

**Striking at the Heart of Corporate Polluters:
Resurrecting Quo Warranto Proceedings to Revoke Corporate Charters
By: Mark Willis**

I. Introduction

One historian characterized the Battle of Bunker Hill as “a tale of great blunders, heroically redeemed.”¹ After key mistakes were made by both American and British commanders, and unable to obtain the aid of nearby American soldiers, the farmers and other ordinary citizens comprising the colonial troops at Bunker Hill bravely fought professional British forces.² Eventually, the poorly supplied soldiers ran out of ammunition and resorted to fighting with rocks and the barrels of their guns.³ Although the brave men who fought at Bunker Hill were eventually forced to retreat following a third British advance, the colonies used the battle as a rallying call and eventually defeated the British, winning their independence.

A second, less known, Battle of Bunker Hill occurred three thousand miles west of and almost exactly two hundred years after the original. Here, in the early 1970s, near the small town of Kellogg, Idaho, the Bunker Hill Co. disregarded local and federal environmental regulations and began polluting at unprecedented rates, severely injuring the health of its employees and local children, as well as the pristine surrounding natural environment. Amidst a cloud of smoke, this time laced with lead rather than gunpowder, blunders were again made on both sides; by both the government, and Bunker Hill Co. itself. And like an echo of the original Battle of Bunker Hill, the employees of Bunker Hill Co. and local Kellogg residents, armed with inadequate weapons and little support, fought bravely for their community and children, but were defeated in the end. However, the battle against corporate pollution has not ended, and the whites of their eyes are in

plain view. If citizens and government officials can find new courage, learn from past mistakes, and employ the appropriate legal weapons to challenge the legitimacy of corporations like the Bunker Hill Co., America can still win out against corporate pollution.

Widespread corporate pollution has existed for longer than people have recognized it as a threat. Once we learned of the harmful effects that pollution, left untamed, could inflict upon both people and the environment, governments passed legislation to help alleviate the problem. Whether these regulations are strict enough to solve the world's environmental crisis, even if always enforced, remains unclear. What is clear is that in certain situations, corporations are not deterred by the current regulations or other legal authority, and engage in illegal polluting. One possible legal weapon that either the government or private citizens could possibly employ to effectively attack corporate polluters, undeterred by traditional methods of environmental enforcement, is charter revocation. An underused tool within the legal arsenal, quo warranto and other involuntary corporate dissolution methods may be the key to rectifying situations involving corporations significantly polluting the environment, and deterring other corporations from choosing that path in the future.

Part II of this article will follow the later stages in the life of the Bunker Hill Co. ("Bunker Hill"). Hopefully, through the use of a real life example, this section will provide the reader with a thorough understanding of how a corporation nearing the end of its useful life, might cut pollution control corners to maintain profitability regardless of the consequences.

Part III of the discussion will turn to the history of corporate evolution in the United States. It will track the 180 degree turn, beginning with the corporation as a useful tool for the government to provide services for the “public good” in colonial America, and ending with corporation as a “personality” in and of itself, subservient only to the interests of its shareholders and the choices of its managers. Finally, it will survey current regulatory attempts at pollution control and indicate possible gaps where these laws break down and the reasons they fail to prevent corporate pollution in some circumstances.

Part IV of the article explores various mechanisms through which the government and private parties can attempt to revoke the charters of the most egregious corporate polluters. Focusing primarily on the development and use of the ancient doctrine of quo warranto, this section analyzes whether charter revocation is a viable solution for corporate polluters that cannot be deterred by traditional environmental regulation.

Part V of the article explores legal roadblocks to the corporate dissolution methods discussed in Part IV. It discusses the reduced and disfavored use of charter revocation, by both judges and government officials, as a means to prevent illegal corporate conduct. It also surveys possible avenues private individuals and non-governmental organizations can take to initiate these proceedings either themselves or by compelling an appropriate government official. Finally it proposes either an expansion of the common law or legislation to allow private individuals and “informers” to use qui tam, another ancient legal doctrine, to initiate quo warranto proceedings.

II. The Bunker Hill Company

People living in Kellogg, Idaho need not spend ten dollars to go see John Travolta or Julia Roberts starring in a blockbuster movie to witness the dramatic effects corporate pollution can have on a community. They need only look out their kitchen windows to observe the scars left by a heartless corporation, more interested in producing record profits than in the health of its neighbors.

The story of Bunker Hill is a tragedy about greed. It is about a government, motivated largely by tax revenue, but also by campaign contributions and maintaining employment. It is about a corporation, driven more than most by increasing profits, even when nearing the end of its useful life. It is about a corporation holding the interests of a small local community in its iron fist and squeezing it harder during its most difficult times. It is about a small town, subject to continuously degrading labor and environmental conditions, but dependent upon a corporation for its subsistence, and lacking significant economic or political capital of its own. But more than anything, the story of Bunker Hill is about all these actors turning their heads, knowing that Bunker Hill was violating environmental laws, but afraid to challenge their economic and political might. However, after Bunker Hill's management looted its corporate assets, transferring much of it to offshore bank accounts, and then left the United States themselves, the federal government, the state of Iowa, and the local communities were left holding the bill; a bill that included sick children, thousands of unemployed men and women, and more than \$200 million in environmental cleanup costs. Bunker Hill can teach us all that, sometimes, environmental regulations and tort actions do not provide a sufficient deterrent to corporate pollution, and in these instances more drastic measures must be taken to protect the health of citizens and the environment.

The Bunker Hill mine was discovered in 1885 by Noah Kellogg and other proprietors who possessed incredible foresight in naming the mine after the revolutionary War battle.⁴ The Bunker Hill Company was incorporated in 1887.⁵ During the next eighty years, Bunker Hill maintained a philosophy of maximizing profits above everything.⁶ Miners were continuously subject to hazardous work environments, and the disputes between labor and management would eventually become famous. Initially, the company mined both silver and lead, and shipped the ore to a lead smelter in Montana.⁷ Eventually Bunker Hill officials built a lead Smelter at Kellogg, believing that its small population would not complain about smelter smoke, and began smelting operations in 1917.⁸

Bunker Hill's horrendous environmental track record began in 1899 when local farmers complained about debris from mining and milling operations washing into the Coeur d'Alene River and eventually terminating in the pristine Lake Coeur d'Alene. The company dealt with this pollution problem by employing the same tactics that repeated in later situations: "seek technological solutions; combat claims in court with all of the company's considerable resources; try to assuage damages with financial offers; and continue production regardless of the status of the claims."⁹ The poor local farmers could not compete with Bunker Hill's resources and political power, and so had little chance of obtaining an injunction.¹⁰ These pollution control problems soon became the rule and would last for the remaining eighty years of the corporation's life.

The miners at Bunker Hill built the community of Kellogg, nearby to the Bunker Hill mine.¹¹ While Kellogg was not actually a company town, the majority of its residents relied on Bunker Hill for employment.

The ownership of Bunker Hill changed in 1968, as Gulf Resources Corporation (“Gulf”), a Texas company, acquired the previously independent Bunker Hill in a hostile takeover.¹² Gulf would run Bunker Hill until its dissolution in 1981. Robert Allen, the president of Gulf, acted as the absentee director of Bunker Hill from then on, despite his unfamiliarity with the labor and environmental situations in Kellogg.¹³ Gulf soon placed even greater pressure on the Bunker Hill management to increase profits; interesting advice for a company that already had a history of increasing profits at all costs.¹⁴

Around the same time as the Gulf Takeover, the 1960s and 70s also brought about the enactment of a number of environmental statutes as state legislators and congress responded to increasing public concern over the state of the environment. Because states had not developed adequate environmental protection, the federal government responded with a flurry of statutes that provided the minimum standard for regulation that the states must meet. Mining was no exception to these new rules, and mines a group constituted one of the worst polluters in the country. These statutes would regulate the amount of lead and other pollutants the Bunker Hill Company could release into the air and water.¹⁵ Although Bunker Hill did take some steps to reduce pollution, its primary tactic resembled more of a marketing campaign, publicizing its pollution control effort despite the company’s internal belief that emissions were a major concern for the old and outdated mine operating at maximum capacity.¹⁶ As a backup to its efforts to create a public illusion from its inadequate pollution control efforts, Robert Allen, Richard Nixon’s top fundraiser in Texas, used his considerable political capital to diminish environmental regulatory effects on Bunker Hill.¹⁷

In 1973 a fire disrupted Bunker Hill's already insufficient pollution control efforts, but quite characteristically did not hinder its activities or production. The fire broke out in the smelter baghouse, destroying two of the seven sections and the part of the roof that captured smelter smoke pollution to prevent lead waste from entering the environment.¹⁸ During 1974, before the fire damages were repaired and replacement bags could be obtained, Bunker Hill's absentee owner actually decided to increase the amount of lead processed at the smelter as lead prices soared.¹⁹ An internal company document stated that compensating the inevitably resulting lead poisoned children would cost the company a fraction of what they would gain by continued operation.²⁰ After the fire, lead emissions increased from 11.7 metric tons per month to 35.3 tons per month.²¹ Due to the economic and political power of Bunker Hill, Idaho turned its head and allowed the increased pollution to continue,²² and one Idaho senator actually went so far as to say that environmental safety regulations kept companies from earning enough to stay in business.²³ Bunker Hill's selfish decision paid off as it reported record profits in 1974, however, local Kellogg children would suffer for their greed with some of the highest lead contaminated blood ever documented in the United States.²⁴

The results of the lead contamination were widespread and dramatic, finally grabbing the attention of state officials. Average lead levels in Kellogg children tripled by 1973, with 22 percent exhibiting levels that indicated lead poisoning, and 98.2% having levels which government officials declared dangerous.²⁵ A number of horses and other animals died due to lead poisoning, and local residents were warned against allowing their animals to continue grazing.²⁶ A Kellogg school closed its doors when its lead levels rocketed to 130 times the safe limit.²⁷ Still, Bunker Hill battled the Centers

for Disease Control, in Atlanta, preventing them from conducting a study. Instead, Bunker Hill fought to secure a panel of local experts, incidentally funded by Bunker Hill, who would be sympathetic to the company.²⁸ Eventually, the lawsuits that Bunker Hill anticipated finally arrived. Nine children near the plant displayed symptoms of lead poisoning, including severe headaches, joint pain, respiratory problems, memory and learning problems and a decreased IQ.²⁹ As the dispute progressed, Bunker Hill's own experts claimed that these symptoms were not due to lead poisoning, and instead tried to blame these ailments on testimony indicating that two of the youngsters had been observed smoking marijuana.³⁰ During this time, the survey funded by Bunker Hill, reported that no "permanent clinical impairment or illness has occurred [in Kellogg]," to the disbelief of many Idaho newspaper reports.³¹

Bunker Hill was also forced to defend its pollution control efforts on other fronts when tests showed it was exceeding its permitted SO₂ emission levels and the company refused to cooperate with the United States Environmental Protection Agency.³² Bunker Hill remained "hostile" to any agency's suggestions indicating it was violating environmental air pollution statutes.³³ Instead of improving its acid plant design to capture SO₂ as the EPA suggested, the company simply built tall stacks to disperse the SO₂ over larger distances. Bunker Hill soon became incapable of economically updating its very outdated facility with sufficient pollution control to meet the EPA standards, and reacted instead by adopting an adversarial approach to both Idaho and federal environmental regulatory agencies.

Inevitably, Gulf shut down the Bunker Hill Company and the Kellogg smelter in 1981.³⁴ After the mine was closed, the Bunker Hill 21 acre smelter site became an EPA

superfund area. Cleanup costs, already exceeding \$200 million,³⁵ are projected to reach between \$500 million and \$3 billion. Upon shutdown, Gulf promised to pay for the cleanup, but in 1993, the managers moved its assets overseas and the company went bankrupt in 1993, leaving the federal government and Idaho to cover the costs.³⁶ Kellogg has also paid a high price in several respects, retaining elevated lead contamination levels and 2100 residents becoming unemployed as a result of the Bunker Hill shutdown.

Additionally, heavy metals from the mine have traveled down the Coeur d' Alene River and into Lake Coeur d' Alene, which provided an excellent location for hundreds of bird and animal species, which are all showing signs of lead poisoning.³⁷ Animals and birds are continuously dying of lead poisoning, resulting much from the 72 tons of lead waste that has accumulated at the bottom of the lake, often said to be one of the most beautiful in the world, and a health threat has developed for Spokane ground water.³⁸ In 1999, nearly twenty years after Bunker Hill's termination, a test indicated that 14 percent of 1 year olds and 15 percent of 2 year olds had acquired lead poisoning, which can impact IQ and behavior, and cause many other deficiencies.³⁹

III. The Development of Corporations and Environmental Regulation

Bunker Hill's nearly 100 years of corporate existence coincided with the later stages of corporate development in the United States. Ironically, the legal standards governing corporations has not mirrored society's realization of environmental degradation and health hazards and the resulting enactment of environmental regulation. As America has discovered the negative impacts that corporate and individual actions continue to inflict on the natural environment and the health and safety of neighboring communities, corporations have enjoyed increasing freedom to operate without

government or public interference. Widespread corporate pollution and other corporate abuses, coupled with a judicially and legislative mandated autonomy of corporate entities, has inevitably led to America development as a regulatory state. The barrage of environmental regulation statutes passed during the 1960s and 70s has been inadequate to address the ever increasing abuses imposed by private enterprises, concerned only with maximizing profits at the expense of our country's soil, water, and air.

This section provides a brief overview of the development of American corporations. It then outlines both corporate law and culture as it stands today, along with the current environmental regulations responsible for controlling corporate pollution. Finally, this section explores the current legal and regulatory challenges to corporate environmental abuses, and why current pollution control measures do not provide an adequate mechanism to deter corporate violations, particularly due to the peculiar nature of environmental abuse.

A. American Corporate History

The evolution of corporations and corporate governance in the United States has consisted primarily of gradual, judicially decreed changes. Spanning over two centuries, these changes have culminated in corporations existing today that are radically different from the corporations witnessed soon after America's birth.

The colonies themselves constituted some of the first charters to exist in the United States. England granted the charters forming the colonies that strictly controlled their every activity, and ensured that all profits were sent to the crown.⁴⁰ Following the English model, the colonies soon began issuing "special charters", which clearly delineated the powers and restrictions granted therein.⁴¹ These special charters, granted

first by the colonial assemblies, and later by the state legislatures, were only awarded to corporations meeting the test of performing a service for the “public good.”⁴² Very few of these corporations existed by 1800, and each was narrowly limited in both purpose and time for a “public or near public” service.⁴³ Additionally, during these early stages, state legislatures maintained the freedom to revise or repeal the charters.⁴⁴

The slow mutation of the corporate creature began in the early nineteenth century through judicial interpretation of the United States Constitution. In a series of cases spanning the nineteenth century, the Supreme Court severely limited a state’s ability to control its corporate charters through the Court’s interpretation of the Contracts Clause. The Court declared that the corporate charter actually constituted a contract between the state legislature and corporation’s founders, and thus, the United States Constitution prohibited the state from passing any act interfering with these charters.⁴⁵

By the early twentieth century, the states themselves reiterated the continuing trend that corporations no longer served the public. In the benchmark case of Dodge v. Ford, the Michigan Supreme Court completed the 180 degree shift in corporate law, holding that a corporation must be run for the pecuniary benefit of its shareholders, and its directors and officers must employ their powers to that end alone.⁴⁶ The court maintained that the lawful powers of the directors did not include running the corporation to benefit the public.⁴⁷ Although this standard was slightly loosened during the remainder of the twentieth century, its underlying premise remains intact.⁴⁸

Additionally, corporations have acquired a legal status equal to that of individuals.⁴⁹ Quite contrary to the associations of shareholders existing during the 1800s, corporations have evolved into persons under the law.⁵⁰ Therefore, they are

afforded many of the rights of US citizens, including the right to enter into contracts, to sue and be sued, to own property, along with many of the constitutional protections American citizens enjoy. Corporations often receive advantages above ordinary citizens, because although they are liable for all of their actions, they often violate state and federal environmental laws and continue to operate unscathed.⁵¹

B. Current Environmental Safeguards

Although they existed for hundreds of years, the very first pollution control mechanisms were no more than civil nuisance laws brought by one private party against another. Today, regulatory statutes governing pollution control have transformed into the first line of defense, but they are a more recent phenomenon that grew out of the “intense” 1960s and 70s.⁵² With advances in the understanding of public health and environmental degradation, as well as increased pollution inevitably resulting from industrialization, both state and the federal governments have passed these measures aimed at preventing pollution. The current scheme employed in the United States to prevent corporate pollution includes a hybrid of common law civil actions, regulatory civil law, and regulatory criminal law. This section first addresses each of these pollution control mechanisms in turn, focusing on their purposes, and specifically, how they are used to deter corporate pollution. Second, this section analyzes why these laws are inadequate for deterring corporations from polluting in certain situations.

1. Common Law

The common law has participated in the pollution arena longer than any other form of law, existing for hundreds of years and clearly coming to America with the adoption of English common law. In 1610, William Aldred’s Case was decided after a

gentleman complained of the noxious vapors commencing from his neighbors pig farm. The King's Bench denied the pig farmer's defense that the pig farm was necessary citing the maxim: sic utere tuo, ut alienum non laedas, which means "use your own (property) so as not to harm another."⁵³ Although, the American tort system has matured a great deal since its infancy in England, its underlying purposes and fundamentals remain constant. Lawsuits are typically brought under nuisance or negligence claims. Consistent with the underlying theories of civil law, the primary goal of common law civil claims is to compensate the aggrieved victim. Moreover, plaintiffs are able to recover punitive damages for particularly egregious or willful behavior. These damages are awarded as both a punishment and a deterrent to the offender.

A plaintiff claiming that she is entitled to recover in tort must prove that the defendant owed a duty of care, that she breached the duty, and that the breach proximately caused an injury to the plaintiff. The prima facie case for nuisance or negligence is often exceedingly difficult for a party to prove, especially the causation prong, particularly in light of a cover-up. For example, the plaintiffs suing Bunker Hill had difficulty proving that the children's symptoms were indeed caused by the lead, and they had experts contending it was not lead poisoning and actually convinced the town that there was no longer a lead problem, despite the overwhelming knowledge of the dangers of lead poisoning and the studies showing extremely elevated levels of lead in blood.⁵⁴ Punitive damages may also be awarded for particularly egregious conduct to punish and deter the wrongful party. To recover punitive damages the Plaintiff must prove the additional element that the defendant acted intentionally.

While common law tort actions are still available for aggrieved parties, they play more of a gap filling role for environmental violations. Courts hearing these cases have often provided compensation to injured victims, but refrain from issuing injunctions proscribing the polluting activity. These courts have decided that the highly technical nature of pollution and pollution control require a more informed decision than that made in a courtroom and avoid terminating corporate activity unless the state has enacted a statute prohibiting the conduct. For instance in the famous case of *Bloomer v. Atlantic Cement Co.*, the court refused to issue an injunction requiring the defendants to install pollution control, deferring to the expertise of the legislature.⁵⁵ As a result, the environmental regulatory statutes discussed below often provide injunctive relief to injured parties today, and common law nuisance and tort claims act more as gap fillers, where specific environmental provisions do not apply or to compensate victims.⁵⁶

2. Civil Regulatory Law

The current regulatory statutes governing environmental violations did not emerge until the “now mythical 1960s and early 1970s, and have created lasting impacts on society.⁵⁷ Due partly to Americas continuing shift toward a regulatory state,⁵⁸ and additionally to the environmental movement and public demand occurring at that time, the federal government created an abundance of environmental law, thereby taking the reigns for the clean up and protection of American air, water and land.⁵⁹ Undergoing only minor modifications, these environmental regulatory statutes currently provide the nucleus of environmental regulation. They work by varying mechanisms, and require participation from several different parties to protect the environment and public. Although states may adopt regulations that are stricter than those imposed by federal

statutes, they must be at least as strict as the federal regulations prescribe. Therefore this discussion will focus exclusively on the standards and rules imposed by the federal environmental statutes including the Clean Air Act (CAA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Comprehensive Environmental Response, Compensation, and liability Act (CERCLA).

First, federal regulatory statutes provide the maximum levels of pollutants that may be emitted. Often, the allowable amounts prescribed in the statutes will be determined either by maximum safe levels for humans or other environmental concerns, or based upon where the agency believes the technology should be capable of by a certain time. The statute will dictate either the maximum level of pollutants a corporation may emit, the pollution control technology the corporation must employ, or both. For instance the CWA subjects sources to a two-tiered standard using both effluent reduction technology and water quality-based control.⁶⁰ Based on these statutes, Bunker Hill was required to meet pollution levels and technology standards for lead emissions. By disregarding these standards, Bunker Hill violated the law. As indicated by the different ways of determining the amount of pollutants a corporation is allowed to expel, two purposes behind environmental regulations is both to protect the public health wherever possible, and to force industries to constantly improve the technology to continually decrease pollutants over time.

Next, these statutes provide a number of different monitoring and enforcement mechanisms for corporate emissions. Although many of these environmental statutes are federal, effective enforcement relies not only on federal agencies, but also on state agencies as well as private individuals, non-governmental organizations, and the parties

being regulated.⁶¹ The statutes provide for EPA or state monitoring of emissions, but rely heavily on the regulated parties to audit and monitor their own activities.⁶² Both state and federal agencies can enforce the provisions of the federal statutes against corporate polluters. This may include civil penalties, injunctions, and closer monitoring in the future. The civil provisions often allow private parties to bring actions against corporate polluters to obtain an injunction or civil damages, however government collects the award.⁶³ Several commentators and agencies alike have pointed out that due to limited governmental resources, private individuals and organizations are instrumental to the success of environmental regulation.⁶⁴

Civil environmental regulations serve many purposes. First they offer emissions standards under which corporations may operate. These standards are useful in several respects. They act as safe limits for human beings and the natural environment, they encourage technological innovation, and they provide some certainty to corporations, working within these limits, that they will not face liability, particularly in a murky scientific area where actual “safe” limits are nearly impossible to determine. Another useful characteristic of these statutes is their ability to collect information from corporations or the government, which later aid in enforcement. Several of these statutes require disclosures of government or corporate activity.⁶⁵

Finally, and most importantly, environmental regulations help deter corporate pollution. First, the statutes empower the appropriate government agency to require corporations to comply with the standards imposed. To carry this out, Generally the EPA will work with the state in which the corporation is operating, issuing permits that outline the allowable emissions of any particular source. The state will generate an

implementation plan, approved by the EPA, and then issue permits accordingly, which governs the amount of pollution any individual corporation may legally release.

Additionally, the statutes include measures for either the state or federal agency to enforce these permits by seeking an injunction against the corporation, revoking its operating permit, or penalizing the noncomplying corporation with a penalty, usually assessed on a per day basis. All of these measures help deter corporate pollution by finding corporate polluters, stopping current pollution, and deterring future pollution.

3. Criminal Regulatory Law

To supplement the civil provisions discussed above, most federal environmental statutes enacted after 1970 include criminal penalties. Initially, administrative agencies were hesitant to initiate criminal proceedings against corporations or corporate officers for environmental violations. Many of these agencies soon realized that additional criminal sanctions would be necessary to help deter corporation pollution. While the main purpose of civil penalties is largely compensation to victims, the purpose of criminal sanctions in these statutes is to deter pollution through the use of fines and imprisonment.

First, criminal provisions aid in preventing corporate pollution by holding the high ranking managers and directors directly responsible for their decisions. This may act as a deterrent if criminal suits are actually brought and won. However, the criminal provisions, similar to those found at common law, present the additional burden of proving mens rea. Most statutes existing today only impose criminal sanctions for “knowing” violations of the provision at issue, although some only require the lesser standard of negligence to invoke criminal penalties.⁶⁶ For example the clean water act

includes a fine of not more than \$25,000 or less than one year imprisonment for person who negligently violates one of several other provisions within the act. Additionally, these provisions apply to corporations, because they are considered “persons” within the meaning of these criminal provisions, so they can also be held criminally liable for the actions of agents and employees based on respondeat superior. The statutes even transfer criminal liability to a corporation for actions by its subsidiaries or predecessors in certain situations. These statutes also permit an appropriate agency to bring criminal penalties against people within the corporation, including high ranking corporate officials who know of the violations, and indeed a recent trend is to indict officers as well as the corporations.⁶⁷ Many of these penalties for knowing violations include jail sentences, which may act as a deterrent to those making the decisions within the corporation. Additionally, criminal provisions also include fines, which act to deter corporations from polluting to increase profits. Finally, criminal penalties can deter corporate polluters because they attach a stigma to the corporation, which it would try to avoid to not hinder public relations.

D. When the current scheme fails

While the emergence of state and federal environmental statutes has had a positive impact on pollution control, they remain ineffective in certain situations. Although retribution against polluters may serve as an important goal in punishing environmental pollution, the primary concern of environmental regulation and enforcement remains to sideline future wrongdoing in order to protect the nations natural resources and the public health. However, in several situations the deterrent effect of the current regulatory model breaks down, and corporations decide to violate the laws and

pollute regardless of the possible consequences. The most serious time this occurs is in the disposal of hazardous waste.⁶⁸ Several traits found within certain corporations, combined with characteristics and assumptions existing within the laws governing those corporations can lead to such a breakdown. First, because corporate decisions are driven primarily by cost-benefit analyses, if the cost of complying with environmental regulations for a certain activity exceeds the penalty imposed for noncompliance, the corporation will often choose the latter. Second, because of the obscure nature of pollution and insufficient agency resources, corporations often act under the often correct assumption that they can hide their wrongdoing and avoid liability altogether. Third, American law treats corporations as individuals equal to its citizens. However, corporations are soulless entities and addressing their wrongdoing the same way as a human's bad acts may not provide the same deterrent effect. Fourth, corporate officers and employees, usually protected by the corporate veil, may not feel a personal threat for corporate environmental violations. In these situations both the retributive and deterrent functions of the current environmental laws fail and corporations continue to pollute.

1. Cost-Benefit Analysis: It pays to break the law.

The most prominent feature of a situation in which the current pollution control legal model fails to curb corporate pollution is the cost of complying with the environmental regulation outweighing the cost of ignoring the statute by polluting. Corporations base most decisions on cost benefit analyses, and decisions to violate environmental laws are no exception to this rule. If a statute or law governing certain corporate activity does not provide a sufficient deterrent effect on a corporation, its managers acting primarily to increase shareholder profits, will choose the less costly

alternative of violating the statute and paying the fine. Therefore, civil penalties for violations of environmental regulations often fail to deter future violators due to their ineffectiveness and inefficiency.⁶⁹ Likewise, compensatory damages for common law torts may also fail to provide appropriate incentives in cases where the cost of pollution reduction outweighs the potential damage arising from harm to individuals. The uncovered internal Bunker Hill document deciding to go forward with its operations despite the increase in lead emissions illustrates this point.

Another problematic feature of current environmental regulation stems from the difficulty in catching violators and the low likelihood of prosecution for those that are caught. Inherent in any cost-benefit analysis is also the risk of getting caught. Often a cost-benefit analysis will involve decreasing the cost by multiplying it against the likelihood of the event occurring. This poses a particular problem when trying to issue a penalty sufficient to deter corporate polluters. Because of the latent nature of many types of pollution, environmental violations are often very difficult to detect under normal conditions, but can become prohibitively difficult to uncover for corporations that are regulating themselves and purposefully concealing the pollution. Additionally, because of limited resources, environmental statutes rely heavily on self auditing by the corporations. Corporations purposefully trying to sidestep the environmental regulations will encounter little difficulty in hiding their pollution in this context. The low risk of getting caught only magnifies the appeal to corporations to violate the statutes because the risk of prosecution pales in comparison with the potential for economic gain by not complying with the statute.⁷⁰

The low risk of getting caught also presents obstacles preventing common law tort actions from acting as a sufficient deterrent to corporate pollution. One common issue confronting plaintiffs in negligence claims is their inability to prove that a particular hazardous pollutant came from a particular source. This particular difficulty appeared in Bunker Hill where several mining companies are still fighting over which was at fault of the high levels of lead in the area. Plaintiffs are also faced with the challenge of establishing that the pollution from a company caused their injuries. With the exact effects of a hazardous substance unclear, the number of other variables that can cause similar symptoms and the years it usually takes for these symptoms to materialize, it can often prove difficult or even impossible to establish causation. Again, Bunker Hill demonstrates this issue, because the company's experts claimed that marijuana had been the cause of the youngster's ailments rather than the lead contamination.

Finally, both the treatment of corporations as people and the protections afforded corporate officers under the current laws hinder the success of laws attempting to curtail corporation pollution. Even criminal penalties often fail to curb corporate pollution. A corporation is not a person regardless of what the law says.⁷¹ Because a corporation is soulless, it cannot be damned by immoral acts and therefore the stigma usually incident to criminal violations does not exist for corporations.⁷² Moreover, because the people usually making the decisions such as the corporate officers and managers are often hidden behind the corporate veil, they are often not held personally responsible for their actions. Despite the harmful and widespread effects of corporate abuses, courts remain hesitant to incarcerate corporate officers that violate criminal provisions.⁷³ And since the primary responsibility of those managers hired to run the corporation is to maximize

shareholder profit, decision-making is guided by cost-benefit analysis instead of social responsibility.⁷⁴ Moreover, criminal penalties assessed in mere fines to the corporation will be viewed as just another cost in the cost-benefit analysis of determining whether to pursue the activity, and in many situations the penalties are outweighed by the potential for economic gain. Finally, even those acts that would welcome personal criminal liability to the corporate managers are not always an effective deterrent.

2. Evidence of current pollution control's inability to deter corporations

The problems addressed above are substantiated by statistics indicating that corporations constitute the number one source of pollution in the United States. Additionally, and EPA report has stated that corporations release 100 billion tons of hazardous waste each year, and ninety percent is discarded in an illegal manner. Evidence also suggests that for every case of corporate pollution that is prosecuted, dozens if not hundreds go undetected. Overall, the chance of getting caught, prosecuted and convicted is very low for a corporation.⁷⁵

Bunker Hill provides a perfect example of a corporation that remained undeterred by both civil and criminal regulatory statutes and common law tort actions. Bunker Hill remained uncooperative throughout the EPA's investigation. The company continued to operate its smelter at full capacity even after its environmental pollution control equipment was damaged by a fire. An uncovered internal document also disclosed that Bunker Hill actually performed a cost-benefit analysis of the damages it would be required to pay to Kellogg children acquiring lead poisoning against the profits it would achieve by continued operation, finding that the more profitable choice was to keep the smelter running. Additionally, because of the age of Bunker Hills equipment and its

depletion of minerals, it could not install the pollution control equipment necessary to decrease its emissions to an acceptable level. Bunker Hill was an entity whose own economic problems and ancient equipment coupled with its continued greed, overwhelmed any deterrent effects that environmental statutes could impose.

IV. Revoking Corporate Charters

Because corporations like Bunker Hill continue to pollute, despite current legal remedies, a more severe punishment may be required under certain circumstances to protect both the public health and safety and the environment. Revoking the charters of some corporations may be necessary to deter future corporate pollution. Such an extraordinary measure, however, must be applied carefully. Thus, for corporations that are caught polluting a number of times or egregiously violate environmental statutes, the only effective solution may be to revoke their charters through quo warranto or judicial dissolution proceedings. This section will first discuss the history of quo warranto and its adoption into American law. Next this section will investigate the current legal standards and uses for quo warranto. Finally, this section will examine the effectiveness of using quo warranto to tackle the issue of corporate pollution, considering both the negative and positive impacts such proceedings may have on both future pollution and the public interest.

A. History of Quo Warranto

1. English Common law

Quo warranto proceedings have existed for nearly a millennium. It was first used in England, by Norman Kings, as a check on the power of strong feudal barons.⁷⁶ As early as 1278, Edward I utilized quo warranto to reclaim franchises either usurped or

abused by challenging the validity of his barons claims to these institutions. Eventually Edward I enacted the first quo warranto statute in 1290.⁷⁷ The legitimacy of quo warranto was premised on the presumption that each franchise existed only by a grant from the crown. While originally adopted only to challenge the validity of franchises, this civil writ soon expanded to also cover abuses and non-uses of franchises.⁷⁸ Although quo warranto was originally reserved for royal use, private individuals eventually obtained the use of quo warranto by informing an official who would then initiate the action.⁷⁹ At some point, a criminal quo warranto in the form of an information evolved, distinct from the civil writ of quo warranto.⁸⁰ Due to its expediency, this criminal information soon replaced its civil counterpart, but eventually departed from its origins to again be regarded as a civil proceeding, maintaining only the formal elements of a criminal information.⁸¹ As a result of its dual evolution, the exact nature or origin of the quo warranto proceeding remains a mystery, and today it is regarded as a quasi-criminal,⁸² and as a legal action guided by equitable principles.⁸³

2. Adopted in the US

Quo warranto proceedings arrived in America alongside the rest of English common law. Particularly after the transformation of corporate entities from special franchises, authorized to do only what the state granted, to simply another private business organization, quo warranto became the only tool states could use to challenge corporations that abused or misused their charters. Because of the Supreme Court's contracts clause interpretation, characterizing a corporate charter as a contract between the state and corporation, the corporation also had duties under these contracts. Therefore, a corporation's breach of these obligations by misuser or nonuser could result

in the breach of this contract allowing the legislature that granted the franchise to take it back, and quo warranto constituted the appropriate means to this end. Justice Story determined that this was the common law of the land, and is a tacit condition annexed to the creation of every corporation.⁸⁴ Additionally, because an inherent assumption within these charters is that corporations are not given the power to violate state or federal law, such violations constitute a breach of the charter and are grounds for revocation.

Quo warranto in the United States retained its form as a quasi-criminal proceeding, however was primarily regarded as civil in nature. Because, quo warranto has always been considered an extraordinary remedy, certain judicial limitations were placed on its use. For instance, in many states quo warranty proceedings could only be initiated by the Attorney General.⁸⁵ Additionally, in the remaining states, where the relator was a private person, the court maintained discretion to issue the information, and would not issue the information at all if the relator were not an “interested” party, the injury was of a private nature, or if there existed another adequate remedy at law.⁸⁶

Examining the history of cases invoking quo warranto illuminates the types of corporate abuses that are properly addressed by this extraordinary remedy. During the nineteenth and early twentieth centuries, states freely utilized quo warranto proceedings to dissolve corporations abusing or misusing their powers. The early nineteenth century was punctuated by a large number of quo warranto suits for nonuse of corporate charters.⁸⁷ These cases commonly involved a public utility that was awarded a charter to provide an important service to the public, but failed to fulfill its obligations.⁸⁸ For example, the Supreme Court in *People v. Kingston & Middletown Turnpike Rd. Co.* revoked the charter of the turnpike company for nonuse of its powers.⁸⁹ The state had

created a charter for the turnpike company to complete a road, but it failed to fulfill its obligations and was ousted from its franchise.

The end of the nineteenth century also marked the disposal of any lingering direct control states asserted over corporate charters. During these years, courts declared that only shareholders could bring quo warranto actions to challenge corporations acting beyond the scope of their corporate charters.⁹⁰ However, one important exception to this general rule existed: a state could initiate a quo warranto proceeding against a corporation if a violation of the corporate charter existed, and it was causing injury to the public interest.⁹¹

Although judicial decisions during this time substantially impeded a state's ability to precede using quo warranto actions, the turn of the century actually marked the highpoint of states revoking charters due to misuse. During the early twentieth century, a flurry of cases was initiated challenging private corporations organizing anticompetitive trusts. The attorneys general of various states commenced quo warranto proceedings to revoke the charters of the Standard Oil monopoly, a Cotton Oil Trust, the Whiskey Trust, the Sugar Trust, and the Lead Trust. In Standard Oil, the court stated that corporati.. Notably, courts hearing these cases discarded the "injury to the public" requirement normally necessary for a state to initiate quo warranto actions. These courts determined regarding the formation of trusts, "if carried out, [they] will obviously result to the public detriment."⁹² Several states effectively utilized quo warranto proceedings to dissolve corporations or stop their illegal activities before the Federal Government enacted the Sherman Act address the problem.

3. Quo Warranto is sidelined

Unfortunately, quo warranto, a tool that had continuously proven effective in neutralizing the worst corporate actors, while deterring others from wrongdoing, fell into disuse along with the very trusts it was used to disband. During the next century, attorneys general stopped initiating quo warranto proceedings to dissolve egregious corporate actors. This trend, developing from the 1930s until today, ensued from America's continued adaptation toward a regulatory state, along with the ever increasing political and economic power enjoyed by corporations.

With the demise of a state's ability to directly regulate a corporation through its charter, states had to develop another means to control corporations.⁹³ To fill this void, states and the federal government passed regulations by statute, which applied to every actor in an industry rather than individual corporations.⁹⁴ The environmental statutes discussed above are examples of this. As a result, charter revocation sat aside as regulatory agencies began to oversee corporate activities. The following years suppressed quo warranto even more as states engaged in a race to the bottom. States began passing a number of pro corporation and pro management statutes to attract companies to incorporate within the state's borders. The states were drawn to the growing amount of incorporation fees and franchise taxes as a method of increasing state revenues, as well as increased employment opportunities for their citizens.⁹⁵ So with the increase of corporate presence in political decision making and the rise of the regulatory state, attorneys general stopped initiating these suits.⁹⁶ These concerns were present in the Bunker Hill case. The only pollution control efforts that were used to curb the lead emissions of Bunker Hill were the EPA and state determining what technology should be utilized to reduce the company's SO₂ emissions through the Clean Air Act. Idaho and

the federal government overlooked Bunker Hill's significant pollution on several occasions because of the company's political influence, and the fear of its miners losing their employment.

Although 49 states have retained a quo warranto statute, or some variation capable of corporate dissolution for illegal or ultra vires acts, they have been ineffective and largely forgotten. The few cases that have temporarily resurrected these proceedings in the corporate context usually involve an insubstantial business entity that's central purpose is illegal, and not the legitimate businesses that create the majority of the pollution today.

B. Charter Revocation Today

Individual states' laws governing quo warranto actions are as diverse as the history and development of the action itself. Until recently, several states recognized quo warranto only at common law, but now the great majority have enacted statutes to govern quo warranto.⁹⁷ The quo warranto statutes within different states have several different rules directing the nature of the proceeding, the remedies allowed and what parties may initiate the action.⁹⁸

Most states have codified the use of quo warranto proceedings, however, these statutes contain many differences. Generally, state quo warranto statutes are always at least as broad as the action had been at common law, and usually afford rights to would be plaintiffs than common law quo warranto. Two major differences are readily apparent between the quo warranto statutes of different states. First, while some statutes only allow the attorney general of the state to commence the action against the corporation⁹⁹, others allow private citizens to initiate these actions.¹⁰⁰ The second fundamental

difference between these statutes that some states retain an action in the form of quo warranto, while others have adopted the involuntary judicial dissolution provisions provided in the American Bar Associations Model Business Corporation Act.

Three variations exist within the state statutes to determine which parties may initiate quo warranto actions. Some states statutes only allow the attorney general to bring a quo warranto action. Other states will allow an “interested” private individual to bring a quo warranto action, but only if the attorney general refused to bring it. Still other states will allow any private party to bring a quo warranto suit, but only if they are particularly effected. For example Illinois’ quo warranto statutes states that quo warranto shall be brought by the attorney general on her own accord or at the instance of any individual relator.¹⁰¹ It also allows an ordinary citizen having an interest in the question to bring the action if she has asked the attorney general and the attorney general has refused.¹⁰² In contrast, Idaho’s judicial dissolution statute only allows the attorney general to initiate the proceedings.¹⁰³

Another major difference between state statutes, is that some retain charter revocation using the language of quo warranto while others have adopted the language found in the ABA’s Model Business Corporation Act. Still others have retained both proceedings, however, the applicability of one over the other in any given situation remains unclear. For example Idaho’s charter revocation statute includes the judicial dissolution language stating that an Idaho district court may dissolve a corporation within its borders if it has “continued to exceed or abuse the authority conferred upon it by law.”¹⁰⁴ Illinois has enacted both proceedings by statute. One statute allows quo warranto proceedings to be brought against a corporation exercising powers not conferred in its

charter.¹⁰⁵ Another section of the Illinois Business Organizations Act mirrors the Idaho judicial dissolution proceeding.¹⁰⁶ The relevant functions of these statutes remain consistent, because they each allow one of the parties discussed above to attempt to revoke the corporations charter through judicial proceedings for participating in illegal conduct.

Quo warranto proceedings incorporate internal safeguards to protect the public policy. First, the attorney general is afforded broad discretion in determining whether to bring a charter revocation proceeding against a business entity. Second, the courts also maintain discretion in charter revocation proceedings and primarily look at the extent and seriousness of the violation, and the effect that the judgment may have on the public welfare.¹⁰⁷ After the court finds that a corporation has engaged in illegal conduct outside the scope of its charter can fashion a series of remedies. Courts may revoke the corporation's charter, enjoin certain activities, impose a penalty, or use a combination of these remedies.¹⁰⁸ Additionally, quo warranto can still be invoked even if a criminal law already governs the conduct at issue. Even if the act violates a criminal statute with another adequate remedy, courts will sustain quo warranto proceedings if they believe that the conduct meets the required conditions and the other remedy is not a proper deterrent.¹⁰⁹ Another interesting aspect of quo warranto is that the plaintiff does not bear the burden of proof. Instead, the defendant must justify that she acted within her authority.¹¹⁰

Although quo warranto only applies to charter revocation in the particular state in which the corporation was incorporated, many states provide similar proceedings for revoking the certificate of authority required to conduct business within their borders.

Many states today have enacted statutes to address foreign corporations doing business within the state. These statutes usually afford the same powers and privileges to the foreign corporation as to the state's domestic corporations, but also subject it to the same duties, restrictions, penalties and liabilities.¹¹¹ These statutes also state that a foreign corporation may not participate in any activities that would be prohibited for a domestic corporation. Foreign corporations would not be allowed to participate in illegal activities under these statutes. A state would therefore be able to revoke a foreign corporation's certificate of authority to conduct business within the state if the corporation were engaged in illegal activity. While a constitutional challenge could possibly be raised based on the commerce clause for corporations engaged in interstate commerce, these defenses would probably fail because no state allows corporations to conduct illegal acts.

The legal standard governing quo warranto during the days of the trusts remains the same. Corporations engaging in unlawful activity are subject to quo warranto proceedings to revoke their corporate charter. While illegal activity continues in corporations today, attorneys general for the most part have discontinued use of quo warranto proceedings, and therefore it has become a mere statutory surplus.

The only situations, since the early twentieth century, where quo warranto actions have been successful involve corporations whose very purpose is illegal or against public policy. In the 1951 case *People v. White Circle League*, the Illinois attorney general brought a quo warranto action for ouster of the White Circle League from its corporate franchise.¹¹² White Circle League, a not-for profit organization in Chicago, had "disseminated scurrilous and inflammatory attacks upon the Negro race," and had solicited new members, sending them letters aimed at creating hatred toward African

Americans.¹¹³ The Illinois Supreme Court easily decided that White Circle League had not been granted the authority to disseminate or publish scandalous matter or violate a statute of the state of Illinois.¹¹⁴ In ousting White Circle League from the enjoyment of its corporate franchise, the court noted that the organizations violation of a criminal statute and the state's ability to bring a criminal action against White Circle League, did not preclude the use of quo warranto.¹¹⁵

C. Can Quo Warranto be used to Prevent Corporate Pollution?

Clearly, states still retain quo warranto as a means of revoking corporate charters. The question now becomes whether another revival of the ancient writ or a variation of quo warranto to revoke corporate charters would prove useful in curbing corporate pollution. Based on the history of quo warranto actions, and the nature of corporate pollution, actions in the nature of quo warranto seem to offer an effective deterrent to pollution, particularly in egregious, intentional, or continuous situations. This section explores whether the legal standards for quo warranto would cover environmental law violations. It also analyzes both the benefits and problems that a revival of quo warranto proceedings could produce.

1. Legally

Legally, quo warranto seems extremely well suited to address corporate polluters. First, the fact that criminal and civil regulatory statutes govern the illegal activity that the corporation is engaged in does not preclude a quo warranto action to revoke the corporation's charter. Courts are particularly likely to allow quo warranto proceedings when "the circumstances are such that the criminal penalty would not be an

effective deterrent.”¹¹⁶ Because, as outline above, criminal law does not deter corporate pollution in many instances, judges may be willing to adopt quo warranto for these cases. Quo warranto jurisprudence also exemplifies that quo warranto would be proper to address environmental violations, because to bring an action in quo warranto, the plaintiff must establish that 1) the corporation has exceeded the authority of its charter and 2) it has caused harm to the public interest.¹¹⁷

Depending on the state in which the corporation is found/practicing in, will determine the appropriate way in which the action should be brought. However, a plaintiff will have to show the two requirements above in any case. For example, if the attorney general of Idaho wanted to bring a quo warranto action today, against a corporation engaged in the type of pollution of Bunker Hill during the 1970s, she would have to show first, that the continued operation of the smelter without the proper pollution control measure in place constituted illegal activity, or at least activity beyond the scope of its charter. Next, she would have to show that the illegal activity was causing a substantial harm to the public interest. In the Bunker Hill case, a court should clearly find that Bunker Hill was engaged in illegal activity by continuing to operate its smelter without adequate pollution controls in place, and that the lead contamination posed a serious harm to the public. Although the public harm factor appears self evident for large releases of a toxic substance, an attorney general should encounter little difficulty in showing that the substantial increases of lead emissions would harm the public.

Furthermore, courts deciding the trust cases at the turn of the century were willing to presume that an illegal trust would cause harm to the public interest. Based on the

public health policies underlying environmental statutes, courts may similarly presume harm to the public health for violations of these statutes. In the realm of environmental regulation, many of the statutes that have been enacted set limits on pollution based on health to the people of the community or environmental degradation.¹¹⁸ Because these limits are set scientifically for safe limits, a corporation that continuously exceeds these allowed levels can be presumed, like a corporation engaged in an illegal trust, to be causing harm to the public interest.

Many corporate pollution situations will involve a corporation that is incorporated within one state, but operating in another. Because the authority to conduct business within a state is another form of a franchise,¹¹⁹ states may also revoke these by quo warranto.¹²⁰ While the corporation will still exist in its home state, this revocation will prohibit the company from operating its business within the borders of the state. Such an act can produce a crippling effect on the foreign corporation and act as a deterrent to other foreign corporations considering violating environmental laws within the state's borders.

2. Benefits

Bringing quo warranto actions to challenge the corporate charters for those entities that either perpetually violate environmental statutes or purposefully engage in egregious activity would provide an effective supplement to the current pollution regulatory scheme. The threat of losing the right to conduct business could create an effective deterrent that would be hard to calculate in a cost-benefit analysis. The potential end to the corporate life would overcome almost any profits that the corporation could maintain by polluting and ignoring regulations. Additionally, officers and

managers hoping either for large profits or better careers would not do so at the risk that the very corporation they are trying to succeed in no longer existed. Charter revocation proceedings would also work as an incapacitation measure against the worst corporate polluters that still violated the law.¹²¹ It would end the corporate existence decreasing the recitivism rate, and allowing a lawful corporation to take its place in the market. Finally, it would serve the retributive function that many criminal laws provide, by punishing the corporation, in the only meaningful way other than its economically. Charter revocation would produce the additional benefit of allowing the judge to hold the corporate assets during the proceeding to ensure they are not wasted.

In Bunker Hill, the regulatory scheme and civil laws did not provide an effective deterrent to curb the company's pollution. The uncovered company document clearly indicated that Bunker Hill was aware of the risks its lead emissions posed to local children, but it decided to continue operations anyway to increase profits. Because nobody was proactive in bringing a quo warranto action, the company eventually wasted its assets and Idaho and the United States were left covering the billions of dollars worth of cleanup required for the superfund site. A quo warranto suit would have allowed a judge to prevent Bunker Hill's continued pollution and hold its assets, which could have then been used to pay for the cleanup costs.

3. Drawbacks

Several commentators have expressed distaste for corporate charter revocation through quo warranto proceedings. Inherent in most arguments is an assumption that quo warranto will be abused, and can be used to blackmail corporations. Additionally, commentators and courts alike worry about the severity of the relief and the rapidity with

which quo warranto dissolves a corporation. Concerns are also raised over the employees whose jobs will be terminated along with the corporation if its charter is revoked.

Although these are legitimate concerns, adequate safeguards already exist to address them. First, most quo warranto statutes offer two level of defense against strike suits.

First, many statutes require the Attorney General to bring the suit at his discretion.

Additionally, courts maintain discretion both in the preliminary hearing stage and at trial to determine if charter revocation would be an equitable remedy. Also, inherent in the public interest factor, is protection of jobs. A court, in its discretion, may consider resulting lost jobs and affected economies when making its decision whether to revoke the charter.

If a corporation acted badly enough to pass both of these barriers, the harm caused by the corporation is probably outweighing its benefits to society, and so the extraordinary remedy or quo warranto should be invoked. The Bunker Hill catastrophe can shed light on the effects of allowing corporate pollution to continue unchecked by relying on existing enforcement mechanisms with no deterrent effect. Both Kellogg and the state of Idaho were understandably worried about the lost jobs and the impact on the economy that would occur if Bunker Hill were dissolved. However, the results their apathy was far worse than if they had revoked the corporation's charter.

When the state first learned that the company was operating its plant without its pollution control in tact, the court could have immediately stopped the company from creating lead emissions. A court could have revoked the charter before large amounts of lead were released, held the corporations assets to prevent waste, and prohibited Gulf, Bunker Hill's parent company located in Texas, from further business within the state of

Idaho. Instead, the failure to initiate charter revocation proceedings resulted in a superfund cost in the area already totals \$200 million. The corrupt officers of the company have cleaned out the corporation leaving the state and federal governments to clean up Bunker Hill's mess. Additionally, Bunker Hill was initially violating pollution regulations because of it selfishly wanted to increase profits. The company then continued polluting because the mine and the company were nearing the end of their useful life, so the company could not afford adequate pollution control equipment to update its aged facilities. As a result the company was doomed to dissolve anyway and eventually did, leaving 2100 employees jobless, but with the added harms of the years and costs of cleanup and children obtaining lead poisoning.

V. Standing to Initiate Corporate Revocation

The largest challenge preventing the effective use of quo warranto to revoke the charters of corporate polluters like Bunker Hill is the state's unwillingness to bring these actions, and private individuals' inability to initiate quo warranto themselves. Many states that provide quo warranto or another statutory mechanism for dissolving corporations acting in unlawful manners, grant power to bring a quo warranto action solely in the attorney general or state's attorney at her discretion. Due to political or economic concerns attorneys general have failed to exercise this power, even in instances clearly demanding judicial action such as Bunker Hill emitting extremely dangerous levels of lead. Because corporations are the number one contributor to political campaign funding, an attorney general may have political motives to avoid bringing such suits. An attorney general, in her discretion, may also mistakenly determine that the public interest demands maintaining the corporation while its pollution continues unchecked.

Additionally, due to the difficulty in detecting environmental pollution in many cases, attorneys general may have difficulty obtaining information of corporate violations without a corporate insider coming forward.

This section will discuss which parties have standing to initiate quo warranto proceedings under existing law. Second, it will investigate whether private parties or environmental groups that own shares of a corporation, may initiate charter revocation proceedings under judicial dissolution statutes. Third it will explore whether these groups can compel the attorney general to bring quo warranto suits in cases where he refuses. Finally, this section proposes the addition of qui tam proceedings within quo warranto or dissolution statutes as a mechanism to initiate charter revocation.

A. Standing to initiate quo warranto and judicial dissolution proceedings

As discussed above, state statutes are in tension regarding the proper parties that have standing to initiate quo warranto actions. Although some commentators disagree, the history of common law quo warranto proceedings within the United States seems to suggest that the information and writ were only at the disposal of the attorney general of the state. One commentator believes that at in common law England, anyone could bring an action in quo warranto.¹²² However, other commentators have stated that even in England Quo Warranto belonged to the king, and could only be brought with his permission. Although case law clearly indicates that any taxpayer or citizen has always been able to commence an information in the nature of quo warranto to challenge the title of an officer when a public office is concerned if they have an interest, only a statute can grant these privileges to private individuals when challenging a corporate charter.¹²³

State statutes may expand the parties capable of initiating a quo warranto action against a polluting company. Illinois allows a private party to initiate quo warranto proceedings if the attorney general refuses to bring the action herself after being asked. The statute also requires permission of the court to commence this action. Case law has narrowed this, only allowing “interested” parties to bring the proceeding if the injury is of a private nature on top of the public injury.¹²⁴ A private party or environmental group in Illinois can invoke corporate revocation proceedings if it can show a private interest adversely affected by the action challenged and another wrong to the public.¹²⁵ Additionally, Iowa courts have established that a private party can prosecute to completion if the attorney general refuses.¹²⁶

B. Shareholder suits to dissolve corporations acting illegally

One interesting alternative, under the statutes of some states, allows shareholders to bring judicial dissolution actions against the corporation if it is acting illegally. In fact the relevant portion of the Idaho corporate dissolution statute reads:

The Idaho District Court...may dissolve a corporation in a proceeding by a shareholder if it is established that the directors or those in control of the corporation have acted or are acting in a manner that is illegal, oppressive or fraudulent and irreparable injury to the corporation is threatened or being suffered by reason thereof.¹²⁷

The ABA Model Business Corporation Act contains a similar provision, which several states have adopted in their Corporation Acts.¹²⁸ Many of these state statutes provide an action to a shareholder simply for illegal conduct by the corporation without the additional requirement of irreparable injury to the corporation.¹²⁹ However, a corporation

violating environmental statutes, which usually assess fines, could incur irreparable injury. Although no cases appeared addressing the issue, under the plain language of the statute a shareholder may be able to use these statutes as an avenue to dissolve a corporation violating environmental statutes.

Although, Idaho does not provide quo warranto or dissolution proceedings to private individuals, these parties may acquire standing to pursue judicial dissolution by purchasing shares of the corporation. Although shareholder suits trying to dissolve corporations generally involve oppressive conduct directed toward the shareholder in a close corporation, the Illinois statute, clarifies that these proceedings are available in publicly owned companies.¹³⁰ Therefore, a citizen living near Bunker Hill, or an environmental group could have obtained standing to judicially dissolve the company by purchasing shares of the then publicly traded Bunker Hill. Older case law also bolsters this proposition. In *Dodge v. Woolsey*, decided in 1855, the court extended the enforcement of the contractual limitations of a charter to shareholders. The court stated that a stockholder could challenge a corporation's activities when the corporation attempted to use its “capital to objects not contemplated by its charter.” For the same reason that a state can revoke a corporate charter based on a corporation engaging in activities not permitted within the charter, this language in *Dodge* suggests that shareholders may possess the same authority. Because violations of federal and state law are not contemplated by any charter,¹³¹ shareholders should be allowed to initiate charter revocation for these suits.

C. Compelling the attorney general to initiate quo warranto

One possible, but difficult, alternative would be for an injured individual or an environmental group to compel the attorney general to bring the quo warranto proceeding. Some statutes specifically provide a mechanism for compelling the attorney general. The Delaware quo warranto statute states that the “Attorney General *shall*, upon his own motion or upon the relation of a proper party,” proceeding against a corporation using quo warranto.¹³² Because this statute does not give the attorney general discretion, if a proper party requests the attorney general in Delaware to initiate a quo warranto proceeding and the attorney general refuses, the party can compel him.

However, in most statutes that only permit the attorney general to bring a quo warranto action in his discretion, a private party or environmental group encounter difficulty compelling her act. The only possible means of compelling the attorney general would try to get a judge to compel him to fulfill his duty using mandamus. However, several courts have held that “mandamus will not lie if the act of a state executive officer, the performance of which is sought to be enforced, is not ministerial merely, but involves the exercise of judgment and discretion.”¹³³ While mandamus may work to compel an attorney general in states where he must bring quo warranto proceedings in a proper case, his discretion in other states will stop this from serving as a useful tool.

D. Utilizing Qui Tam to initiate quo warranto proceedings

Based on the above discussion, no good method exists for initiating quo warranto or corporate dissolution charters for private individuals in states that do not expressly provide by statutes that these individuals may initiate these proceedings. In today’s economic and political environment, many attorney generals are unwilling to initiate quo

warranto proceedings against corporate polluters, even resulting from a direct request by an aggrieved party. The hidden nature of pollution also results in the worst corporate polluters avoiding charter revocation by covering up their pollution and pollution remaining undiscovered until it has lasted for a long time and many people and the environment have been exposed to its hazards. This section proposes that through an expansion of the common law or the enactment of legislation, private individuals should be allowed to initiate quo warranto proceedings through the use of Qui Tam.

This section first provides a brief overview of the history and present state of Qui Tam suits. Next, it explores how the common law, based on the development of Qui Tam, may be expanded to include qui tam suits to initiate quo warranto proceedings for aggrieved parties. Finally it proposes state legislation that would allow either aggrieved parties or informers to bring a qui tam action on behalf of the government to initiate quo warranto proceedings against corporate polluters.

1. The History and Development of Qui Tam suits

Qui Tam actions are brought by a private individual on behalf of the government, where part of the suit belongs to the private party and the rest belongs to the government. Abbreviated as qui tam, “qui tam pro domino rege quam pro seipso,” literally translating to “he who as much for the king as for himself,”¹³⁴ allows a public interest and a private interest to be combined into one suit.¹³⁵

Qui tam suits began in English common law during the thirteenth century. As sovereignty developed in England, the notion of public interests arose and was often conveyed in statutes. Because England lacked sufficient police power, it relied on qui tam relators to bring and enforce the penal laws directed at protecting these public

interests. As qui tam originally developed, two types of parties could initiate these suits. First, aggrieved parties could bring a qui tam suit to redress their injury. Second, informers, lacking a personal injury themselves, could bring a qui tam suit and recover part of a penalty.

Under the original common law, qui tam could be brought as a remedy in royal courts by an aggrieved private party additionally alleging an injury to the public interest. Many injured parties desired bringing suits in the royal courts because they were considered a much fairer venue to redress wrongs than the local courts. When royal courts began hearing the private cases during the fourteenth century, private parties were no longer forced to claim a public injury or use common law qui tam suits to gain access to these courts, resulting in the steady decline in qui tam actions.

Around the time that common law qui tam suits began to fade away, several statutes were enacted that allowed private parties to bring qui tam actions for public wrongs. Many of these statutes required that the plaintiff suffered some sort of private wrong above the public wrong, but others allowed an informer to initiate the qui tam action.

The usefulness of qui tam suits during the birth of English criminal law was based largely on an inadequate police force. Due to the lack of sufficient enforcement by the government, the king relied largely on informers to bring informations against violators of penal statutes. Two elements were common to qui tam statutes at this time: (1) private informers were awarded part of the penalty and (2) private parties could bring the suit to recover the penalty.¹³⁶ It was clear at this time that qui tam was not an action itself, only a means of initiating an action. Plaintiffs were also given the choice of

bringing the suit as a criminal or civil proceeding, which would determine what procedure the court would use. Qui tam appealed to the people of England because inadequate law enforcement left victims of crime as potential future targets if they did not initiate justice themselves.¹³⁷

Qui tam suits in the United States have relied exclusively on statutory provisions. Initially, qui tam statutes were common in both state and federal statutes and mirrored those in England. Eventually they fell into disuse based on legislation eliminating much of their effectiveness.¹³⁸ One clear thing was that qui tam was only utilized when necessary to enforce penal laws.¹³⁹ Many states and the federal government have enacted qui tam provisions within statutes to allow private individuals to use qui tam to bring actions consisting of both a private and public injury.

As the federal False Claims Act includes the best known qui tam provision in a statute today, it provides a useful example for understanding the usefulness of qui tam. President Lincoln enacted the False Claims Act during the civil war in an effort to curb abuses of defense contractors making fraudulent claims against the government. The Act allows private parties, or “relators,” to sue on behalf of the United States and collect a percentage of the government’s recovery. The qui tam provision in the False Claims Act exemplifies informer type qui tam provisions. After a qui tam relator initiates a suit, the government can decide whether to intervene or allow the relator to conduct the case.

2. Common law qui tam

One possible route to expanding the use of qui tam to bring an information in the nature of quo warranto against corporate polluters would be through the common law. In England, qui tam provisions were recognized at common law. As recently as the 19th

century, English commentators had acknowledged the existence of common law qui tam.¹⁴⁰ However, it was far from clear whether English courts would have accepted a qui tam suit without any accompanying statutory provision.¹⁴¹ Still, because non-statutory qui tam fell into disuse without actually being abolished, it was arguably adopted by American courts with the rest of English common law.¹⁴²

An aggrieved party attempting to initiate a quo warranto proceeding under non-statutory qui tam would be required to establish a private as well as a public injury. As discussed above, English common law only allowed private citizens to use qui tam to initiate an action if they alleged a public wrong along with a private wrong. Someone incurring a personal injury based on the illegal activity of a corporation should then be allowed to use common law qui tam in the name of the state to bring charter revocation proceedings. Because American courts have not invoked common law qui tam since their inception, the chances of courts today will expand the common law to include qui tam remains unlikely. Additionally, English common law qui tam did not contain any type of whistleblower or informer rules. Thus, common law qui tam, even if adopted, would probably not extend to allow informers or whistleblowers initiate quo warranto actions.

Although unlikely, if state courts recognized non-statutory qui tam, it would be an excellent avenue for initiating quo warranto proceedings against a corporate polluter. Pollution normally affects the general public, but it also affects persons near its source in a more magnified manner, often causing more severe injury to these people. Therefore, an individual living nearby the source of pollution would be allowed use qui tam to commence a quo warranto suit as an aggrieved party. Additionally, quo warranto itself

requires a public wrong; therefore qui tam would be a particularly useful method for initiating a quo warranto action because of this overlapping element. Quo warranto also allows courts to impose additional monetary penalties on a corporation on top of revoking its charter. An aggrieved person could therefore seek revocation of the corporate charter to redress both her and the public's injuries by stopping the unlawful activity, as well as recover part of a penalty imposed by a judge to compensate the aggrieved party for any injuries she has suffered.

In Bunker Hill, several local children acquired lead poisoning as a result of the company's violation of environmental laws. Additionally, these violations resulted in large amounts of lead depositing in local rivers and lakes. Because these violations were of a public and private nature, these injured individuals could have utilized common law qui tam to launch quo warranto proceedings to revoke Bunker Hill's charter.

3. Enacting Legislation to revive qui tam

Although the expansion of common law qui tam by courts seems doubtful, legislators may be willing to enact a qui tam provision in state statutes to allow private individuals to bring quo warranto actions. State as well as federal legislatures have conceded that it is often difficult to effectively monitor and enforce environmental regulations. Federal and state governments seem willing, and even eager, to allow private citizens and organizations to help carry this burden. Nearly every statute passed after 1970 contains some provision permitting private citizens to bring civil suits against environmental violations. Additionally, the federal government has had wide success and has continuously defended the qui tam provision of the false claims act as a necessary element to its success. Given the governments willingness to defer some of its

enforcement powers to private citizens in the pollution realm, along with its continued success using qui tam in the federal false claims act, a strong case exists for creating qui tam legislation allowing private citizens to bring a qui tam action on behalf of the state.

Qui tam would be a perfect compliment to a stepped up use of quo warranto proceedings; both legally and practically. Legally, qui tam has been used to allow private citizens to bring actions as relators of the state for hundreds of years. These statutes should include a method for both aggrieved parties and informers to file qui tam suits to initiate quo warranto proceedings as relators of the government. An informer provision would be particularly useful. Due to the latent nature of many types of pollution, an informer provision would encourage an individual with inside information about the corporation's pollution abuses, to come forward with the information. This would serve the dual purposes of obtaining invaluable information and initiating the quo warranto action. Historically, and within the False Claims Act, a qui tam relator may share in the recovery. Because courts are able to secure monetary penalties against corporations under quo warranto statutes, a qui tam provision within the quo warranto statutes should provide a percentage of this penalty to the informer or aggrieved party. Some concern has been raised about qui tam being used as a blackmail tool, or being used too often. These are legitimate concerns, but could be easily remedied. A provision should provide disincentives such as fines for relators initiating frivolous suits, which was useful in the suits of common law England to avoid abuses.

Additionally, qui tam provisions sharing in the recovery is a necessary tool to encourage whistle blowers to cooperate with the government when there are so many factors deterring them from coming forward. Generally, whistle blowers within a

corporation refuse to come forward with information regarding criminal activity by the corporation. They can incur large costs for proceeding with information about a corporation's illegal activities, including the loss of employment,¹⁴³ Qui tam is particularly useful when the actions trying to be stopped are of an unobvious nature. Due to complexities in the transactions, it often requires years before evidence of corporate wrongdoing surfaces and at that point witnesses may have died or records have been destroyed.¹⁴⁴ Additionally, the government may not have sufficient resources to prosecute all criminal activity within its environmental statutes. Qui tam suits are useful because they fill this gap by providing information as well as investigative and litigative support to the government trying to enforce the penal laws.¹⁴⁵ Government officials have actually confirmed the importance of whistle blowers in trying to enforce regulations.¹⁴⁶

Had qui tam been available in Idaho in the 1970s, it may have prevented the catastrophe. Miners or management, knowing that the pollution control equipment was ineffective, may have disclosed this information to the government if they had been given a monetary incentive. With the knowledge that Bunker Hill was knowingly placing children in harms way, may have been the evidence that the attorney general needed to successfully revoke the corporation's charter before it caused so much harm.

Additionally, if the government refused to bring the suit, an injured party or the informer could have commenced the suit.

VI. Conclusion

The Bunker Hill Company was only one of thousands of corporations within the United States, and acts only as a microcosm for corporate pollution across the country. Undeterred by environmental regulations, Bunker hill earned \$26 million in profits in

1974 while Idaho and the Kellogg community watched them poison hundreds of children and one of the most beautiful and diverse ecosystems in America.

Egregious corporate pollution is not limited in time or space to Kellogg, Idaho during the 1970s. Today, corporations comprise the number one group of polluters in the United States, and their activities are spread across the entire country. Like a rabid dog turning on its owner, corporations have created substantial harm to the very public they were first adopted to serve. Although our current laws and administrative agencies have met large success in challenging corporate polluters, they remain ill equipped to battle the worst of this class.

This article serves to present alternatives to traditional ways of dealing with corporate polluters. It provides legal weapons that may be utilized by states to deter the worst corporate actors. It also explores avenues that private citizens and environmental groups can take to use these laws themselves when a state, fearing the economic and political might of corporations, turns its back on its citizens. If victims of corporate pollution fail to stand up for themselves and challenge the corporations, they will simply become perpetual targets. Laws granting corporations the rights to act as citizens is a legal fiction that has been abused to provide them with unmatched power. Therefore, the only appropriate legal deterrent to counter these individuals is to strike at their legal heart by challenging the charter that provides their existence.

¹ Bernard Bailyn, *The Battle of Bunker Hill*, at <http://www.masshist.org/bh/essay.html> (quoting Allen French)

² *Id.*

³ *Id.*

⁴ Katherine G. Aiken, *Idaho's Bunker Hill, The Rise and Fall of a Great Mining Company, 1885-1981*, 5, [University of Oklahoma Press: Norman, 2005] [hereinafter Aiken]

⁵ Aiken, *Bunker Hill* at 8.

⁶ *Id.*

⁷ *Id.* at 9

⁸ *Id.* at 70

⁹ *Id.* at 65

¹⁰ *Id.* at 64. One gentleman noted that there was little chance of the farmers obtaining an injunction when Judge Beatty, the district court judge owed his appointment to the political power of the Bunker Hill Company.

¹¹ *Id.* at 41

¹² *Id.* at 165-66

¹³ *Id.* at 164, 169

¹⁴ *Id.* at 169

¹⁵ see e.g., 42 U.S.C. 1251 et seq. (2006).

¹⁶ Aiken, *Bunker Hill* at 174

¹⁷ *Id.* at 179

¹⁸ *Id.* at 180

¹⁹ Jim Fisher, *Latah County Pays so Millionaires Can Fight*, Lewiston Morning Tribune, May 9, 1991, Pg. 6A.

²⁰ Charlie Kingdollar, *North American Activity*, World Wide Pollution Review, August 2000 at <http://www.facworld.com/FACworld.nsf/doc/CasPollAug> (citing The Salt Lake Tribune, August 15, 2000).

²¹ Aiken, *Bunker Hill* at 180

²² *Id.* at 180

²³ Mark Shenefeld, United Press International, Oct. 28, 1981, Financial Section.

²⁴ card 33

²⁵ Fisher, *Latah County* at 183-84

²⁶ Aiken, *Bunker Hill* at 183

²⁷ *Id.* at 185

²⁸ *Id.* at 183

²⁹ Ann Kirkwood, United Press International, Oct. 23, 1981, Financial Section.

³⁰ *Id.*

³¹ Aiken, *Bunker Hill* at 187

³² *Id.* at 186

³³ *Id.* at 188

³⁴ *Id.* at 202

³⁵ Kingdollar, *North American Activity*, Financial Section

³⁶ Jim Fisher, *Bunker Hill's Fleecing of Idaho Isn't Over Yet*, Lewiston Morning Tribune, October 25, 1993, Pg. 8A. Additionally, Idaho is required to pay 10 cents on the dollar to the federal government for cleanup, costing over \$10 million.

³⁷ Paul Koberstein, *Out of the Earth, Into Our Lungs: A century of mining leaves poison and poverty in the Idaho Pandhandle*, Cascadia Times, 2000 at

<http://www.times.org/archives/2000/november2000/bunkerhill.htm>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 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'tl. L. Rev.* 219, 228 (1995)

⁴¹ *Id.*

⁴² *Id.* at 229.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 652-53 (1819)

⁴⁶ *Dodge v. Ford*, 204 Mich. 459, 507, 170 N.W. 668, 684 (1919)

⁴⁷ *Id.*

⁴⁸ see *A. P. Smith Mfg. Co. v. Barlow*, 13 N.J. 145, 152-153 (allowing corporation to donate some earnings to Princeton University).

⁴⁹ Linzey, *Awakening a Sleeping Giant* at 220-221

⁵⁰ Katsuhito Iwai, *Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance*, 47 *Am. J. Comp. L.* 583, 585 (1999).

⁵¹ Linzey, *Awakening a Sleeping Giant* at 221.

⁵² Glicksman et al., *Environmental Protection: Law and Policy*, xxv (4th ed., Aspen Publishers 2003).

⁵³ *William Aldred's Case*, 77 *Eng. Rep.* 816, 817 (1611).

⁵⁴ Aiken, *Bunker Hill* at 187.

⁵⁵ Glicksman, *Environmental Protection* at 994.

⁵⁶ *Coastline Terminals of Conn., Inc. v. USX Corp.*, 156 F. Supp. 2d 203 (D. Conn. 2001).

⁵⁷ Glicksman, *Environmental Protection* at xxv

⁵⁸ Cass R. Sunstein, *Paradoxes of the Regulatory State*, 57 *U. Chi. L. Rev.* 407, 409 (1990).

⁵⁹ Glicksman, *Environmental Protection* at xxv This time period marked the birth of the National Environmental Policy Act, the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act.

⁶⁰ *Id.* at 509-510

⁶¹ *Id.* at 940

⁶² *Id.* at 941

⁶³ Robin Kundis Craig, *Will Separation of Powers Challenges "Take Care" of Environmental Citizen Suits? Article II, Injury-In-Fact, Private "Enforcers," and Lessons from Qui Tam Litigation*, 72 *U. Colo. L. Rev.* 93 (2001).

⁶⁴ Glicksman, *Environmental Protection* at 940

⁶⁵ see NEPA §102(2)(c)

⁶⁶ David Markert et al., *Environmental Crimes*, 41 *Am. Crim. L. Rev.* 443, 449 (2004). See also 33 USCS § 1319 (2006).

⁶⁷ Markert et al., *Environmental Crimes* at 450.

⁶⁸ Steven Humphreys, *An Enemy of the People: Prosecuting the Corporate polluter as a Common Law Criminal*, 39 *Am. U.L. Rev.* 311 (1990).

⁶⁹ *Id.* at 319

⁷⁰ *Id.* at 318-319

⁷¹ Mary Ramirez, *The Science Fiction of Corporate Criminal Liability: Containing the Machine Through the Corporate Death Penalty*, 47 *Ariz. L. Rev.* 933, 935 (2005).

⁷² *Id.*

⁷³ Humphreys, *An Enemy of the People* at 319

⁷⁴ Ramirez, *The Science Fiction of Corporate Criminal Liability* at 935

⁷⁵ *Id.* at 962

⁷⁶ *Quo Warranto and Private Corporations*, 37 *Yale L.J.* 237, 237-238 (1927)

⁷⁷ Donald Sutherland, *Quo Warranto Proceedings in the Reign of Edward I, 1278-1294*, 263 (1963).

⁷⁸ 37 *Yale L.J.* 237 at 238.

⁷⁹ *Id.* at 238.

⁸⁰ *Imposition of a Fine in Quo Warranto Proceedings*, 12 *Col. L. Rev.* 548, 548 (1912)

⁸¹ *Id.* at 548

⁸² *Id.* at 548

⁸³ Frank Cabell, *Appellant v. The City of Hazleton et al.*, 96 *Pa. Commw.* 129, 133 (1986)

⁸⁴ *Tarrett v. Taylor*, 13 U.S. (9 Cranch) 43, 71 (1815).

⁸⁵ 37 Yale L.J. 237 at 239-240
⁸⁶ Id. at 240
⁸⁷ Herbert Hovenkamp, *Enterprise and American Law 1836-1937*, 56-59 (1991)
⁸⁸ Id.
⁸⁹ 23 Wend. 193 (N.Y. Sup. Ct. 1840)
⁹⁰ Id. at 61
⁹¹ Id. at 63
⁹² Id. at 67
⁹³ Id. at 126
⁹⁴ Id. at 126
⁹⁵ Linzey, *Awakening a Sleeping Giant* at 237
⁹⁶ Id. at 239
⁹⁷ 65 Am Jur. 2d Quo Warranto §5.
⁹⁸ Id.
⁹⁹ Idaho Code §30-1-1430 (2006).
¹⁰⁰ Code of Ala. § 6-6-591(a)(1) (2005).
¹⁰¹ §735 ILCS 5/18-102 (2005)
¹⁰² Id.
¹⁰³ Idaho code §30-1-1430 (2006)
¹⁰⁴ Idaho Code §30-1-1430 (2006)
¹⁰⁵ §735 ILCS 5/18-101 (2005)
¹⁰⁶ see 805 ILCS 5/12.50 (2005)
¹⁰⁷ 37 Yale L.J. at 242
¹⁰⁸ 12 Columbia L.R. at 549 citing other cases
¹⁰⁹ 37 Yale L.J. at 243-244 citing cases
¹¹⁰ *People ex rel. Daley v. Datacom Sys. Corp.*, 146 Ill. 2d 1, 39
¹¹¹ §805 ILCS 5/13.10 (2005)
¹¹² *People v. White Circle League*, 408 Ill. 564 , 565 (1951).
¹¹³ *White Circle League* at 565.
¹¹⁴ Id. at 569
¹¹⁵ Id. at 570
¹¹⁶ 65 Am Jur 2d Quo Warranto § 48
¹¹⁷ Hovenkamp, *Enterprise and American Law* at 64
¹¹⁸ Glicksman, *Environmental Protection* at xxv.
¹¹⁹ see e.g. 805 ILCS 5/13.05 (2005)
¹²⁰ see 735 ILCS 5/18-101 (allowing quo warranto actions against corporations generally).
¹²¹ Ramirez, *The Science Fiction of Corporate Criminal Liability* at 941
¹²² Raoul Berger, *Standing to Sue in Public Actions: Is it a Constitutional Requirement?*, 78 Yale L.J. 816, 840.
¹²³ 10 Minn L Rev 176-177
¹²⁴ 37 Yale L.J. at 240
¹²⁵ *People ex rel. City of North Chicago v. city of Waukegan*, 116 Ill. App. 3d 88 (2d Dist. 1983)
¹²⁶ *State ex rel. Maley*, 28 N.W. 2d 668
¹²⁷ Idaho Code §30-1-1430(2)(b) (2006).
¹²⁸ Revised Model Business Corporation Act §14.30.
¹²⁹ Rev. Code Wash. (ARCW) § 23B.14.300(2)(b) (2005)
¹³⁰ 805 ILC 5/12.55(a)(2) (2005).
¹³¹ 37 Yale L.J. at 240
¹³² Del. Code Ann. Tit. 8, 284 (a) (1994)
¹³³ *Bryant & Chapman Co. v. Lowell*, 129 Conn. 321 (1942).
¹³⁴ *The History and Development of Qui Tam*, 1972 Wash. U.L.Q. 81, 83 (citing 3 W. Blackstone, *Commentaries on the laws of England* 160 (1st ed. 1768)) [Hereinafter *History of Qui Tam*]
¹³⁵ Id. at 83
¹³⁶ Id. at 87
¹³⁷ Pamela Bucy, *Information as a Commodity in the Regulatory World*, 39 Hous. L. Rev. 905 at 910.

¹³⁸ History of Qui Tam at 99-100 [hereinafter Information as a Comodity].

¹³⁹ Id. at 99-100

¹⁴⁰ Id. at 85 (citing 2 W. Hawkins, A Treatise of the Pleas of the Crown 368-391, 369 (8th ed. 1824)).

¹⁴¹ Id. at 90

¹⁴² Id. at 110,

¹⁴³ Bucy, Information as a Comodity at 48

¹⁴⁴ Id. at 915.

¹⁴⁵ Id.

¹⁴⁶ Id. at 941.