org/web/20201112053447/https://www.naag.org/publications/naagazette/volume_1_number_2/the_abcs_of_the_tobacco_master_settlement_agreement.php]. State signatories to the MSA include forty-six states (all but Mississippi, Minnesota,

six state attorneys general who had filed suit to force the cigarette companies to settle.[142] The settlement agreement against the tobacco industry included directed payments to the states—almost $206 billion over twenty-five years, adjusted for inflation, to recover tobacco-related healthcare costs; severe marketing restrictions on outreach to young people; and significant restrictions on advertising in cartoons, transit advertising, billboard advertising, product placement in media, and sponsorships.[143] Additionally, the settlement dissolved the following tobacco groups: the Tobacco Institute, the Center for Indoor Air Research, and the Council for Tobacco Research.[144] Still the largest civil settlement in U.S. history,[145] the Tobacco Master Settlement established an anti-tobacco advocacy organization that has had a lasting impact on the use of tobacco in American society.[146]

Florida, and Texas, which settled separately with the major tobacco companies), the District of Columbia, Puerto Rico, and four territories. *Id.*

142. Dennis C. Vacco, *Dennis C. Vacco: Tobacco and Energy: Very Different Cases*, VIRGINIAN-PILOT (July 18, 2016), https://www.pilotonline.com/opinion/columns/article_1ff39c50-8a58-5e47-a672-a95f98eb61cb.html [https://web.archive.org/web/20201112053803/https://www.pilotonline.com/opinion/columns/article_1ff39c50-8a58-5e47-a672-a95f98eb61cb.html].

143. MASTER SETTLEMENT AGREEMENT, § III(a)–(n), http://truthinitiative.org.960elmp02.blackmesh.com/sites/default/files/media/files/2019/04/master-settlement-agreement.pdf [https://web.archive.org/web/20201112054041/http://truthinitiative.org.960elmp02.blackmesh.com/sites/default/files/media/files/2019/04/master-settlement-agreement.pdf] (listing prohibition on youth targeting, ban on use of cartoons, limitation on tobacco brand name sponsorships, elimination of outdoor advertising and transit advertisements, prohibition on payments related to tobacco products and media, ban on tobacco brand name merchandise, ban on youth access to free samples, ban on gifts to underage persons based on proof of purchase, ban on non-tobacco brand names, minimum pack size of twenty cigarettes, corporate culture commitments related to youth access and consumption, limitations on lobbying, and restriction on advocacy concerning settlement proceeds); *see also* Editorial Staff, *20th Anniversary of Tobacco Master Settlement Agreement*, AM. LUNG ASS'N: EACH BREATH BLOG (Nov. 20, 2018), https://www.lung.org/blog/anniversary-of-tobacco-msa [https://web.archive.org/web/20201112054132/https://www.lung.org/blog/anniversary-of-tobacco-msa].

144. MASTER SETTLEMENT AGREEMENT, *supra* note 143, at § III(o) (naming the section "Dissolution of The Tobacco Institute, Inc., the Council for Tobacco Research-U.S.A., Inc., and the Center for Indoor Air Research, Inc." and stating that these companies shall "cease all operations and be dissolved").

145. Editorial Staff, *supra* note 143.

146. *Who We Are*, TRUTH INITIATIVE, https://truthinitiative.org/who-we-are [https://web.archive.org/web/20201112054227/https://truthinitiative.org/who-we-are] (last visited Nov. 7, 2020). According to the Truth Initiative, it is "America's largest nonprofit public health organization committed to making tobacco use a thing of the past." *Id.* "We investigate, expose[,] and amplify the truth about tobacco through groundbreaking research and policy studies, our award-winning truth campaign,

Following the successful revocation of the tobacco corporation charters, even Eliot Spitzer—the subsequent attorney general of New York State—promised to use his power to revoke the charters of corporations that act illegally, stating that "when a corporation is convicted of repeated felonies that harm or endanger the lives of human beings or destroy our environment, the corporation should be put to death, its corporate existence ended, and its assets taken and sold at public auction."[147] Although earlier promoting corporate reform, Spitzer later backed down from his more aggressive stances.[148]

Unlike both Unocal and *Citizens Utilities*, the quo warranto proceeding against Council for Tobacco Research, coupled with the tobacco settlement, was successful in dissolving the corporation. The number of states involved in the tobacco settlement and the enormity of the suit are testaments to the power of state attorneys general to act against unlawful corporations.

B. The Big Picture

So far, this Note has explored the quo warranto action and how attorneys general have handled their (often mandatory) responsibilities to dissolve corporations for their ultra vires actions. In Unocal, the state attorney general failed to follow his mandatory state law duty to challenge Unocal's charter for its unlawful practices.[149] However, the petitioning coalition for Unocal's charter revocation considered its efforts successful when—soon after it filed a petition—Unocal announced its withdrawal from business dealings with the Taliban.[150]

In *Citizens Utilities*, the California attorney general carried out his mandatory obligation to bring a quo warranto action against a private water company for delivering contaminated water to its customers.[151] Although not dissolved by the courts in this action (due to unresolved jurisdictional issues), the private water company settled the case in the

---

community activism and engagement, and innovation to end tobacco use." *Id.* Regarding its impact, the Truth Initiative has "prevented millions of young people from becoming smokers" and has helped to drive down youth smoking rates from twenty-three percent in 2000 to 3.7% in 2019. *Id.*

147. Parrish, *supra* note 133; *see also* Avery, *supra* note 110.

148. Ryan C. Drake, *Corporate Responsibility and State False Claims Acts: Evaluating the Use of Qui Tam Proceedings to Revoke the Charters of Corporate Polluters*, 12 LEWIS & CLARK L. REV. 267, 274 n.29 (2008).

149. *See supra* Part III.A.1.

150. *See supra* Part III.A.1.

151. *See supra* Part III.A.2.

interim and agreed to sell its assets to a public water company—an overall win for the State of California.[152]

In New York's *Council for Tobacco Research* and the subsequent Tobacco Master Settlement, the quo warranto actions were successful: the tobacco corporations spreading misinformation about the dangers of smoking were dissolved and forced to forfeit their assets.[153] With the force of forty-six states in the Tobacco Master Settlement, state attorneys general exercised their power against the tobacco industry and drove the corporations to settle and dissolve, atoning for their illegal actions.[154]

However, state attorneys general sometimes choose not to bring actions—even if mandated by state law—for, potentially, political or tax reasons. Whether afraid to appear unfriendly to corporations—which have become increasingly powerful allies in public elections[155]—or for other reasons, it appears that state attorneys general have decreased their legal power to bring quo warranto actions by failing to exercise it. Additionally, states may want to appear friendly to corporations for tax purposes: the ability of corporations to go "venue shopping" encourages states to compete with each other to create the most favorable environment for chartering.[156]

From these cases, a common theme emerges: quo warranto challenges that hold corporations accountable for their ultra vires actions can force corporations to change their behavior—even if the state attorneys general decline to bring suit (Unocal) or the courts fail to formally act (*Citizens Utilities*). If wielded by state attorneys general, quo warranto actions have the power to dissolve corporate charters and force corporations to forfeit their assets. From challenging human rights violations to fraudulent and deceptive practices, ultra vires actions by state attorneys general have the power to change corporate behavior and—as exemplified by these cases—have a lasting impact for the public good.

---

152. *See supra* Part III.A.2.

153. *See supra* Part III.A.3.

154. *See supra* Part III.A.3.

155. *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) (holding that the free speech clause of the First Amendment prohibits the government from restricting independent expenditures for political communications by corporations); *see also* Laura McCamy, *Companies Donate Millions to Political Causes to Have a Say in the Government – Here Are 10 That Have Given the Most in 2018*, BUS. INSIDER (Oct. 13, 2018, 9:39 AM), https://www.businessinsider.com/companies-are-influencing-politics-by-donating-millions-to-politicians-2018-9 [https://web.archive.org/web/20201112054514/https://www.businessinsider.com/companies-are-influencing-politics-by-donating-millions-to-politicians-2018-9].

156. NACE, *supra* note 138, at 93.

IV. CONCLUSION

While the use of quo warranto actions has declined over the last century, these actions exist as a powerful tool for state attorneys general to combat corporate crime through charter revocation and re-chartering. Even if unused in practice, it appears from recent cases that attorneys general can leverage the threat of corporate dissolution to force corporations to change their practices.

Although various corporate and state statutes narrowed the grounds on which a corporation may be challenged,[157] attorneys general still retain the power to dissolve corporate charters for their illegal, or ultra vires, actions.[158] Whether they decide to use that power or not is up to them; however, the expansion of corporate charters for "any lawful business or purpose" is not as broad as it may seem. Attorneys general, as demonstrated in *Citizens Utilities* and *Council for Tobacco Research*, among other cases, can affirmatively hold corporations accountable for their violative acts. Additionally, the coalition's petition to revoke Unocal's charter—despite its failure to spur California attorneys general to action—was a success: the complaint against Unocal rekindled the belief that "a corporate charter is not a natural right."[159] Rather, a corporate charter is granted by the state, and the state may revoke it.

157. *See* MODEL BUS. CORP. ACT § 3.04 (1999) (stating that "the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act"); Sulkowski, *supra* note 21, at 102.

158. *See* Sulkowski, *supra* note 21, at 102.

159. NACE, *supra* note 138, at 112.