QUO WARRANTO IN THE AFTERMATH OF *LOPER BRIGHT*

by
Dennis Hall[*]

In 2024, the Supreme Court did away with Chevron *deference in* Loper Bright Enterprises v. Raimondo. *One previously undiscussed consequence of this decision is how it opens the door to a broader use of quo warranto corporate charter revocation. Quo warranto is a legal remedy held by the states that has fallen into relative obscurity, but it has the power to regulate large corporations that have strayed from the bounds of acceptable activity. This Comment examines the history of corporations and corporate oversight regulation in the United States, as well as the history of quo warranto as a remedy. Additionally, this Comment considers how quo warranto may effectively be used today, and obstacles to that use. Long underused and forgotten, quo warranto provides a novel approach to combatting corporate wrongdoing today.*

[*] J.D. Candidate, Lewis & Clark Law School. Executive Editor, Animal Law Review; Evening Student Representative, 2025–2026. This Comment was originally written as part of a seminar course, *Remedies*, taught by Professor Tomás Gómez-Arostegui. I especially thank Professor Gómez for his guidance not only with this project, but beyond in school and in life, and extend a special appreciation to Professor John Kenagy, who broke a few metaphorical bones for the better during first-year Lawyering. Thank you, also, to the editors and staff at Lewis & Clark Law Review for your interest and dedication. Finally, to my wife, Debra; my daughter, Elsie; and to Mark McDougal and Gregory Kafoury, family in all but name—thanks and forever thanks.

"The state permanently revokes the licenses of hundreds of doctors, lawyers, accountants and others every year—why not corporations?"[1]

INTRODUCTION

Thirty-five million dollars for 124 Chevy Cobalt fatalities.[2] Seven million people dying annually from using tobacco products exactly as intended.[3] A single

[1] Ki Lee O'Brien, Note, *The Ultra Vires Doctrine: Evaluating Quo Warranto Proceedings and the Power of State Attorneys General*, 66 WAYNE L. REV. 699, 712 (2021) (quoting Robert Benson, Loyola Law School Professor and lead attorney for a California coalition seeking to convince the attorney general to pursue quo warranto action against Unocal).

[2] Press Release, U.S. Dep't of Transp., U.S. Department of Transportation Announces Record Fines, Unprecedented Oversight Requirements in GM Investigation (May 16, 2024), https://www.transportation.gov/briefing-room/us-department-transportation-announces-record-fines-unprecedented-oversight [https://perma.cc/WK4S-WB34]; The Associated Press, *Court Ruling Opens GM to Billions in Death, Injury Claims*, NBC NEWS (July 13, 2016, at 20:04 PDT), https://www.nbcnews.com/storyline/gm-recall/court-ruling-opens-gm-billions-death-injury-claims-n609021 [https://perma.cc/3W7G-8DE5].

[3] *Corporate Hall of Shame Spotlight: Philip Morris International*, CORP. ACCOUNTABILITY (Sep. 28, 2018), https://corporateaccountability.org/blog/corporate-hall-of-shame-spotlight-philip-morris-international/ [https://perma.cc/9JWF-M4KL].

corporation responsible for $65 billion in damages for *one* Gulf of Mexico incident.[4]

Newsfeeds frequently carry reports of corporate wrongdoing on such large scales that the harm is difficult, if not impossible, to fully comprehend. Regulatory agencies and tort actions attempt to stem the tide of corporate harm but have not been effective at preventing repeat offenses. None of this is a secret. Today, a search anyone with access to the internet can perform on British Petroleum (BP)—the company responsible for $65 billion in damages from the Deepwater Horizon disaster in 2010—reveals a long history of environmental and human disasters, including a $2.3 million fine in response to an Environmental Protection Agency (EPA) lawsuit for Delaware River discharges, and other fines for destruction in Huntington Beach, California; Lima, Ohio; and Alaska's North Slope.[5] But more than a decade after Deepwater, BP remains a powerhouse in the international oil market, with close ties to some of the deepest pockets in the world: the U.S. military.[6] What can be done? Make the obvious choice—empowering regulatory agencies to set stricter standards and impose harsher punishments?

Not so fast, according to the United States Supreme Court: "*Chevron* is overruled."[7] With these three words from the decision in *Loper Bright Enterprises v. Raimondo*, the Supreme Court effected a chaotic, monumental shift in the law of the regulatory state, one which had been hinted at two years earlier in *West Virginia v. EPA*.[8] With these three little words, the Court rolled back the deference shown by the judicial branch toward agency regulations and statutory interpretation, bringing more discretion and independent judgment into courtrooms across the country.[9] This decision caused shockwaves in legal scholarship, primarily driven by concern for the ramifications of this significant shift impacting administrative law and environmental protections.[10] What could have been reinforced has instead been destabilized.

---

[4] Ron Bousso, *BP Deepwater Horizon Costs Balloon to $65 Billion*, REUTERS (Jan. 16, 2018, at 13:11 PST), https://www.reuters.com/article/world/bp–deepwater–horizon–costs–balloon–to–65–billion–idUSKBN1F50O5/ [https://perma.cc/Z477-XHTB].

[5] Philip Mattera, *BP: Corporate Rap Sheet*, CORP. RSCH. PROJECT (Aug. 1, 2016), https://www.corp–research.org/BP [https://perma.cc/N6XW-TTCQ].

[6] *See, e.g.*, *Contracts for Aug. 3, 2022*, U.S. DEP'T OF WAR, https://www.war.gov/News/Contracts/Contract/Article/3115725/contracts-for-aug-3-2022/ [https://perma.cc/28VH-MHMT] (last visited June 8, 2026) (showing a $556,067,223 contract between a BP subsidiary and the Department of Defense).

[7] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024).

[8] West Virginia v. EPA, 142 S. Ct. 2587, 2620 (2022) (Gorsuch, J., concurring).

[9] BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV., R48320, *LOPER BRIGHT ENTERPRISES V. RAIMONDO* AND THE FUTURE OF AGENCY INTERPRETATIONS LAW 1, 11 (2024).

[10] *See, e.g.*, Cary Coglianese & Daniel E. Walters, *The Great Unsettling: Administrative Governance After* Loper Bright, 77 ADMIN. L. REV. 1, 52 (2025) (describing *Loper Bright* as a "legal earthquake"); Sanne Knudsen, *Sidestepping Substance: How Administrative Law Plays an Outsized Role in Shaping Environmental Policy and Why Recalibration is Necessary*, 76 ADMIN. L. REV. 519, 578 (2024) (using *Loper Bright* as an example of administrative law's "capacity to create moving targets").

Except, one consequence of this decision warrants serious consideration and has not yet been discussed in legal scholarship.[11] This Comment aims to start that conversation, as I believe *Loper Bright* and the line of cases leading up to it quietly reopened the door to broader use of quo warranto corporate charter revocation.

The ancient remedy of the writ of quo warranto lies near the heart of the American experiment, embodying the sovereign power that early Americans fought to uphold.[12] Quo warranto played an important role in early American political and corporate development, but faded into relative obscurity after the regulatory state grew out its dominion. Now, *Loper Bright* appears to have begun weakening that federal regulatory state, opening the door for a return of what came before.

Even before *Loper Bright*, as far back as the 1930s, at least one voice called for a revitalization of the remedy of quo warranto.[13] Legal scholars in the years since have echoed this call, arguing that attempts to "control" corporate harms through regulation have generally proven ineffective.[14] I believe these arguments carry even more persuasive weight today in the wake of the *Loper Bright* decision.

---

[11] A Shepardized search of law review articles discussing *Loper Bright* containing the phrase "quo warranto" results in zero hits, and a broader search among all other citing sources in Lexis (a number in excess of 3,000 documents) returns only ten references to quo warranto; of those ten, nine involve public office rather than corporations, and a single result—a district court objection in Texas—mentions both "quo warranto" and *Loper Bright*, but not in connection to one another. *See* Objection of W. Kenneth Paxton to Report and Recommendations at 11, 23, Spirit Aerosystems, Inc. v. W. Kenneth Paxton, No. 24-CV-472, (W.D. Tex. Nov. 4, 2024), Dkt. No. 53. This is not to say that there has been limited discussion on *Loper Bright* among legal scholars at all; indeed, more than 300 law review articles have mentioned the decision, dealing with, among other subjects, employment law, renewable energy, and immigration. *See, e.g.*, Aaron D. Arnson & Steve Coleman, *How the End of* Chevron *Deference Could Transform Employment Law*, 61 AZ ATT'Y 30, 30 (2025); Charles Beauregard, Comment, *Regulating the Renewable Revolution: Revisiting FERC's Authority under the Federal Power Act Post-Major Questions Doctrine*, 76 ADMIN L. REV. 699, 701–03 (2024); Karen Musalo, Anna O. Law, Annie Daher, Katharine M. Donato & Chelsea Meiners, *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. REV. 2743, 2745–48 (2024).

[12] The Latin term *quo warranto* translates to "by what warrant or authority," and has two legal uses. One is as a common law writ "used to inquire into the authority by which a public office is held or a franchise is claimed." The other, which is the subject of this Comment, represents an action whereby the government seeks to revoke a corporation's charter. *Quo Warranto*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[13] *See* Roscoe Pound, *Visitatorial Jurisdiction Over Corporations in Equity*, 49 HARV. L. REV. 369, 376, 395 (1936) (advocating for use of quo warranto in extreme cases of corporate wrongdoing); *see also* Comment, *Quo Warranto and Private Corporations*, 37 YALE L.J. 237, 237–45 (1927) (arguing that quo warranto may be used to prevent corporations from committing criminal acts).

[14] *See, e.g.*, Benjamin T. Seymour, *Corporate Purpose and the Separation of Powers*, 36 BYU J. PUB. L. 113, 146–47 (2021); Thomas Linzey, *Killing Goliath: Defending Our Sovereignty and Environmental Sustainability Through Corporate Charter Revocation in Pennsylvania and Delaware*, 6 DICK. J. ENV'T L. POL'Y 31, 35 (1997); O'Brien, *supra* note 1, at 708.

The problems of modern corporate power are well documented, and I do not wish simply to echo the work of those who have so insightfully decried how the evils at the outer limits of corporate power have come to dominate 21st-century policy.[15] Nor do I wish to take the easy path and insist that major corporations are evil in and of themselves and must all be destroyed—indeed, large corporations can and often do produce benefits and improvements in many aspects of modern life. Rather, this Comment responds to the *Loper Bright* decision by reembracing the writ of quo warranto for those corporations straying too far from the bounds of acceptable activity.

Part I of this Comment briefly traces the development and use of federal corporate oversight before discussing the recent line of Supreme Court decisions culminating in *Loper Bright*, arguing that the decision and the reasoning behind it opened the door to expanded state authority—including a broader use of quo warranto. Then, to understand the potential significance of quo warranto actions for modern jurisprudence, I believe it will be helpful to go back to the beginning of the American experiment and chart some of the important landmarks of corporate policy development, since quo warranto and corporate policy are closely related. Part II, therefore, surveys the history of American corporate existence and charters. Part III examines the history and practical application of quo warranto, then examines model cases which may serve as guideposts for renewed applications of the remedy. Part IV discusses the modern value of quo warranto and problems of modern oversight which the remedy may be uniquely positioned to address. Finally, Part V discusses possible obstacles to this revitalization.

By looking backwards, I believe we can see a clearer path forward through the chaos created by *Loper Bright*. I hope that this Comment reminds the states of the power to seek the quo warranto remedy they already hold, and starts that conversation around *Loper Bright* propping open the door to a revitalization of that power.

I. *LOPER BRIGHT*, THE REGULATORY STATE, AND QUO WARRANTO

A. *Quo Warranto and Federal Powers*

Federal law is a powerful tool, with the Federal Trade Commission Act,[16] the

---

[15] *See, e.g.*, Richard L. Grossman & Frank T. Adams, *Taking Care of Business: Citizenship and the Charter of Incorporation*, CHARTER, INC. (1993), https://www.ratical.org/corporations/TCoB.html [https://perma.cc/D85G-UBSM] (arguing that "[c]orporations chartered by our states are the cause of political, economic, and ecological injury around the globe").

[16] Federal Trade Commission Act, 15 U.S.C. §§ 41–58 (establishing the Federal Trade Commission and granting it authority to regulate unfair methods of competition).

Clean Air Act,[17] and the Sherman Antitrust Act[18] undoubtedly exerting some regulatory control over corporate activity. What is perhaps less widely understood is the causal relationship between the remedy of quo warranto and these federal powers. The federal government's ability to reach into corporate enterprises for violations of law and punish them, or even dissolve them, developed against a background of states' police powers, which included the remedy of quo warranto.[19] *United States v. E. C. Knight*, decided by the U.S. Supreme Court in 1895, is an important decision because it hints at the Court's early intention to rely on these state powers for effective trust-busting.[20] Historically, state antitrust actions had connections to quo warranto statutes, and in fact antitrust statutes in many states still carry quo warranto powers to revoke corporate charters.[21] The ultimate balance the Court seemed intent to establish was that interstate antitrust efforts would be the domain of Congress under the Commerce Clause, while states would retain the power to regulate corporations and trusts within their borders.[22] However, this was difficult to achieve in practice, as Supreme Court decisions struck down aggressive state actions under the Commerce Clause if they strayed beyond state lines and affected interstate commerce in any way.[23] Since this was not an easy balance to maintain, it is perhaps unsurprising that states eventually shelved their efforts to regulate corporations while the federal government's efforts continued to grow.[24] Ultimately, the Supreme Court in the 1930s and 1940s moved away from this

---

[17] Clean Air Act, 42 U.S.C. §§ 7401–7671q (authorizing the EPA to regulate air pollutants and polluting industries to protect public health and the environment).

[18] Sherman Antitrust Act, 15 U.S.C. §§ 1–7 (authorizing executive oversight of certain business practices to promote free, fair, and competitive markets).

[19] *See, e.g.*, John C. Brinkerhoff Jr., Note, *Ropes of Sand: State Antitrust Statutes Bound by Their Original Scope*, 34 YALE J. REGUL. 353, 371 (2017) ("*Quo warranto* actions gave individual states the ability to nullify cross-border consolidation agreements and rescind the charters of corporations located within their borders that violated these limits. Multiple states flexed this authority even before the Sherman Act's passage." (footnote omitted)).

[20] United States v. E. C. Knight, 156 U.S. 1 (1895). *E. C. Knight*'s holding denying any infringement by state quo warranto power on Congress's Commerce Clause powers was ultimately criticized by later Supreme Court decisions and popular constitutional law textbook cases such as *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 39 (1937) and *United States v. Lopez*, 514 U.S. 549, 554, 570–71 (1995). The important historical lesson remains—despite this negative treatment—that the core understanding at the heart of *E. C. Knight* was that federal powers grew out of state quo warranto powers. Brinkerhoff, *supra* note 19, at 371 n.105 (citing Charles W. McCurdy, *The Knight Sugar Decision of 1895 and the Modernization of American Corporation Law, 1869–1903*, 53 BUS. HIST. REV. 304, 308 (1979)).

[21] Brinkerhoff, *supra* note 19, at 372 n.118.

[22] *Id.* at 373.

[23] *Id.* at 372.

[24] *See id.* at 372, 374–76 (discussing instances of judicial efforts to maintain this balance while acknowledging that clear lines at state borders could not always be drawn in commerce regulation).

balancing effort towards broader federal jurisdiction, based largely on unrest caused by the Great Depression.[25] It is no coincidence that quo warranto faded at the same time, as discussed below.

B. Corporate Wrongdoing and Successful Federal Enforcement

There can be little doubt that federal exercises of power which grew out of states' ability to bring quo warranto actions have, at times, been successful in punishing corporate wrongdoing. Two cases serve as examples of this success: one involving the German company Volkswagen for deceiving customers and cheating on emissions tests,[26] and another involving General Motors, accused of selling vehicles with a defective ignition switch in order to save less than $1 per car.[27]

1. Volkswagen

The Federal Trade Commission (FTC) took action against Volkswagen under the Federal Trade Commission Act and the EPA alleged violations of the Clean Air Act.[28] Volkswagen installed "defeat devices" that triggered full emission control systems when vehicles were actually being tested for emissions, but turned off otherwise, leading to vehicles emitting upward of 40 times EPA-compliant levels during normal road use.[29] The cases eventually settled for nearly $15 billion.[30]

The Second Partial Stipulated Order for Permanent Injunction and Monetary Judgment entered in May of 2017 in the Northern District of California is an outstanding outline for how quo warranto-styled remedies may be used against corporate wrongdoers, especially gigantic modern international

---

25 *Id.* at 374–75.

26 Press Release, Fed. Trade Comm'n, Volkswagen to Spend up to $14.7 Billion to Settle Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Engines (June 28, 2016), https://www.ftc.gov/news–events/news/press–releases/2016/06/volkswagen–spend–147–billion–settle–allegations–cheating–emissions–tests–deceiving–customers–20 [https://perma.cc/6ZKT-526B].

27 Press Release, Pa. Att'y Gen., Attorney General Josh Shapiro Reaches Settlement with General Motors Over Defective Ignition Switches (Oct. 19, 2017), https://www.attorneygeneral.gov/taking–action/attorney–general–josh–shapiro–reaches–settlement–with–general–motors–over–defective–ignition–switches/ [https://perma.cc/J3X6-VFNL]; Paul Lienert & Marilyn Thompson, *GM Avoided Defective Switch Redesign in 2005 to Save a Dollar Each*, REUTERS (Apr. 2, 2014), https://www.reuters.com/article/2014/04/02/us-gm-recall-delphi-idUSBREA3105R20140402/ [https://perma.cc/M68Z-UY6U].

28 Second Partial Stipulated Order for Permanent Injunction and Monetary Judgment, FTC v. Volkswagen Grp. of Am., Inc., MDL No. 2672, 2017 U.S. Dist. LEXIS 94474, at *801–02 (N.D. Cal. 2017) [hereinafter FTC v. Volkswagen MDL]; Press Release, Fed. Trade Comm'n, *supra* note 26.

29 Press Release, Fed. Trade Comm'n, *supra* note 26.

30 *Id.*

corporations.[31] First, obviously, the court entered no paltry amount as a judgment: "the Court enters Judgment in the amount of four billion, thirty-nine million, two hundred forty-six thousand, seven hundred seventy-three dollars ($4,039,246,773.00) against Volkswagen and in favor of the FTC."[32] But the judgment did not stop there: it further ordered Volkswagen to "make every reasonable effort to obtain mailing and email addresses" of all affected consumers, even including using third-party information and placing advertisements in major national media to notify eligible consumers.[33] Finally, the order included a permanent injunction barring Volkswagen from making deceptive claims in the future.[34]

2. General Motors

The General Motors (GM) scandal a decade ago is another example of the success of the federal regulatory state and the need for regulation and punishment of corporate malfeasance. To save the automaker less than $1 per vehicle, Chevy Cobalts were knowingly sold with a defective ignition switch that could cut electrical power, disable power steering and brakes, and prevent airbag deployment in crashes.[35] At least 124 people were killed, and 266 others were injured by the defective vehicles.[36] The U.S. Department of Transportation announced a record fine of $35 million against the automaker after hearing testimony before Congress that GM executives failed to report the defect in a timely fashion.[37] GM paid out another $595 million for a nationwide settlement in 2015, and an additional $900 million fine for the misconduct.[38]

The cases against Volkswagen and GM, while not resulting in a complete corporate dissolution, show how traditional quo warranto principles are made necessary by corporate wrongdoing and how similar powers have been applied by federal agencies in modern times. It should not be forgotten that these federal statutes grew out of an interest in supplementing, rather than supplanting, what

[31] *See generally* FTC v. Volkswagen MDL, *supra* note 28 (entering the order reflecting the parties' settlement).

[32] *Id.* at *821.

[33] *Id.* at *825–26.

[34] *Id.* at *802; Press Release, Fed. Trade Comm'n, *supra* note 26.

[35] Press Release, Pa. Att'y Gen., *supra* note 27; Lienert & Thompson, *supra* note 27.

[36] Press Release, Pa. Att'y Gen., *supra* note 27.

[37] *See* Press Release, U.S. Dep't of Transp., *supra* note 2.

[38] Press Release, Pa. Att'y Gen., *supra* note 27.

states were already doing, i.e., quo warranto and other statutory schemes, in a spirit of cooperation.[39]

But what does *Loper Bright* have to do with this?

C. Loper Bright*, the End of* Chevron *Deference, and the Return of Independent Judicial Judgment*

On its face, the *Loper Bright* decision is about agency interpretations of statutes those agencies administer, and the deference owed to those interpretations by courts.[40] Under the long-held "*Chevron* doctrine,"[41] if Congress had not directly spoken on an issue and a statute was silent or ambiguous as to that issue, a court could not substitute its own interpretation for an agency's if the agency's interpretation was reasonable or permissible.[42] Ultimately, however, the Supreme Court declared, "*Chevron* is overruled."[43] The Court based this decision on one of the fundamental tenets of American jurisprudence, that legal interpretation is "'emphatically . . . the province and duty of the judicial department.'"[44]

For the past 40 years, "*Chevron* deference" stood as a fundamental decision in administrative law, "governing the relationship between agencies and courts in matters of statutory interpretation and acting as a backdrop against which Congress has legislated."[45] Congress, of course, has long been legislating corporate behaviors through such laws as the Toxic Substances Control Act;[46] the grandfather of environmental legislation, National Environmental Policy Act;[47] and many others. The Court appears to be supplanting this deference with the idea that "[w]hen an agency claims the power to regulate vast swaths of American life," it runs the risk of intruding upon both Congress's power and powers reserved to the states.[48] Powers such as quo warranto.

The concurring opinion of Justice Gorsuch in *West Virginia v. EPA* highlights this reasoning, showing a concern for the "explosive growth of the administrative state since 1970."[49] This was not the first time these concerns had been raised.[50]

---

[39] Frank Schulze, Note, *Old, Not Odd: Running Laches Against the States and the Future of Antitrust After* New York v. Meta Platforms, 123 MICH. L. REV. 111, 117 (2024).

[40] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2254 (2024).

[41] Chevron U. S. A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

[42] *Loper Bright*, 144 S. Ct. at 2254; *Chevron*, 467 U.S. at 842–43, 866.

[43] *Loper Bright*, 144 S. Ct. at 2273.

[44] *Id.* (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).

[45] BARCZEWSKI, *supra* note 9, at 1.

[46] 15 U.S.C. §§ 2601–97.

[47] *E.g.*, 43 U.S.C. § 1638.

[48] West Virginia v. EPA, 142 S. Ct. 2587, 2621 (2022) (Gorsuch, J., concurring).

[49] *Id.* at 2619 (Gorsuch, J., concurring).

[50] *See, e.g.*, Knudsen, *supra* note 10, at 541–42.

With the administrative state in the crosshairs of the Supreme Court, there has been concern about the future of federal regulations and enforcement.[51] That said, the ruling from *Loper Bright* and the reasoning from *West Virginia* reopen the door to broader quo warranto actions thanks to the Court's subliminal emphasis on returning power to the states and emphasizing judicial independent judgment.[52] All of this suggests that the Court may now be more willing to entertain and uphold states' quo warranto remedies. As a result, calls to revitalize quo warranto are more persuasive now in the wake of the *Loper Bright* decision.

II. STATE AND FEDERAL CORPORATIONS IN AMERICA

In order to understand the power of quo warranto and the value it may have for corporate enforcement, it is necessary to undertake a brief overview of the history and development of corporations in America before turning to an analysis of quo warranto and what it can do.

A. *Corporate Existence as a Special Grant of Privilege*

Corporations in the western hemisphere came to power thanks to Royal British corporate charters, which created a number of the founding American colonies.[53] The first colony in North America, Jamestown, came into existence by virtue of the East India Trading Company, which deeded land to the Virginia Company in the early 1600s.[54] Likewise, Massachusetts was a corporation akin to Virginia.[55] These chartered companies were "quasi-governmental institutions," exercising delegated sovereign authority over the New World, "extracting its wealth and natural resources."[56]

Much more than a political event, the Boston Tea Party, at its heart, was an economic event—the Boston merchants dumped a commercial product into the

---

[51] *See, e.g.*, *id.* at 585–93 (emphasizing the danger in allowing the Court's administrative law jurisprudence to undermine environmental policy).

[52] *See* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024); *West Virginia*, 142 S. Ct. at 2612–16.

[53] O'Brien, *supra* note 1, at 703–04; Francis J. Bremer, *The Thirteen Colonies*, THE GILDER LEHRMAN INST. OF AM. HIST., https://www.gilderlehrman.org/history-resources/essays/thirteen-colonies [https://perma.cc/Z9DU-SF8T] (last visited June 9, 2026).

[54] O'Brien, *supra* note 1, at 703. After the Virginia Company faced many difficulties in the 1620s, King James I changed the company's status to a royal colony. Virginia would remain a royal colony under English control until 1776 when it became a state. *The Virginia Company of London*, NAT'L PARK SERV. (Feb. 26, 2015), https://www.nps.gov/jame/learn/historyculture/the-virginia-company-of-london.htm [https://perma.cc/PMG3-8SKC].

[55] O'Brien, *supra* note 1, at 703.

[56] Charlie Cray & Lee Drutman, *Corporations and the Public Purpose: Restoring the Balance*, 4 SEATTLE J. FOR SOC. JUST. 305, 309 (2005).

waters of the harbor as an act of rebellion against *both* the British crown and the East India Company, a British corporation, the interests of whom were intertwined.[57] By creating a republican form of government and rejecting the British crown's corporate control, American revolutionaries sought to free themselves from monarchical power, as they were "keenly aware of the tyrannical potential" of unlimited power.[58] They pushed that goal further by adopting a constitution establishing state and citizen sovereignty, an experiment rooted in the twin premises of dispersed power and personal accountability.[59]

The revolutionaries also recognized the threat posed by immense economic—yet "lawless"—powerhouses like the East India Trading Company and the Hudson's Bay Company.[60] This sentiment was not an American invention, to be sure; a British writer in 1796 defined a corporation as "'an infamous relic of the ancient feudal system; a tyrannical, exclusive monopoly, generally consisting of gluttons, idiots, and oppressors; brutes in a human form.'"[61]

In the days leading up to the American Revolution, corporations "were few, small, and largely inconsequential."[62] Because of that, the United States Constitution made no reference to business corporations.[63]

Nevertheless, early American lawmakers took "conscious and informed" steps to hobble the growth of corporate power in an effort to preserve their own sovereignty.[64] At the close of the 18th century, "special incorporation" led the way towards achieving this ambition.[65] Lawmakers required that a specific statute be passed for each corporation granting it privileges to incorporate and detailing boundaries on the corporation's existence and scope.[66] Those boundaries included such things as limiting the corporation's capital, describing in detail what activities the corporation was allowed to undertake, outlining internal governance by setting forth the precise number and duties of its directors, and closely protecting

---

57 *Id.*

58 RALPH NADER, MARK GREEN & JOEL SELIGMAN, CORP. ACCOUNTABILITY RSCH. GRP., CONSTITUTIONALIZING THE CORPORATION: THE CASE FOR THE FEDERAL CHARTERING OF GIANT CORPORATIONS 1 (1976).

59 *Id.*

60 Linzey, *supra* note 14, at 36.

61 Robert E. Wright, *Rise of the Corporation Nation*, *in* FOUNDING CHOICES: AMERICAN ECONOMIC POLICY IN THE 1790S, at 217, 226–27 (Douglas Irwin & Richard Sylla, eds., 2010) (quoting CHARLES PIGOTT, A POLITICAL DICTIONARY: EXPLAINING THE TRUE MEANING OF WORDS 15 (1795)).

62 *Id.* at 218.

63 NADER ET AL., *supra* note 58, at 1.

64 Linzey, *supra* note 14, at 36.

65 Wright, *supra* note 61, at 224.

66 *Id.*

stockholder rights.[67] Anything beyond the scope of the statutory charter would be considered void or illegal, an important component of quo warranto actions.[68] The chartering process involved petitioning the state legislature, or legislatures where a project spanned state borders—like a ferry or bridge river crossing.[69] That process was likewise required whenever a charter needed to be updated.[70]

At the heart of that legislative process was a central question: whether the proposed corporation served a public or "laudable" purpose?[71] As a result, early corporate existence in America depended upon a "special" grant of privilege which allowed the entity to continue to exist only as long as the corporation continued to represent a valuable service to the public good.[72] That approach saw definite results: by 1800, only about 300 corporations had been established in the United States.[73] To put this number in perspective, consider that 16 jurisdictions combined to incorporate 319 corporations from the beginning of the colonial period through to 1800. In only two of those years did a single jurisdiction incorporate more than 10 entities, and none incorporated more than 15.[74]

B. Chartermongering and the End of Special Incorporation

"General incorporation" began to replace stricter special incorporation widely throughout the 19th century.[75] Where special incorporation required an act of the legislature to pass a statute, general incorporation allowed for the chartering of any corporation that simply filed all the proper paperwork.[76]

However, this is not to say that corporations, once chartered by general incorporation, were without limitations. Massachusetts law, for example, mandated

---

67 *See id.*

68 O'Brien, *supra* note 1, at 704.

69 Wright, *supra* note 61, at 224.

70 *Id.*

71 *See* Elizabeth Pollman, *The History and Revival of the Corporate Purpose*, 99 TEX. L. REV. 1423, 1434–35 (2021) (noting that some corporations chartered around the 1800s included provisions promoting public welfare because states would use their discretion to grant corporate charters with the public good in mind).

72 *See, e.g.*, Hale v. Henkel, 201 U.S. 43, 74 (1906) ("[T]he corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter."); *see also* Linzey, *supra* note 14, at 36 (describing incorporation as a revocable privilege conferred through special legislative charters for public purposes, reflecting the understanding that corporate existence depended on continued service to the public good).

73 Wright, *supra* note 61, at 221 tbl. 7.1.

74 *Id.*

75 Harwell Wells, *The Modernization of Corporation Law, 1920–1940*, 11 U. PA. J. BUS. L. 573, 581 (2009).

76 *See id.*

that (1) corporations could not hold legal capital exceeding $1 million, or less than $5,000; (2) stockholders could be personally liable for the corporation's debts and employees' unpaid wages; and (3) a corporation must have "a single, specific purpose" laid out in its charter, and any corporate actions unrelated to that purpose were unauthorized and void.[77]

Such restrictive laws typified the 19th century, until 1889 when New Jersey caused a tectonic shift by allowing corporations to own shares of other corporations.[78] However, that was not the first time that New Jersey loosened its restrictions on corporations. Starting in 1875, New Jersey adopted fewer restrictions on corporate directors.[79] That began what some scholars have called "the race to the bottom," where "chartermongering" states tripped over themselves in their eagerness to welcome and support new corporations.[80] So-called enabling acts replaced more limiting acts of the 1800s and changed the face of the 20th century.[81] Delaware won the race that New Jersey started, proving the most successful at attracting significant tax revenue from incorporations.[82] Today, Delaware boasts that it recently surpassed the milestone of having 2 million business entities registered, that it is home to more than 66% of all Fortune 500 companies, and that it saw an increase of more than 7% in general fund revenue growth for 2023.[83]

C. Federal Charters

Even though the U.S. Constitution omits any reference to chartering or corporations, the power to charter corporations is not limited to the states. Federal chartering of corporations meets the constitutionality tests of the Commerce Clause and the enabling provision of the Necessary and Proper Clause.[84] Indeed, federally chartered corporations have existed throughout American history, in banking and mortgages, railroad transportation, and international trade.[85] While such corporations have been charted by Congress since 1791, the majority of federal

---

[77] *Id.*

[78] *Id.* at 583.

[79] *Id.*

[80] Kevin Frazier, *Anti-Constitutional Rivals*, 92 TENN. L. REV. 505, 559 n.374 (2025); Cray & Drutman, *supra* note 56, at 313–14.

[81] Wells, *supra* note 75, at 585–86.

[82] *Id.* at 585. For a more in-depth discussion of the effect of "traitor state" and New Jersey's legislation loosening the chains of corporate charters, see NADER ET AL., *supra* note 58, at 42–53.

[83] *Annual Report Statistics*, DEL. DIV. OF CORPS., https://corp.delaware.gov/stats/ [https://perma.cc/UP7V-VMP6] (last visited June 9, 2026).

[84] NADER ET AL., *supra* note 58, at 77 (noting that there is no modern debate suggesting the federal chartering law would be unconstitutional under these constitutional provisions).

[85] *Id.* at 76–77.

charters have been issued since the 20th century.[86] However, moratoria on the granting of federal charters have been prevalent throughout the second half of the 20th century and into the early decades of the 21st century.[87] The goal of this Comment is not to argue the case for increased federal chartering, as arguments on both sides of that issue have been raised before.[88]

D. The Modern Perspective

Thirty years ago, the 1990s were viewed as an exciting new world for corporations, despite "growing resentment" among the public towards the "cozy" relationship between government and corporations.[89] That sentiment only deepened in the early decades of the 2000s; according to the Pew Research Center, around 70% of citizens on both sides of the aisle today have negative opinions of large corporations, one of the few cross-political agreements of our time.[90] While the names of the companies have changed through time—from Hudson's Bay Company and East India Trading Company, to Standard Oil and DuPont, and in more recent years to BP, GM, and Volkswagen—the issues remain the same.

How then, did these charters of old work to protect against corporate threats to sovereignty, which was so fundamental to early Americans, and how in today's age might a disenfranchised and frustrated citizenry exercise any control over lawless corporate fictions? Enter the writ of quo warranto.

---

86 *See* CONG. RSCH. SERV., RS22230, CONGRESSIONAL OR FEDERAL CHARTERS: OVERVIEW AND ENDURING ISSUES 2 (2013).

87 HENRY B. HOGUE, CONG. RSCH. SERV., R47236, TITLE 36 CHARTERS: THE HISTORY AND EVOLUTION OF CONGRESSIONAL PRACTICES 25–26 (2022).

88 *See generally, e.g.*, NADER ET AL., *supra* note 58 (arguing that failing to mention corporations in the Constitution was an oversight that should be remedied); *see also* HOGUE, *supra* note 87, at 27–29 (arguing that federal charters present a benefit to corporations in that federal chartering may lend companies an aura of authenticity or superiority, and drawbacks in that the federal chartering process may be time and resource intensive, and would require the legislative process which, putting it mildly, "can sometimes be protracted").

89 Linzey, *supra* note 14, at 40.

90 PEW RSCH. CTR., FROM BUSINESSES AND BANKS TO COLLEGES AND CHURCHES: AMERICANS' VIEWS OF U.S. INSTITUTIONS 3, 7 (2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/02/PP_2024.02.01_institutions_REPORT.pdf [https://perma.cc/Q2V3-VD2C]; *see also* Frank Newport, *Americans' Confidence in Military, Presidency Up; Big Business, Organized Religion Drop*, GALLUP NEWS SERV. (June 28, 2002), https://news.gallup.com/poll/6298/americans-confidence-military-presidency-up-big-business-organi.aspx [https://perma.cc/8LKX-YPVT] (showing Americans' confidence in "big business" on the decline from 30% in the 1990s to 20% by 2002); *Do Americans Like or Dislike 'Big Business'?*, GALLUP (June 27, 2022), https://news.gallup.com/poll/270296/americans-dislike-big-business.aspx [https://perma.cc/MG4Y-BPVD] (showing further declines in confidence in large corporations to approximately 14% by 2022).

III. QUO WARRANTO

A. English Origins of Quo Warranto Writs

Quo warranto means, in essence, "by what authority," and belongs to a family of "ancient" legal remedies from English common law.[91] It is helpful to look at a somewhat detailed background of that remedy because certain aspects of American quo warranto law reflect rules or practices developed in England as the common law system came of age, and because the American legal system is derived from England's.[92]

Originally, the crown used writs of quo warranto to inquire whether a person was legitimately exercising a privilege or office, or instead intruding upon the king's good graces.[93] Quo warranto actions were also brought to make inquiries regarding the authority upon which a corporation had acted; a writ could be issued, summoning the corporation into court to show by what authority it had undertaken its conduct.[94]

King Edward I used the writ of quo warranto extensively during his reign from 1272 to 1307 in his work to stamp out franchises and liberties as part of a larger legal reform agenda.[95] It is not difficult to imagine a modern American president pursuing the same goal. Eventually, the writ became connected by statute to justices in *eyre* as a way of streamlining the process.[96] When the *eyre* system later disappeared, quo warranto faded into disuse along with it.[97] As discussed in in later Sections, this waxing and waning history of the writ would not remain uniquely European.[98]

In the 1500s, King Henry VIII revived the writ, but in doing so altered its nature and process. He made it less cumbersome and established the attorney

---

[91] State *ex rel.* Sec. Sav. & Tr. Co. v. Sch. Dist. No. 9 of Tillamook Cnty., 36 P.2d 179, 181 (Or. 1934); *see* discussion *supra* note 12.

[92] *See, e.g.*, Grupo Mexicano de Desarrollo v. All. Bond Fund, Inc., 527 U.S. 308, 318 (1999) ("We have long held that 'the "jurisdiction" thus conferred . . . is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.'" (alteration in original) (quoting Atlas Life Ins. Co. v. W.I. S., Inc., 306 U.S. 563, 568 (1939))).

[93] *Sch. Dist. No. 9 of Tillamook Cnty.*, 36 P.2d at 181.

[94] JOHN BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 155–56 (5th ed. 2019).

[95] *Id.* (discussing how Edward I relied on quo warranto "to be a comprehensive survey of inferior jurisdictions and liberties"); James W. Alexander, *Edward I*, EBSCO (2022), https://www.ebsco.com/research-starters/biography/edward-i [https://perma.cc/5ZAS-2UYW].

[96] *See* BAKER, *supra* note 94, at 155–56; *see also Eyre*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/eyre [https://perma.cc/DUP7-EP3V] (last visited June 9, 2026) (defining *eyre* as "a circuit traveled by an itinerant justice in medieval England or the court he presided over").

[97] *See* BAKER, *supra* note 94, at 155–56.

[98] *See* discussion *infra* Sections III.C–D.

general as the sole holder of the privilege to seek the writ before the King's Bench.[99] That is important to note, because this relic of the 1500s lives on today—the predominant practice in the United States is that standing to bring quo warranto actions lies in the hands of state attorneys general with very few exceptions.[100]

King Charles II was the last to use the writ of quo warranto in a politically significant way when he sought to force new municipal charters on existing corporations.[101] He used quo warranto against the City of London, demanding that it show by what authority it claimed its privileges.[102] In 1683, the King's Bench delivered a devastating blow, decreeing that London's liberty of being a corporation had been "seized into the king's hands."[103] The scale of this ruling is almost unfathomable as at the time of this judgment, London was an enormous entity, with a population "overshadow[ing] all other British and almost all European cities."[104] A similar action was taken with respect to Massachusetts, when the provincial charter was challenged and ultimately revoked for encroaching on the English monarchy's efforts to found Harvard College.[105]

Eventually, the writ of quo warranto was formally abolished in England in 1938, and the common remedy of injunctive relief took its place,[106] but not before the writ's adoption in American courts.

B. Quo Warranto in America

> *"Incarcerated within the walls of a factory, while as yet mere children—drilled there from five till seven o'clock, year after year . . . . [W]hat, we would ask, are we to expect, the same system of labor prevailing, will be the mental and intellectual character of the future generations . . . ? A race fit only for corporation tools and time-serving slaves? . . . Shall we not hear the response from every hill and vale, 'EQUAL RIGHTS, or death to the corporations'?"*[107]

[99] BAKER, *supra* note 94, at 156.

[100] *See* discussion *infra* Section V.C.

[101] BAKER, *supra* note 94, at 156.

[102] *Id.*

[103] *Id.*

[104] Tim Hitchcock, *A Population History of London*, OLD BAILEY PROCS. ONLINE (2023), https://www.oldbaileyonline.org/about/population-history-of-london [https://perma.cc/D3K2-7PTB].

[105] BAKER, *supra* note 94, at 156.

[106] *Id.*; *see also* Senior Courts Act 1981, c. 54, § 31 (Eng.) (setting out the procedure for application to a High Court for an injunction under Section 30 restraining "a person" from acting in an office to which they are not entitled and setting forth that such actions will be known as "application[s] for judicial review").

[107] Grossman & Adams, *supra* note 15 (quoting Female Lab. Reform Ass'n (Julianna), *Factory Life As it Is: The Evils of Factory Life*, FACTORY TRACTS (Lowell, Mass.), Oct. 1845, at 3–4).

By the 1890s, quo warranto enjoyed a bit of a heyday in America. A New York court memorialized the Americanized writ of quo warranto in strong terms: "[it is] corporate death. The state, which created, asks us to destroy."[108] The opinion continues to declare that the "life of a corporation is, indeed, less than that of the humblest citizen."[109] On the other side of the country, an Oregon court felt much the same way: "the state, out of its sovereign power, has created the corporation for the purposes declared in its charter, and the same power must preside at its dissolution."[110] The language "for the purposes declared in its charter" is crucial to remember, as this is a key which unlocks many quo warranto actions seeking to reign in corporate activities extending beyond the bounds of their charters—in other words, acting ultra vires.

C. *The Infamous* Dartmouth College *Decision and Resulting Codification of Quo Warranto Across the Country*

The early history of quo warranto was not without its own obstacles, to be sure. The U.S. Supreme Court attempted to suppress or annul state quo warranto power to revoke corporate charters in 1819 by applying contract law doctrines.[111] *Trustees of Dartmouth College v. Woodward* centered around a 1769 charter issued by King George III to the trustees of Dartmouth College in New Hampshire.[112] Chief Justice John Marshall infamously ruled that the charter was a legal contract, such that any attempt by the state to rescind that contract would be unconstitutional, since, by its terms, the contract contained no reference to any revocation clause.[113]

Backlash was swift and vocal, with the staunchest opponents decrying that the *Dartmouth* opinion "cut out the heart of state sovereignty."[114] David Henshaw, a legislator, wrote, "Sure I am that, if the American people acquiesce in the principles laid down in this case, the Supreme Court will have effected what the whole power of the British Empire, after eight years of bloody conflicts, failed to achieve against our fathers."[115] The hostility makes sense, not only in that it is to be expected whenever state sovereignty is curtailed, but also in that many believed Justice Marshall had overstepped the Supreme Court's authority by asserting that

---

[108] People v. N. River Sugar Refin. Co., 24 N.E. 834, 834 (N.Y. 1890).

[109] *Id.* (explaining that although a corporation does not hold human rights, it may have some person-like qualities (such as accumulating property and engaging the economy) and is entitled to some procedural protection).

[110] State v. Douglas Cnty. Rd. Co., 10 Or. 198, 202 (1882).

[111] *See* Trs. of Dartmouth Coll. v. Woodward, 4 U.S. 518, 706 (1819).

[112] *Id.* at 624, 706.

[113] *Id.* at 706.

[114] Grossman & Adams, *supra* note 15.

[115] *Id.* (quoting JOSEPH L. BLAU, SOCIAL THEORIES OF JACKSONIAN DEMOCRACY: REPRESENTATIVE WRITINGS OF THE PERIOD 1825–1850, at 182 (1947)).

corporations were "beyond the reach of the legislature which created [them] in the first place."[116] To some, Marshall's ruling represented an insistence on the judicial branch's "right to dictate the contours of the corporate form."[117]

The crux of this decision's import is that the American people did not acquiesce—at least, not right away. State legislators fought back against Chief Justice Marshall's proclamation by including clauses specifically allowing for amendment and revocation, and even quo warranto writs, in new charters, state laws, and constitutions—thereby sidestepping the contract doctrines Marshall relied upon.[118] For example, the right to bring quo warranto writs was included in the original text of the Washington State Constitution adopted in 1889.[119] The language written in the constitution was itself related to some of the earliest statutory provisions for quo warranto circa 1854.[120] Other states with references to quo warranto actions in their constitutions include New Mexico, Nevada, Kansas, Florida, and Oregon.[121] As of 1995, the codified laws of 49 states and the District of Columbia included statutes granting states the power to revoke corporate charters.[122] Below, as an example, is the current version of Ohio's Revised Code titled "Proceedings against a corporation":

> A civil action in quo warranto may be brought in the name of the state against a corporation:
>
> (A) When it has offended against a law providing for its creation or renewal, or any amendment thereof;
>
> (B) When it has forfeited its privileges and franchises by nonuser;
>
> (C) When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;
>
> (D) When it has misused a franchise, privilege, or right conferred upon it by law, or when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law;
>
> (E) When any application for a license to transact business in this state filed by a foreign corporation, any articles of incorporation of a domestic

---

116 *Id.*

117 Seymour, *supra* note 14, at 129.

118 *Id.* at 129–30; Grossman & Adams, *supra* note 15.

119 WASH. CONST. art. IV, § 6 ("Said courts and their judges shall have power to issue writs of . . . quo warranto.").

120 Monford Arthur Orloff, *Information in the Nature of Quo Warranto in the State of Washington*, 15 WASH. L. REV. 165, 165 (1940).

121 N.M. CONST. art. VI, § 3; NEV. CONST. art. VI, § 4; KAN. CONST. art. III, § 3; FLA. CONST. art. V, § 3(b)(8); OR. CONST. art. VII, § 2.

122 Thomas Linzey, *Awakening a Sleeping Giant: Creating a Quasi-Private Cause of Action for Revoking Corporate Charters in Response to Environmental Violations*, 13 PACE ENV'T L. REV. 219, 223 & n.15 (1995) (surveying state statutes).

corporation or any amendment to them, or any certificate of merger or consolidation which set forth a corporate name prohibited by the Revised Code, has been improperly approved and filed.[123]

The codification of quo warranto principles would eventually begin to cut both ways, as the codified language ossified, creating long-standing, unnecessarily rigid interpretations of the writ which would prove difficult to adjust and restrictive in application. The Supreme Court of North Dakota briefly touched upon this issue in 1920, when upholding statutes codifying common law quo warranto principles as against public offices only.[124] The court focused on the fact that North Dakota statutory remedies, which had formerly been available under the common law quo warranto principles, explicitly applied only to a public office.[125]

It may have been for the best that quo warranto remedies were protected against the *Dartmouth* fallout by being codified, but cementing them into rigid statutory form only as to public offices no doubt created a limitation. The common law flexibility had been traded for rigid statutory protection.

As another example, in Oregon, the common law quo warranto writ and "proceedings by information in the nature of quo warranto" were seemingly abolished by statute in 1862.[126] However, only the *form* of the writ had been rescinded—the *remedy* of charter revocation, and the jurisdiction and power of the courts, had not been altered.[127]

D. *Quo Warranto in Practice: A Survey of Cases*

An all-too-brief survey of sample cases from the 19th and 20th centuries illuminates how seriously states and courts treated this right to charter revocation, both at common law and by statute. The cases reveal how willing states were to pursue the writ, how carefully courts examined the circumstances, and the types of harms warranting punishment. The main focus here is corporate quo warranto actions for violations of law or abuse of charters. Many other examples of quo warranto involve actions against elected officials or public officers for usurpation of their offices; however, aside from brief comments on these types of cases for context, history, or clarity, the focus of this Comment remains on corporate malfeasance.

It is a truism, as well, that each of the sovereign states has its own history and tradition, creating 50 different possible approaches to quo warranto actions and interpretations of the ancient English remedy. To avoid whiplash caused by

---

[123] OHIO REV. CODE ANN. § 2733.02 (LexisNexis 2026).

[124] State *ex rel.* Langer v. Lofthus, 177 N.W. 755, 756 (N.D. 1920).

[125] *Id.*

[126] State *ex rel.* Sisemore v. Standard Optical Co. of Or., 188 P.2d 309, 310 (Or. 1947).

[127] *See id.* (noting that the writ of quo warranto was abolished in Oregon in 1862 and that the "remedies" of quo warranto remain available "by action at law in the name of the state").

comparing quo warranto actions in all states and territories, this Comment attempts to limit the analysis of caselaw to a narrow range of jurisdictions while preserving an adequate sense of the scope and scale of the issue. On one hand, research into Oregon's quo warranto past reveals a single case worth noting. Ohio, on the other hand, has a much more active history, with interesting and approachable quo warranto caselaw.

What does the remedy of quo warranto look like in practice? I hope these case examples provide an answer.

1. Ohio

In 1901, the Ohio Supreme Court dealt with an appeal on an action in quo warranto for the ouster of a savings company from the privilege of doing business for issuing illegal endowment certificates.[128] What makes this specific case worth examining is the fact that the court weighed sanctioning the corporation—up to and including complete dissolution—without concern for whether the company *intentionally* schemed to mislead and defraud, but instead on whether such was the actual *result*.[129] The court stated that "[i]f the company is misusing its corporate privileges in such a way as to be a public abuse, the writ must issue regardless of intent."[130] The opinion continues, "The legislature is presumed to have contemplated that a corporation thus authorized to do business in this state would exercise its franchises within chartered limits, and in a manner not injurious to the public."[131] Ultimately, the court granted the petition and the judgment of ouster, revoking the corporation's charter and terminating its privilege of doing business.[132]

The strong language the court used—"the writ must issue regardless of intent"—demonstrates how seriously courts at the turn of the century treated the privileges of corporations and the need to control their actions. Likewise, the phrase "not injurious to the public" speaks to the fact that Ohio courts were concerned with public harms over corporate privileges.[133]

In another case around the same period, Ohio filed a quo warranto action against a dairy corporation engaged in the production and sale of margarine products.[134] The petition alleged that the corporation defendant violated Ohio law by coloring its artificial oleomargarine product to look like butter, by not clearly labeling it as margarine, and by refusing to allow state inspectors access, all of which constituted a misuse of its corporate authority, franchises, and privileges.[135]

---

[128] State *ex rel.* Att'y Gen. v. Interstate Sav. Inv. Co., 60 N.E. 220, 231 (Ohio 1901).

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.* at 233.

[133] *Id.* at 231.

[134] State *ex rel.* Monnett v. Cap. City Dairy Co., 57 N.E. 62, 63 (Ohio 1900).

[135] *Id.*

The defense claimed that the laws purportedly violated were unconstitutional as "an arbitrary and unauthorized attempt to interfere with . . . legitimate business"; that the violations of law, if any, could not be maintained because the true remedy must be a criminal one; and that "fraud" in creating and selling margarine "is not the abuse or misuse of a franchise, and not the proper subject of a quo warranto proceeding."[136]

None of these arguments convinced the Ohio Supreme Court. Specifically, in dismissing the defense argument that the quo warranto action was inappropriate in light of criminal punishments readily available, the court unambiguously declared, "the remedy is not adequate."[137] With language telling and articulate—and somewhat prophetic—the court continued, "The object of the statute is to protect the public. In the nature of things, a small fine is not a sufficient deterrent to accomplish the desired end, especially in the case of a company possessed of ample means and conducting a large business."[138]

The wrongdoing justified the punishment of corporate death. In entering judgment revoking the corporation's charter, the court pronounced that, due to the "persistent, defiant, and flagrant" acts of the defendant, "no other course is left to the court than to enter a judgment of ouster."[139] Trustees were later appointed to wind up the concerns of the business enterprise.[140]

Not all quo warranto actions automatically resulted in a complete ouster, however. Compare the above cases to another quo warranto action from the 1930s, where Ohio filed a petition for writ of quo warranto against a Delaware-registered defendant, who was allegedly operating an illegal optometry business throughout the Buckeye state.[141] At the heart of this controversy was the contention that a corporation could not engage in the practice of a profession which required particular licensure.[142] Since Ohio considered optometry a profession, "articles of incorporation [could not] be granted in the state of Ohio to engage in the practice of optometry."[143] In dealing with the question of what a foreign-organized corporation may or may not do within another state, the Ohio Supreme Court concluded that the Delaware corporation could not exercise any powers in Ohio that a domestic Ohio corporation would not be able to exercise.[144] The court ultimately concluded that the facts did not warrant a full ouster of the optometry

---

136 *Id.*

137 *Id.* at 65.

138 *Id.*

139 *Id.* at 66.

140 *Id.*

141 State *ex rel.* Bricker v. Buhl Optical Co., 2 N.E.2d 601, 601–02 (Ohio 1936).

142 *Id.* at 602.

143 *Id.*

144 *Id.*

business from doing business within Ohio, but rather deserved a judgment "ousting [the defendant] from engaging directly or indirectly in the practice of optometry and especially from doing those things which an optical company is forbidden to do."[145]

Such a result exemplifies the balancing test that courts perform when analyzing quo warranto actions, and the political or public good which may yet be accomplished even without the ultimate punishment of corporate death. In the case of the optometry business, the state proved that the corporate defendant had engaged in unlawful activity by running a professional business when it was not licensed to do so, and sought to oust the business from the state.[146] The court declined to go so far, but its ruling made an important clarification for Ohio corporate law moving forward: out-of-state chartered businesses would be prohibited from doing what in-state chartered businesses could not do, without regard to what the foreign chartering state allowed.[147]

In the latter decades of the 1900s, quo warranto actions remained alive and well in Ohio. In 1988, the Ohio Supreme Court considered a quo warranto action based on the evidence that two out of three signatures on a defendant's incorporation paperwork had been forged.[148] In revoking the corporation's charter and dissolving it, the court examined the line between instances warranting full dissolution and instances where partial ousters were the more appropriate remedy.[149] Although acknowledging the general truth that "the law abhors a forfeiture," the court held that if a state proved one or more grounds for terminating a corporate charter, the state would be "entitled, as a matter of law, to a decree of forfeiture, and the court has no discretion to refuse the same."[150] Strong language indeed.

2. Beyond Ohio

Broadening beyond Ohio, another important example comes from the sugar fields of Puerto Rico. The U.S. Supreme Court decided the case of *Puerto Rico v. Rubert Hermanos, Inc.* in 1942.[151] By way of background, Congress had, in 1900 and 1917, mandated that every agricultural corporation operating in Puerto Rico

---

[145] *Id.* at 604.

[146] *Id.* at 602.

[147] *See id.* at 604.

[148] State *ex rel.* Falke v. Montgomery Cnty. Residential Dev., Inc., 531 N.E.2d 688, 690 (Ohio 1988).

[149] *Id.* at 690–91.

[150] *Id.* at 690 ("[W]hen, in an action in quo warranto, it is found and adjudged that a corporation has violated R.C. 2733.02(A) by offending against a law providing for its own creation, R.C. 2733.20 requires that judgment be entered that the corporation be entirely ousted and excluded from its privileges, rights and franchises, and that it be dissolved.").

[151] Puerto Rico v. Rubert Hermanos, Inc., 315 U.S. 637 (1942).

was restricted to owning and controlling no more than 500 acres of land.[152] In the 1930s, Puerto Rico's legislative assembly codified quo warranto actions specifically to address violations of these limitations.[153] Empowered by this law, Puerto Rico brought a quo warranto proceeding against a defendant corporation for owning 12,188 acres of land.[154] The writ succeeded: the charter was forfeited and revoked, with "the immediate dissolution and winding up of [its] affairs" ordered, and a receiver was appointed by the Puerto Rico Supreme Court to "preserve the enterprise as a going concern pending a final settlement" and distribution.[155] The U.S. Supreme Court sustained these rulings in full.[156] The business was dissolved and its property auctioned off for simply owning more land than was allowed under the law.[157]

It may be difficult in contemporary thought to imagine the type of modern actionable public harms which may have arisen from the facts in the Puerto Rico case. Yet such concerns did not convince either the Supreme Court of Puerto Rico or the of the United States to stay this corporate execution. Instead, each held that the law existed, the defendant breached that law, and that breach warranted a revocation of the defendant's right to exist, even in a nearly total absence of evidence of any specific harm to any particular citizen.[158] Modern boardroom executives might scoff at the notion that such a violation would be considered serious, or that it warranted a complete dissolution of the company. Yet it was, and it did.

A search of quo warranto corporate charter revocation reveals scant caselaw on the subject in Oregon. Indeed, contrary to the arguments made against a return to quo warranto due to the risk of abuses,[159] the quo warranto process in Oregon can hardly be deemed so abusive in any sense of the word. The solitary case of charter revocation for corporate wrongdoing in Oregon deals, remarkably, with an optometrist case mimicking the case from Ohio discussed above.

In Oregon's own optometrist story, the defendant was organized in 1940 for the purpose of operating a general merchandising business which included optical goods.[160] The defendant maintained executive offices in Salt Lake City, Utah, during the time of the litigation.[161] In each of its store locations, the company

---

[152] *Id.* at 638.

[153] *Id.* at 638–39.

[154] *Id.* at 639.

[155] *Id.* at 639, 648.

[156] *Id.* at 648.

[157] *Id.* at 638–39.

[158] *Id.* at 638–39, 647–48.

[159] Seymour, *supra* note 14, at 116 (arguing that modern corporate law's checks and balances curbed longstanding "abuses" of the power of state executives to bring quo warranto actions).

[160] State *ex rel.* Sisemore v. Standard Optical Co. of Or., 188 P.2d 309, 310 (Or. 1947).

[161] *Id.* at 314.

employed a registered optometrist who, the defendant advertised, could administer eye exams to customers free of charge.[162] The state, by way of quo warranto, challenged the defendant's right to continue in business in violation of the law, under the charge of holding oneself out as an optometrist without being appropriately registered, thereby engaging in a prohibited practice of optometry by unlicensed persons, among other charges.[163]

In candid, lively language, the court agreed with the state's charges: "It would seem that the public has as much need to be protected from quacks and charlatans in optometry as in dentistry or any other subdivision of medicine."[164] The chief concern, of course, was "undoubtedly" to preserve the "health, safety and welfare" of Oregonians.[165] Ultimately, the court ruled that the defendant had practiced optometry unlawfully, but declined the corporate capital punishment of charter revocation, stating that Oregon's quo warranto statute did not make revocation or complete ouster mandatory.[166] Much like their Ohio predecessors (whom the Oregon justices cited with favor), the court simply enjoined the defendant from engaging in any further unlawful practice of optometry or performance of any acts which could constitute an optometry practice in Oregon.[167]

Other examples of quo warranto proceedings brought against corporations involved price fixing of fruit in North Dakota,[168] the failure of a Missouri fairgrounds to fulfill the central purpose of its franchise promoting agriculture when it only provided a racetrack and gambling enterprise,[169] and illegal gambling in Ohio.[170] A survey undertaken in 2005 found that corporations throughout American history had been "executed" for such transgressions as failing to lay railroad tracks by a promised date, monopolizing sugar, engaging in real estate fraud, false advertising, serving polluted water, self-dealing, and for failing to remove a corporate president who had been convicted four times in one year for illegally selling booze.[171]

Such infractions worthy of corporate capital punishment seem all too pedestrian and perhaps even comical compared to today's newsfeeds.[172]

---

162 *Id.* at 310.

163 *Id.* at 309–11 (holding that although the company employed registered optometrists, the corporation itself unlawfully held itself out as an optometrist and practiced through licensed employees).

164 *Id.* at 312.

165 *Id.* at 311.

166 *Id.* at 315.

167 *Id.*

168 State *ex rel.* Langer v. Gamble-Robinson Fruit Co., 176 N.W. 103, 103 (N.D. 1919).

169 State *ex rel.* Hadley v. Delmar Jockey Club, 92 S.W. 185, 189 (Mo. 1906).

170 State *ex rel.* Crabbe v. Thistle Down Jockey Club, Inc., 151 N.E. 709, 709 (Ohio 1926).

171 Cray & Drutman, *supra* note 56, at 320–21.

172 *See, e.g.*, *supra* notes 2–4 and accompanying text.

IV. THE VALUE OF QUO WARRANTO IN HOLDING CORPORATIONS ACCOUNTABLE

"Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?"
—Edward, First Baron Thurlow, 1731–1806[173]

This Part touches upon three areas of modern corporate litigation which quo warranto may be uniquely situated to solve in the wake of *Loper Bright*: punishing artificial persons, handling widespread harmful effects, and influencing wealthy and powerful enterprises.

A. Enforcing Control Over Artificial Persons

Corporations have long been defined as "artificial" persons.[174] How is it possible to punish an artificial person, since the corporation cannot be thrown into prison? Punishments for corporations are markedly different from those against individuals. For an individual offender who—by virtue of having no significant resources—may not be deterred by an uncollectible $5 million judgment, the threat of incarceration may yet stay her hand.[175] For a corporation which cannot be incarcerated, what then is the deterrent? Scholars have argued that no such sufficient deterrent exists.[176] Do these artificial persons have any reason to obey our laws? Or do they simply pay whatever fines or penalties are levied against them, pass on the cost by means of increased prices, and then continue unscathed on their merry way, trampling over our rules, policies, and laws?[177] The latter scenario seems especially likely in a society where states' power to use quo warranto to deter corporate wrongdoing has been almost universally abandoned.

There may yet be a double-edged sword embedded in the constitutional protections granted so frequently to corporations by American courts which may

---

[173] John C. Coffee, Jr., "*No Soul to Damn; No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386, 386 (1981) (quoting Edward Thurlow, *found in* 1 ARCHIBALD ALISON, THE HISTORY OF EUROPE FROM THE FALL OF NAPOLEON TO THE ACCESSION OF LOUIS NAPOLEON 56 (1852)).

[174] *See, e.g.*, Gulf, C. & S. F. Ry. Co. v. Ellis, 165 U.S. 150, 154 (1897) ("The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called 'corporations' any more than they can be in respect to the individuals who are the equitable owners of the property belonging to such corporations.").

[175] Coffee, *supra* note 173, at 390.

[176] *See, e.g.*, *id.*

[177] For a more robust discussion of this issue, see *id.* at 401–02 (arguing that corporations do not bear the real cost of punishment because financial penalties are shifted to shareholders, workers, and ultimately consumers through layoffs and higher prices, permitting firms to absorb fines as operating expenses while continuing misconduct largely undeterred).

help answer this question. The issue of corporate personhood is hardly settled.[178] Varying Supreme Court decisions paint an inconsistent mosaic of rights and protections for corporations under constitutional provisions.[179] Yet the main issue seems clear: even if full personhood protections were to apply to corporations, the corporate death penalty—corporate charter revocation and dissolution—may be enforced, just as it may be enforced against natural persons (even though that issue itself is hardly settled).[180] Indeed, modern jurisprudence permits capital punishment for humans under certain circumstances.[181] Such an extreme penalty may be allowed, or even necessary, when it is not "'grossly out of proportion to the severity of the crime,'" if legislatures deem it necessary.[182]

It seems obvious that legislatures have deemed corporate capital punishment to be necessary at times, given the number of states, like Delaware, which continue to have quo warranto statutes on the books.[183] And as to the scope of the crimes which corporations, as opposed to singular individuals, are able to commit, one need look no further than the popular examples of the tobacco industry giants, automakers, or even the singular company BP, whose environmental and human harms are almost incalculable and certainly unprecedented.[184]

In reality, precedent already exists for exactly this sort of capital punishment within current corporate law. As late as the 1960s, the U.S. Supreme Court spoke in no uncertain terms when, in supporting the remedy of complete divestiture in an antimonopoly case, it declared that "courts are authorized, indeed required, to decree relief effective to redress the violations, whatever the adverse effect of such a decree on private interests."[185] The Court continued, "it is well settled that once the

---

[178] *See* Drew Isler Grossman, Note, *Would a Corporate "Death Penalty" Be Cruel and Unusual Punishment?*, 25 CORN. J.L. & PUB. POL'Y 697, 699 (2016).

[179] *See id.* at 698–99 (writing that "the Supreme Court's explanations of when and why the law should treat a corporation as a person are inconsistent and somewhat unsatisfactory," and that the Court has "addressed Bill of Rights protections [for corporations] in a piecemeal fashion, unsure what rights are 'personal,' what rights are 'universal,' and whether the distinction should matter" (footnote omitted)); *see also* First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 778–79 n.14 (1978) (noting a realm of "purely personal" guarantees that do not extend to corporations). *But see* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 357–58 (2010) (dismissing the dictum in Bellotti).

[180] Coffee, *supra* note 173, at 713.

[181] *Id.*

[182] *Id.* (quoting Gregg v. Georgia, 428 U.S. 153, 173, 187 (1976)).

[183] *See, e.g.*, DEL. CODE ANN. tit. 8, § 284 (2026); WASH. REV. CODE § 7.56 (2024).

[184] *See* Rena Steinzor & Anne Havemann, *Too Big to Obey: Why BP Should Be Debarred*, 36 WM. & MARY ENV'T L. & POL'Y REV. 81, 97–98 (2011) (chronicling BP's long record of fatal workplace accidents, environmental crimes, and systemic safety failures, culminating in the Deepwater Horizon disaster and producing human harms of unprecedented scope that resist meaningful quantification).

[185] United States v. E. I. du Pont de Nemours & Co., 366 U.S. 316, 326, 331–34 (1961)

Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor."[186]

It is worth noting here that severe punishments already exist under modern corporate law. As one example, under the National Banking Act, charters may be revoked if bank executives or directors "knowingly commit, or allow employees to commit, violations" of the Act.[187]

There is a pressing need to find a way to hold these corporations responsible when they commit violations of laws that our society has determined important enough to enact. Can fines, jury damages, and other economic-based penalties truly "approximate prolonged incarceration?"[188] Perhaps not. But perhaps quo warranto could.

B. Handling Widespread Harmful Effects

What if all of us are injured by a corporation's actions? All the citizens of a state wronged by a corporation's violation of a law? The violation may be egregious, but the insular harm to each citizen is negligible at best. What then?

A quo warranto case from Pennsylvania may have some of these answers. There, the attorney general sought to revoke the right of a baseball club to continue to play because it engaged in business activity.[189] The business activity? Playing a baseball game and charging ticket prices for admission on a Sunday, in violation of Christian-based laws.[190] While the baseball club survived the action, it was nonetheless reprimanded by the court.[191]

What is important about this case, however, is that there is hardly an acute, namable victim of the club's wrongdoing. Its only "sin" was to play a game on a Sunday, and charge tickets for the viewing. No citizen's rights were trampled; no one who did not want to be involved had to buy a ticket. Yet the attorney general and the court both agreed that such a violation of the law warranted the writ and a remedy.[192] The court's commentary on this issue is enlightening for modern

(holding a district court's remedy of partial divestiture in an antitrust case inadequate because "under this arrangement there can be little assurance of the dissolution of the intercorporate community of interest which we found to violate the law" and directing complete divestiture).

[186] *Id.* at 334.

[187] Grossman, *supra* note 178, at 713; *see also* David Yellen & Carl J. Mayer, *Coordinating Sanctions for Corporate Misconduct: Civil or Criminal Punishment?*, 29 AM. CRIM. L. REV. 962, 977 (1992) (discussing state and local debarment penalties for corporations).

[188] Diane Marie Amann, *Capital Punishment: Corporate Criminal Liability for Gross Violations of Human Rights*, 24 HASTINGS INT'L & COMPAR. L. REV. 327, 335 (2001).

[189] Commonwealth *ex rel.* Woodruff v. Am. Baseball Club, 138 A. 497, 498–99 (Pa. 1927).

[190] *Id.*

[191] *Id.* at 501.

[192] *Id.* at 498–502.

applications: "It would be an unthinkable proposition that the commonwealth would create organizations to break its own laws."[193] It was not prepared, the court decided, to declare that a violation of a Pennsylvania public law, even without an acute, namable victim of the violation, did not injure the public.[194] Compare this to the following case.

Pruitt v. Allied Chemical Corp., a case out of Virginia in the 1980s, is an excellent example of the limitations of attempting to punish corporations for widespread harmful effects without quo warranto.[195] There, plaintiffs sought to punish the defendant chemical company for negligently contaminating the James River and Chesapeake Bay with the chemical agent Kepone in a run-of-the-mill negligence case.[196] The plaintiffs included various businesses and professionals relying on the vitality of fishing and harvesting of Chesapeake Bay.[197]

One of the key issues in the case was the "directness" of the widespread injury from the contamination—entire categories of potential plaintiffs with damages that were too distant to litigate were excluded from the case for "equity and efficiency" purposes, in an effort to "tailor justice" to the facts because their harm was not sufficiently direct.[198] The court noted that *none* of the plaintiffs suffered "direct harm to [their] property" and that "the plaintiffs . . . obviously do not own the marine life that they harvest or the water in which that life flourishes."[199] Compare this approach to that of the Ohio margarine case, the Puerto Rico farmland case, or the Pennsylvania baseball case, in each of which the concern was rooted in a generalized harm to the public, not to sufficiently "direct" plaintiffs.[200]

In the *Pruitt* case, where simple negligence litigation apparently failed vast numbers of citizens,[201] quo warranto may have had a better chance to right such massive wrongs.

---

193 *Id.* at 500.

194 *Id.* at 499–500.

195 Pruitt v. Allied Chem. Corp., 523 F. Supp. 975, 976–77, 980 (E.D. Va. 1981).

196 *Id.* at 976.

197 *Id.* at 976 n.1.

198 *Id.* at 980.

199 *Id.* at 976 n.3, 980 (concluding that it was necessary to limit liability, and that "plaintiffs who purchased and marketed seafood from commercial fisherman suffered damages that are not legally cognizable, because insufficiently direct," even though the defendant's acts were foreseeable; meanwhile the court held that the plaintiffs who suffered losses "as a result of defendant's tortious behavior" did have a legally cognizable claim).

200 *See supra* notes 134–40, 151–59, 189–94 and accompanying text.

201 *Pruitt*, 523 F. Supp. at 976–77, 979–80 (holding that plaintiffs who suffered only indirect economic losses from pollution were barred from recovery as their damages were not sufficiently direct).

C. Influencing the Influential

The problem of holding large, powerful, influential corporations accountable has been well documented.[202] Nor is this strictly a modern problem. As far back as 1869, Georgia's Supreme Court voiced this same concern:

> All experience has shown that large accumulations of property, in hands likely to keep it intact for a long period, are dangerous to the public weal. Having perpetual succession, any kind of a corporation has peculiar facilities for such accumulation, and most governments have found it necessary to exercise great caution in their grants of corporate powers. . . . [Corporations] are able to add field to field, and power to power, until they become entirely too strong for that society which is made up of those whose plans are limited by a single life.[203]

Consider again, too, the *Pruitt* case discussed above. The case took a frustrating turn after the corporation defendant was ordered to pay more than $15 million as punishment for its negligent activity dumping the dangerous Kepone into waterways.[204] However, even in the face of proven widespread environmental and economic damage, the court felt compelled to soften the blow to the powerful corporation (perhaps for political reasons) by allowing it to receive a credit for $8 million paid to establish a charitable foundation.[205] Unfortunately for the citizens of Virginia, the corporation was able to take a significant tax credit for the charitable donation which it would not have been able to take had it simply paid the full amount as a penalty, saving the company upwards of $4 million.[206]

How far justice has changed from the days of corporate capital punishment for sneaking yellow coloring into margarine or owning too much farmland, to a softened slap on the wrist and a wink and a nudge for a powerful corporate polluter in Virginia.

Even the power of punitive damages—the poster child for punishments capable of capturing the attention of massively wealthy and powerful interests and a remedy traditionally designed to deter others similarly situated from engaging in the same conduct—has in modern times been eroded to a shadow of its intended power. A 2024 personal injury case before the Oregon Supreme Court highlights this point. In *Trebelhorn v. Prime Wimbledon SPE, LLC*, a jury awarded the plaintiff—injured when his foot broke through an area of concrete on an upper-level walkway weakened by dry rot—$300,000 in compensatory damages

---

202 *See, e.g.*, Steinzor & Havemann, *supra* note 184, at 83–84.

203 Katie J. Thoennes, Comment, *Frankenstein Incorporated: The Rise of Corporate Power and Personhood in the United States*, 28 HAMLINE L. REV. 203, 206 (2005) (alterations in original) (quoting Cent. R.R. Co. v. Collins, 40 Ga. 582, 629 (1869)).

204 Coffee, *supra* note 173, at 458 n.199.

205 *Id.* at 458 n.200.

206 *Id.*

and $20 million in punitive damages.[207] The supreme court relied on *BMW of North America, Inc. v. Gore*'s three principles in analyzing the reasonableness of the punitive damages.[208] The court recited the fact that the defendants "ignored the safety risks" and determined that a reasonable juror could conclude the defendants "put their profits ahead of the safety of the residents."[209] An expert in life safety construction issues testified that there was "imminent danger" throughout the apartment complex, which was "one of the 'most dangerous' residential properties he had seen in commercial use, and that he did not believe it was 'safe for occupancy.'"[210] Such evidence, according to the court, established an *enhanced* culpability.[211]

However, the Oregon Supreme Court affirmed the trial court's significant reduction of the punitive damages despite the jury finding the existence of this enhanced reprehensibility, limiting the final amount of the punitive damages against each defendant to approximately $3 million.[212] The Oregon Supreme Court was influenced by constitutional concerns about due process and the uncomfortably large delta between the compensatory damages and the punitive damages.[213] In the wake of such a reduction, then, how are the purposes of deterrence and punishment served?

The solution to this conflict may lie outside personal injury litigation. In fact, quo warranto powers are still available by law in Oregon.[214] The corporate crime in *Trebelhorn*, covering up rotting structures to feign safety and save money while allowing 600 families to continue living in the "most dangerous" complex,[215] offends the fundamental right of human shelter. If quo warranto were to see a resurgence, the state itself might be moved to take action to protect its citizens, and even effect change *before* an unfortunate soul is hurt.

---

[207] Trebelhorn v. Prime Wimbledon SPE, LLC, 544 P.3d 342, 345 (Or. 2024).

[208] *Id.* at 348–49; *see also* BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 575 (1996) (listing the three guideposts for assessing the excessiveness of punitive damages as: (1) "the degree of reprehensibility" of the defendant's conduct; (2) "the disparity between the harm or potential harm suffered" and the punitive damages award; and (3) the difference between the punitive damages award and "civil penalties authorized or imposed in comparable cases").

[209] *Trebelhorn*, 544 P.3d at 349, 353.

[210] *Id.* at 352 (quoting testimony of the expert).

[211] *Id.* at 362.

[212] *Id.*

[213] *Id.*

[214] *See* OR. REV. STAT. § 34.810 (2025) (abolishing the writ of quo warranto but providing that the "remedies heretofore obtainable under" quo warranto "may be obtained by action in the mode prescribed in ORS 30.510 to 30.640").

[215] *Trebelhorn*, 544 P.3d at 352.

V. POTENTIAL OBSTACLES TO A REVITALIZATION OF QUO WARRANTO

While quo warranto appears well-equipped to begin to address some of the problems with holding large corporations accountable, it is by no means a flawless panacea. Legitimate concerns about its effectiveness can be found in, for example, the sometimes difficult nature of scrutinizing charters to find instances of ultra vires actions.[216] Additionally, time has proven that judicial dissolutions have sometimes "left closed factories and terminated employees in their wake," with investors becoming hesitant to resume an executed firm's operations.[217] Quo warranto and its accompanying judicial and executive "opportunism," so the argument goes, led to a significant reduction in the market value of the country's largest corporations.[218] If purely economic concerns drive the analysis, then perhaps quo warranto corporate revocations may cause some measure of economic harm while attempting to cure other harms.

Likewise, there is a concern among scholars that political pressure exerted by wealthy, powerful corporations may serve to prohibit effective use of quo warranto charter revocation by states where attorneys general are elected and may need to account for their actions under the foundational theory of personal accountability.[219] Another risk of a corporate charter revocation in one state is that the operators of the business may simply seek a safe harbor in another state.[220]

As with any human endeavor, however, there are bound to be drawbacks and setbacks. But just as with all of humanity's successes and triumphs, the risk of failure should not deter the effort. For in reality, the alternative may be too noxious to bear. In 1830, a Jeffersonian political economist bemoaned the state of the American business corporation: "Generally in this country, it has glutted itself by incorporating banking companies, insurance companies, canal companies, and manufacturing companies of various descriptions. All these are increasing daily, the list of public nuisances."[221] Now, as then, something must be done, even if that

---

216 Seymour, *supra* note 14, at 127, 132.

217 *Id.* at 135–36.

218 *Id.* at 136.

219 *See, e.g.*, Cray & Drutman, *supra* note 56, at 320–21 (discussing the case of Unocal, which committed many environmental violations and participated in "unspeakable" human atrocities in Afghanistan and Burma, for which a citizen-led group petitioned the attorney general to initiate quo warranto proceedings, but ultimately failed).

220 This is precisely what occurred when many of the sugar trusts, dissolved by quo warranto actions, resurrected as New Jersey corporations. *See* Seymour, *supra* note 14, at 137–39. *See generally* Cray & Drutman, *supra* note 56 (providing a more in-depth analysis of the strengths and weaknesses of quo warranto actions).

221 THOMAS COOPER, LECTURES ON THE ELEMENTS OF POLITICAL ECONOMY 246 (2d ed. 1831).

something is an imperfect or sometimes flawed approach.

Beyond these practical concerns, the next Part addresses potential major obstacles to a revitalization of quo warranto for the modern world.

A. *Constitutional Issues of Due Process and Equal Protection*

Constitutional doctrines can muddy the waters of quo warranto actions and have been used in arguments by both sides.

From the plaintiffs' side, for example, concerned citizens in California during the 1970s attempted to argue that traditional quo warranto limitations—whether derived from common law or statutory codification—providing that attorneys general were the sole parties authorized to bring quo warranto actions were unconstitutional under both the California and United States Constitutions.[222] They argued that this rule of exclusivity deprived them of equal protection under the law.[223] The California Court of Appeals was disinclined to acquiesce to this argument. It held that the charter at issue was not beyond attack merely by function of its ratification and because only the attorney general could bring a quo warranto action.[224] While the attorney general declined to pursue the requested quo warranto action—going so far as to provide a lengthy written response with well-reasoned and articulated analysis—in the court's view, that refusal did not result in any unequal protection with respect to the petitioners seeking the writ.[225] Instead, the court determined that the alternative remedy of citizens petitioning to compel the attorney general to bring the suit on the people's behalf (as happened in the case) satisfied the equal protection concerns.[226]

Defendants have likewise raised equal protection arguments, but so far appear to have been generally unsuccessful, thanks to a ruling from the U.S. Supreme Court in *Hammond Packing Co. v. Arkansas*.[227] In that case, the state had sought penalties against a corporation for violations of state antitrust laws.[228] Defendants argued due process barred the state's intrusion into its business and records, but the Supreme Court rejected this argument as "unsound" by virtue of the state's inherent interest in knowing "whether the business of a corporation was being carried out in a lawful manner."[229]

The defendants in *Standard Oil Co. of Indiana v. Missouri* raised the question of the constitutionality of quo warranto ousters by attempting to argue that a state's

---

[222] Oakland Mun. Improvement League v. City of Oakland, 23 Cal. App. 3d 165, 171 (1972).

[223] *Id.* at 171.

[224] *Id.* at 171–72.

[225] *Id.* at 172.

[226] *Id.* at 172–73.

[227] Hammond Packing Co. v. Arkansas, 212 U.S. 322 (1909).

[228] *Id.* at 330.

[229] *Id.* at 347–48.

action terminating a corporation's right to do business within its borders amounted to an abrogation of the federal government's interstate economic powers.[230] The Supreme Court seemed to punt on this issue rather than address it directly:

> This [Missouri quo warranto] statute which, it is said, will deprive plaintiffs of the right to do interstate business, is not before us. We have no right to assume that it will be applied so as to interfere with any right, which plaintiffs have, under the Constitution, to do interstate business.[231]

The Eighth Circuit Court of Appeals, however, later faced the issue directly:

> The question of the violation of subdivision 3, section 8, article 1, of the Constitution, referring to the right of Congress to regulate commerce among the several states, could hardly be seriously urged as a reason for holding the quo warranto action as unconstitutional. While the Brictson Manufacturing Company was organized under the laws of South Dakota, the principle [sic] place of business was the state of Nebraska. Its real estate was in Nebraska; likewise its head offices, and its operations were there conducted. There was no interference on the part of the state with the right of Congress to regulate interstate commerce.[232]

Another constitutional challenge that stands in the way of any revitalization of quo warranto is the somewhat skewed legacy of the Fourteenth Amendment. As one legal scholar has posited, this amendment stands as an example of how corporations have been able to skirt or ignore power-curbing reforms.[233] Somewhat surprisingly, between 1868—when the Fourteenth Amendment was ratified—and 1912, only 28 Supreme Court cases involved the rights of African Americans, while a staggering 312 cases dealt with the rights of business corporations.[234] The Fourteenth Amendment, of course, had been ratified specifically to protect the rights of recently freed African American slaves after the Civil War.[235] Indeed, during this period when the Supreme Court hesitated to interpret the amendment broadly and allowed Jim Crow laws to continue to deny freed slaves equal citizenship, it had no qualms interpreting the very same amendment broadly to the benefit of corporate interests in striking down laws regarding wages, labor relations, and zoning.[236]

---

[230] Standard Oil Co. of Ind. v. Missouri, 224 U.S. 270, 274 (1912).

[231] *Id.* at 290.

[232] Brictson Mfg. Co. v. Close, 25 F.2d 794, 801 (8th Cir. 1928).

[233] Adam Winkler, *The Long History of Corporate Rights*, 98 B.U. L. REV. ONLINE 64, 67 (2018).

[234] *Id.* at 67.

[235] *Id.* at 66.

[236] *Id.* at 66–67 (providing the example of *Lochner v. New York*, 198 U.S. 45, 52 (1905), where the Supreme Court struck down a New York statute which forbade bakery employees from working more than 60 hours per week or 10 hours per day, and instead finding that the cap on hours would be a violation of the Fourteenth Amendment).

The heart of this problem is the Supreme Court's decision that corporate fictions are to be treated as persons under the Constitution and afforded the full faith and credit of its protections, including against unequal protection and due process: "Using the [Fourteenth] Amendment . . . . [t]he high court ruled that elected legislators had been taking corporate property 'without due process of law.'"[237] This chain of constitutional protection extends nearly as far back as the American judiciary itself. *Bank of the United States v. Deveaux*, an 1809 case, saw Chief Justice John Marshall determine—somewhat "creatively," according to one writer—that the people who organized the corporation were citizens with rights, and the corporation should be able to stand in and assert those rights.[238] Later, in 1886, the Supreme Court again addressed the application of the Fourteenth Amendment to corporations. Prior to oral argument Chief Justice Morrison Waite stated:

> The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.[239]

Constitutional issues will, perhaps, always be with us. In an uncertain future after *Loper Bright*, however, we may find some help from the past in charting a course forward.[240]

B. *The Risk of Double Jeopardy*

What of those cases where a corporation engages in criminal activity and also violates administrative law? Which law will prevail, criminal or civil quo warranto?

In October 1924, the Washington State attorney general exercised the right to bring a quo warranto action under the state's constitution and statutes in an action against an educational corporation in Seattle.[241] The state sought the dissolution of the American University of Sanipractic and the forfeiture of its rights for fraudulently issuing diplomas to students who had not met appropriate qualifications.[242] There, the defendants argued that the attorney general's complaint against them amounted to criminal charges in the form of a civil proceeding, which

---

[237] Grossman & Adams, *supra* note 15.

[238] Bank of the U.S. v. Deveaux, 9 U.S. 61, 89–90 (1809); *see* Winkler, *supra* note 233, at 65.

[239] Thoennes, *supra* note 203, at 210 (quoting Santa Clara Cnty. v. S. Pac. R.R. Co., 118 U.S. 394, 396 (1886)).

[240] For a broader, more in-depth discussion of corporate constitutional issues, see *id.* at 210–11.

[241] State *ex rel.* Dunbar v. Am. Univ. of Sanipractic, 250 P. 52, 52 (Wash. 1926).

[242] *Id.* at 52, 54.

should not stand.[243] This argument echoed the one made in the Ohio case of the yellow margarine.[244] The court's research revealed the general rule at the time was that quo warranto proceedings against corporations were civil matters which did not bar separate criminal prosecutions against the corporation's officers and agents.[245] The court quoted at length from a contemporary treatise on the issue to find that quo warranto actions and criminal prosecutions were not a bar to each other.[246] Ultimately, the Washington Supreme Court declared that the attorney general had the right to institute and maintain separate civil and criminal actions, and that the merits of the judgment dissolving the corporation had been sustained.[247]

The general rule discussed in and cited by the Washington case came from the United States Supreme Court decision in *Standard Oil*.[248] *Standard Oil* represents an early antitrust case, where the state brought a quo warranto action against the defendant oil companies for having formed a competition-stifling monopoly "to the great damage of the people of Missouri."[249] The Supreme Court looked to history and determined that "in England before the Revolution, and since that date in most of the American States, including Missouri, quo warranto has been resorted to for the purpose of trying the civil right."[250] Ultimately, the Court concluded that quo warranto proceedings "differ in form and consequence from a prosecution by indictment for violation of a criminal statute. In the one the State proceeds for a violation of the company's private contract—in the other it prosecutes for a violation of public law."[251] There are echoes here of Justice Marshall's *Dartmouth* contract-based analysis—divorcing contract law from criminal law—but this time to the support rather than the detriment of quo warranto proceedings:

> The corporation may be deprived of its franchise for nonuser—a mere failure to act. It may also be deprived of its charter for that which, though innocent in itself, is beyond the power conferred upon it as an artificial person. If, however, the act of misuser is not only ultra vires but criminal, there is no merger of the civil liability in the criminal offence. Separate proceedings may be instituted—one to secure the civil judgment, and the other to enforce the criminal law. Both cases may involve a consideration of the same facts; and evidence warranting a judgment of ouster may be sufficient to sustain a conviction for crime. A judgment may in one case sometimes be a bar to the

243 *Id.* at 54.

244 *See supra* notes 134–40 and accompanying text.

245 *Dunbar*, 250 P. at 54.

246 *Id.*

247 *Id.* at 55.

248 Standard Oil Co. of Ind. v. Missouri, 224 U.S. 270, 281 (1912); *see supra* text accompanying notes 230–31.

249 *Id.* at 272.

250 *Id.* at 282 (emphasis omitted).

251 *Id.* at 288.

> other; but neither remedy is exclusive. The double liability, in civil and criminal proceedings, finds its counterpart in many instances, as, for example, where an attorney is disbarred or ousted of his right to practice in the court because of conduct for which he may likewise be prosecuted and fined.[252]

As long as *Standard Oil* remains good law, any demurrer motion based on principles of double jeopardy will likely be unsuccessful, especially in jurisdictions where quo warranto has not been historically treated as a criminal matter.

C. *Practical Limitations on Standing to Bring Quo Warranto Actions*

The majority law across American jurisdictions is that only a select few may bring quo warranto actions, and often only attorneys general.[253] Wisconsin is one of the minority states which allows for a private party to bring a quo warranto action when the attorney general refuses to act.[254] Michigan similarly allows citizens to bring quo warranto actions only by leave of the court, or by petition to the attorney general to bring the action.[255] It is worth noting, however, that this procedure may have a chilling effect, because a citizen who asks the Michigan attorney general to bring a quo warranto action may be required to indemnify the state for all costs and expenses of the proceeding.[256]

Qui tam proceedings have been proposed as a potential end-run around this problem. In instances where statutes may be silent on the right, citizens concerned enough about corporate wrongdoing, according to the proposal, might nonetheless bring an action under qui tam against the attorney general to force the filing of a quo warranto action, or to allow the citizens to pursue the action themselves.[257] There is some measure of historical support for this notion. Andrew Jackson's presidency in the early 1800s reflected an anti-corporate sentiment, and his remarks on the matter reveal the power and necessity of this very public right to reign in corporations:

> [W]hen the laws undertake . . . to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and

---

[252] *Id.* at 288–89; *see* Trs. of Dartmouth Coll. v. Woodward, 4 U.S. 518, 706 (1819).

[253] *See, e.g.*, CAL. CIV. PROC. CODE § 803 (West 2026) ("An action may be brought by the attorney-general, in the name of the people of this state . . . against any corporation . . . .").

[254] *See* WIS. STAT. § 784.04(2) (2025) ("Such action may be brought in the name of the state by a private person on personal complaint when the attorney general refuses to act.").

[255] MICH. CT. R. 3.306(B)(2)–(3) (West 2026).

[256] *See id.*

[257] *See* Ryan C. Drake, Comment, *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, 269 (2008) (explaining that qui tam proceedings are proceedings that allow private citizens to bring a suit against a wrongdoer on behalf of the government and then share in the recovery, allowing private citizens to "prosecute government procurement and program fraud").

> laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government.[258]

Until the right to bring quo warranto is expanded, or until qui tam actions begin to effectuate this same goal, care must be taken that only the appropriate party brings an action. If a party without sufficient standing attempts to bring the action, it will risk a prejudicial dismissal.

D. Pushback from Political and Corporate Circles

A contrary voice to the revitalization of quo warranto actions has argued that the current state of the law, which focuses on regulation rather than revocation, is an "equilibrium" of powers benefiting all parties.[259] Note, however, that this argument may have been weakened by the *Loper Bright* decision throwing the regulatory law sector into some chaos.

Further, it has been argued that the "best and simplest way" to preserve this beneficial equilibrium is to leave in place the checks and balances of Delaware corporate law.[260] It is also easy to predict that corporate interests themselves might raise hue and cry were quo warranto efforts to be revitalized. This has happened in the past, when "powerful investors" sought to influence governors and state attorneys general against bringing quo warranto actions.[261] And yet—despite the vast number of companies incorporated in Delaware—somewhat surprisingly, Delaware's statutory scheme continues to include specific authority to use quo warranto actions.[262]

It would hardly be feasible for those same corporations which have deliberately chosen Delaware as their place of incorporation to argue against a renewed enforcement of a statute long existing on Delaware's books—by consenting to incorporation in Delaware, these corporations subject their internal affairs to Delaware corporate law, including statutes already on Delaware's books whether or not those provisions are frequently invoked.

---

258 ARTHUR M. SCHLESINGER, JR., THE AGE OF JACKSON 90 (1945).

259 Seymour, *supra* note 14, at 116 ("[M]odern corporate law's system of checks and balances curbed longstanding abuses and ushered in an equilibrium among the branches that has served as a foundation for economic growth in the United States ever since." (footnote omitted)).

260 *Id.* at 152–53. Delaware has enacted a successful separation of powers regime in its corporate law by: (a) "prevent[ing] legislative domineering by prohibiting incorporation by special charter and requiring super-majorities to pass any corporate statutes"; (b) "adopting a modern corporate code" that allowed incorporators, rather than the state to define a corporation's powers and internal governance structures, and checked the executive branch's power; and (c) insulating the judiciary from the executive branch and "vest[ing] the courts with significant policy-making authority over corporate law." *Id.* at 140–42.

261 *Id.* at 126–27 (noting that governors and state attorneys general in the Early Republic "frequently declined to enforce charter restrictions," sometimes "in fear of powerful investors").

262 *See* DEL. CODE ANN. tit. 8, § 284 (2026).

CONCLUSION

"One check to industry . . . was the erecting of corporations; an abuse which is not yet entirely corrected."[263]

It may prove difficult, if not impossible, to know the true net effect of a resurgent use of quo warranto across modern American courts; perhaps the effort would be successful, or perhaps it would fail spectacularly. What is clear, however, is that the modern remedies of antitrust regulation and competition have done little to deter corporate wrongdoing or curb exercises of corporate monarchical power.[264] In an age when behemoth companies, like tobacco giants, continue to ship millions of deadly products to addicted consumers, or when BP continues to reap massive wealth earned at the expense of so many once-pristine waterways, any option seems better than inaction. The "beneficial equilibrium" has only benefitted one side: the corporations.[265]

Perhaps it is time to return to the early days of the American Revolution, when massive corporations were treated with as much disdain as the tyrannical monarchs of England and, rightly or not, were feared as threats to American sovereignty.[266]

If such an extreme path is not the most popular, then perhaps a return to the days of Ohio in the early 1900s might be the solution, when courts were so concerned about actions injurious to the public that they deliberately looked past intent and focused on harmful results.[267] Or when courts looked at "persistent, defiant, and flagrant acts" and decided they had "no other course" than complete dissolution.[268] Through this lens, the modern landscape of broad environmental and human harms and of repeated patterns and practices of abuse and wrongdoing cry out for justice.

This is not a new call, with voices raised in favor of stronger quo warranto nearly a hundred years ago. To that call, I add my own voice. In an age of vast corporate power and chaos caused by the *Loper Bright* decision, the time seems ripe for a new experiment, a revitalizing of what has worked before, to begin to claw back the power and influence of the sovereign corporate powers.

---

[263] 3 DAVID HUME, THE HISTORY OF ENGLAND: FROM THE INVASION OF JULIUS CAESAR TO THE REVOLUTION IN 1688, at 79 (Liberty Classics 1983) (1778).

[264] NADER ET AL., *supra* note 58, at 84.

[265] *See* Seymour, *supra* note 14, at 155–56 (celebrating a separation-of-powers "equilibrium" that limits public enforcement in corporate affairs and prioritizes investor protection over regulatory intervention).

[266] *See* discussion *supra* Section II.A.

[267] *See* State *ex rel.* Att'y Gen. v. Interstate Sav. Inv. Co., 60 N.E. 220, 231 (Ohio 1901); *see also supra* Section III.D.1 (analyzing early quo warranto actions in 20th-century Ohio).

[268] *See* State *ex rel.* Monnett v. Cap. City Dairy Co., 57 N.E. 62, 66 (Ohio 1900).

In the 1970s, Nader asked, "Who rules the corporation?"[269] The answer should be, as it was in the beginning: citizens, through their representatives—after all, reining in corporate enterprise played a key role in the development of the American experience of sovereignty and liberty. The Supreme Court seems to agree, based on its recent line of reasoning bemoaning the explosion of the administrative state and rolling back of regulatory deference to return some power to the hands of the sovereign states.

There is a reason why the most powerful symbol of American justice is a goddess, blindfolded, holding scales in one hand and a sword in the other. Corporations would have us forget the sword in her right hand, but there it remains at the ready.

---

[269] NADER ET AL., *supra* note 58, at 86.