THE WRIT OF QUO WARRANTO IN MINNESOTA'S LEGAL AND POLITICAL HISTORY: A STUDY OF ITS ORIGINS, DEVELOPMENT AND USE TO ACHIEVE PERSONAL, ECONOMIC, POLITICAL AND LEGAL ENDS

By

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Abstract:

The ancient and extraordinary writ of quo warranto has been an integral legal device in the development of Anglo-American society. The writ has also been a critical component in Minnesota, particularly in the geopolitical development of the state. Quo warranto has traditionally possessed a civic quality but has not been a consistent feature of our political process. This article explores the background of quo warranto and eventual adoption into Minnesota's legal history. Tracing the course of the writ, this article posits that quo warranto should not be studied as a historical relic but rather a dynamic judicial device. The history of quo warranto is compelling and intriguing, but even more fascinating are the future potential uses of the writ and understanding how and why the use of quo warranto ebbs and flows.

—2015—

TABLE OF CONTENTS

I. INTRODUCTION

Quo warranto is an extraordinary writ that challenges an officeholder's or institution's official status.[1] The use of quo warranto has varied over time and has been used to consolidate royal power[2] and dissolve corporate monopolies.[3] These uses are only examples of the spectrum of this extraordinary writ. Quo warranto can be seen through a dual lens of institutional and personal power struggles. Often these interests come together in unique quo warranto strategies which may appear as a personal struggle but which may be a part of, or in support of, larger institutional conflicts.

Quo warranto was originally intended as a royal weapon.[4] This article examines the evolution of this ancient writ from its use by the English monarchy and subsequent adoption into the American colonies.[5] More interesting are the unique adaptations and applications of quo warranto in the state of Minnesota and their effect on the state's political landscape.[6] Lastly, this article questions the modern judicial reluctance use of quo warranto and explores the future of the quo warranto writ.[7]

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[1] BLACK'S LAW DICTIONARY, *infra* note 8 (providing a short background on quo warranto).

[2] Jenks, *infra* note 10 (discussing Edward I's use of quo warranto to consolidate royal power).

[3] Standard Oil Company of New Jersey v. United States, 221 U.S. 1 (1911) (affirming that quo warranto could be used to dismantle a corporation which unlawfully exceeds the scope of its charter); See also Brent Fisse, *Reconstructing Corporate Criminal Law; Deterrence, Retribution, Fault and Sanctions*, 56 S. CAL. L. REV. 1141 (1983) (citing example of courts ordering corporate death through quo warranto proceeding).

[4] Jenks, *infra* note 10, at 527. The writ was never even publicly published and thus reserved for the Crown. *Id.*

[5] *Infra* Part II (detailing the evolution from England to America).

[6] *Infra* Part III (describing uses of quo warranto).

[7] *Infra* Part IV (exploring the future potential for quo warranto actions).

II. BACKGROUND

Writs are formal orders issued by courts. When the United States adopted the English Common Law it also adopted the traditional writ system, in the sense that there was a rigid set of forms of relief that courts were authorized to grant. Before the expansion of judicial authority, there were distinct writs that the courts could authorize; and claims had to carefully seek the specific relief of a particular writ. There are common writs such as *capias* (directing police to take a person into custody), *fieri facias* (commanding a sheriff to seize a debtor's assets and auction them to resolve the judgment), and *venire facias* (summoning a jury to appear in court).

However there is also a class of prerogative, or extraordinary, writs which must be heard before any other case on a court's docket. The prerogative writs include habeas corpus (challenging unlawful imprisonment), mandamus (ordering a government entity to do or refrain from doing a particular action), certiorari (seeking judicial review), and quo warranto.

Quo warranto is a common law writ used to inquire into or effectively challenge the authority by which a public office is held or a franchise is held.[8] It is filed by a petitioner/relator against a respondent/usurper, with the relator seeking a judgment of ouster for the usurper from public office or cease an official action. Quo warranto translates to "by what warrant" in Latin.[9] It began

[8] BLACK'S LAW DICTIONARY (9th ed. 2009) (discussing quo warranto in general).
[9] *Id.* (offering the linguistic foundation for the legal device).

as a means of royal consolidation in England.[10] Over time, however, the writ evolved from a royal weapon to a means of testing usurpation and finally as a democratic device.[11] The American adoption of quo warranto and its subsequent evolution correlates with the expansion of the individual's role in government.[12] Seen most prevalently during times of foundation or reconstruction, the writ has a storied legacy in America and Minnesota as a force that shapes elections, geopolitical formation, and overall governance.[13]

A. The English Use of Quo Warranto

Edward I[14] came to the throne of England in 1272 after a long struggle with rebellious barons that would ultimately direct the course of his reign as one of consolidation and preventive measures.[15] The monarchy had lost control over the country and was being challenged by the growing power of the aristocracy.[16]

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[10] Edward Jenks, *The Prerogative Writs in English Law*, 32 YALE L.J. 523, 527 (1923) (discussing the evolution of prerogative writs in the English system of laws). Prerogative, also known as extraordinary, writs are legal devices which test or force a particular legal action. *Id.* Common examples include: habeas corpus (testing validity of imprisonment), mandamus (judicial ordering of a particular function of a public official), certiorari (seeking judicial review of prior administrative or judicial findings), and quo warranto (testing the validity of a government franchise, public office, or the qualifications of a public officeholder). *See id.*

[11] *See* Shael Herman, *The Code of Practice of 1825: The Adaptation of Common Law Institutions*, 24 TUL. EUR. & CIV. L.F. 207, 210–11 (2009) (discussing the transposition of quo warranto from England to America).

[12] *Infra* note 44 and accompanying text (discussing how quo warranto for the individual was expanded at a time when political involvement for the individual was also expanded).

[13] *Infra* Part II.C–D (explaining quo warranto's role in the development of Minnesota).

[14] Edward I (1239-1307) was an English king who reigned from 1272-1307. A veteran of the last medieval crusade, 1271-1272, Edward I was commonly known as Edward the Longshanks and is credited with initiating the unification of the British continent and helping England to develop parliamentary and constitutional government.

[15] SPENCER C. TUCKER, A GLOBAL CHRONOLOGY OF CONFLICT: FROM THE ANCIENT WORLD TO THE MODERN MIDDLE EAST 284 (ABC-CLIO 2009) (chronicling the armed conflicts of Middle England). The Second Baron's War lasted from 1264–1267. *Id.*

[16] *Id.* The country was wrought with famine and heavily in debt due to Henry III's commitment to the Crusades. *Id.* This allowed Simon de Montfort to seize the opportunity and lead an armed rebellion against the monarchy. *Id.*

Edward was even kidnapped by the barons, but managed to escape and raise an impressive army.[17] Edward eventually commanded King Henry III's army at the Battle of Evesham, which was the decisive battle in suppressing the rebellious barons.[18] Soon after coming to the throne Edward I audited the nobility's titles, land holdings, revenues, and ultimate power, beginning with the great inquest of 1274–1275 commonly known as the Ragman Rolls.[19] The process of questioning the validity of feudal franchises was formalized in the Statute of Gloucester of 1278, thus establishing the statutory writ *of quo warranto.*[20] Edward I was thus enabled to consolidate his royal power and reassert monarchial control over those formerly delegated institutions that weakened his absolute authority.[21] Edward I's "vigorous campaign" was eventually tempered by the Quo Warranto Statute of 1290, which provided that tenure since 1189 was good warrant, or that the claim or title was properly held.

Edward I

[17] *Id.* While under capture, the royals were kept alive as figurehead monarchs while the barons broadened representation in Parliament and appeared ready to abolish the monarchy altogether. *Id.*

[18] *Id.* The Battle of Evesham (1265) was essentially a massacre where Edward outnumbered Earl Montfort nearly four to one and in the end took no prisoners trapping and slaughtering the baron's forces. *Id.*

[19] Helen Cam, *Quo Warranto Proceeding in the Reign of King Edward I, 1278–1294,* 77 HARV. L. REV. 985, 986 (1964) (book review) (discussing the systematic review of royal franchises under Edward I). Alternately referred to as the Hundred Rolls, "[t]he juries of all the hundreds of England were required to report all the franchises in their district and, if they knew, by what warrant they were held." *Id.*; "Hundreds" were rural geographical divisions that functioned as a subdivision of the larger "shire" which was similar to the modern county. *See* ROBERT BARTLETT, ENGLAND UNDER THE NORMAN AND ANGEVIN KINGS, 1075–1225, 165–167 (Oxford 2002) (explaining the history of old English municipalities).

[20] Jenks, *supra* note 10, at 527 (discussing the legal history of quo warranto).

[21] Herman, *supra* note 11 at 210(discussing the background of quo warranto as aligned with Edward I's ambitions). Without a proper warrant, a feudal franchise could be dissolved and restored to the Crown. *Id.*

This law exempted many respondents from the king's inquisition, and operated as a 100-year and older grandfather clause.[22] However, this episode of absolutism would not be the last or even the most famous exercise of quo warranto by the English monarchy.[23]

Legal and historical scholars have debated the motivations for the vast exercise of quo warranto during the seventeenth century, but a trend of political-religious repression has been recognized.[24] Professor Edward Jenks, a noted English jurist of the early 20th century, describes this period as marked by vicious prosecution under Charles II (1660–1685) and James II (1685–1688). The former monarch "had set the kingdom in a blaze by his Quo Warranto tour among the Puritan boroughs."[25] Professor Francis Bremer contends that colonial, in effect Puritan, self-determination incited Charles I to initiate quo warranto proceedings against the Massachusetts Bay Colony in 1635.[26] Bremer notes that because the Bishops War and other domestic developments had occupied the attention of Charles I until he was deposed in the English Civil War,

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[22] Cam, *supra* note 19, at 985 (discussing the inevitable compromise which recognized tenure as an acceptable seal).
[23] *Infra* note 38 and accompanying text (quo warranto was later used against colonial charters).
[24] Edward Coke, Francis Bacon, and William Blackstone have each written extensively on quo warranto. *See* Herman, *supra* note 11 at 210. (briefing the history of quo warranto).
[25] Jenks, *supra* note 10, at 530. (discussing the seventeenth century acceleration of quo warranto prosecution under Lord Chief Justice of the King's Bench George Jeffreys). The effect of these quo warranto actions was to create a policy of packing corporations that excluded Whig candidates from municipal office. Herman, *supra* note 11.
[26] FRANCIS J. BREMER, THE PURITAN EXPERIMENT: NEW ENGLAND SOCIETY FROM BRADFORD TO EDWARDS 70–72 (2013). This prosecution was encouraged by Sir Ferdinando Gorges (founder of the Royal Province of Maine) who was angered by the pro-Puritan, non-feudal establishment in Massachusetts. *Id.* A 1666 letter from William Morrice to the Massachusetts Bay Colony, sent at the direction of Charles II, reveals the past displeasure of Charles I at the colony "for not only not conforming to, but abolishing, the worship of the Church of England." ADOLPHUS EGERTON RYERSON, THE LOYALISTS OF AMERICA AND THEIR TIMES: FROM 1620 TO 1816 171 (1970).

the Puritan colonies or "Bible Commonwealths" were able to live on.[27] The quo warranto proceedings were religious discrimination and shows the institutional nature of the writ.[28]

Following the civil strife, the English Restoration in 1660 restored Charles II to the throne.[29] The king soon turned his attention to imposing royal power on the Puritan colonies who were flaunting English sovereignty.[30] But by the time Charles II came to the throne, the Bay Colony was effectively independent of England.[31] The English monarchy used the writ of quo warranto to vacate numerous charters in England and even cancelled the colonial charters in an effort to quell rebellion.[32]

Charles II

[27] REYERSON, *supra* note 26 at 72 (describing the survival of the colonies amidst the domestic turmoil occupying the English Crown).
[28] BREMER, *supra* note 26 at 71 (examining quo warranto through a Puritan lens).
[29] BROOKS ADAMS, THE EMANCIPATION OF MASSACHUSETTS 179–82 (1899) (discussing the quo warranto wrath of the English monarchy against the American colonies).
[30] *Id.* The great distance of the Massachusetts Bay Colony allowed the colony to escape the Privy Council's oversight into their affairs. *Id.* at 181. Scholars note that this unfettered control allowed for a manipulation of corporate power and religious discrimination as a means of control. *Id.* Adams wrote that the church was highly influential in the corporate control of the colony "because by means of a religious test the ministers could pack the constituencies with their tools." *Id.*
[31] *Id.* "Laws were enacted in the name of the Commonwealth, the king's name was not in the writs, nor were the royal arms upon the public buildings; even the oath of allegiance was rejected."*Id.*
[32] DAVID RAMSAY & ROBERT YOUNG HAYNE, HISTORY OF THE UNITED STATES: FROM THEIR FIRST SETTLEMENT AS ENGLISH COLONIES, IN 1607, TO THE YEAR 1808; OR, THE THIRTY-THIRD OF THEIR SOVEREIGNTY AND INDEPENDENCE, VOLUME 1 157 (1818). "In the last years of the reign of [K]ing Charles the second, the rights of the nation were violated, and a great number of corporations in England and Wales were deprived of their charters. King James the second began, with the most flagrant violation of the laws. He proceeded in the same lawless manner with the colonies, to vacate the colonial charters." *Id.*

Before turning to quo warranto, Charles II tried writing a letter on June 28, 1662, and declared that he would not revoke the charter of the Massachusetts Bay Colony if they conformed to his conditions.[33] When the colonies did not submit, Charles II sent a second letter urging cooperation in 1679.[34] Finally, a writ of quo warranto was issued by the Privy Council on June 27, 1683,[35] and the Massachusetts Bay Colony charter was officially revoked.[36]

Charles II's experience with the Massachusetts Bay Colony served as a lesson for his successor.[37] James II quickly issued three writs of quo warranto against the colony of Connecticut with the last writ received on December 28, 1686.[38] This final writ was accompanied by an in-person demand from the newly appointed governor-general over New England, Sir Edmund Andros, who sought the resignation of their charter.[39] But the Glorious Revolution ended the reign of King James II, and as a result the former colonial governments were quickly resumed.[40] However, the use of

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[33] RYERSON, *supra* note 26, at 211. The king wanted them to respect the authority of the Crown, and to expand the power to vote beyond church members. *Id.*
[34] *Id.* at 187–189. Historical records indicate that the colony responded to the royal questioning by attempting to bribe the clerks of the Privy Council to limit the prosecutorial scope. *Id.* at 205.
[35] RYERSON, *supra* note 26, at 208. The writs caused great concern for the colonists whose property rights in the New World were now in question. *Id.*
[36] *Id.* at 210. The charter was actually revoked procedurally on default for non-appearance, because the colony had not arranged for official representation to defend them in court. *Id.*
[37] EDWARD RODOLPHUS LAMBERT, HISTORY OF THE COLONY OF NEW HAVEN: BEFORE AND AFTER THE UNION WITH CONNECTICUT 36 (1838).
[38] *Id.* James II's goal was to reorganize the colonies into a single entity of New England. *Id.*
[39] *Id.* While the Connecticut Assembly was in session, Governor Andros arrived in Hartford in October of 1687 "with his suit and about sixty 'regular troops' and demanded the charter." THE NEW ENGLAND HISTORICAL AND GENEALOGICAL REGISTER: VOLUME 23, 1869 170 (1994).
[40] RAMSAY & HAYNE, *supra* note 32, at 163. The Glorious Revolution replaced James II with William & Mary who reversed the tide of colonial prosecution and abandoned the attempted

the writ had in fact united the fragmented colonies who had collectively faced a legal vacation of their right to exist.[41]

The Glorious Revolution not only saved the colonies from dissolution by quo warranto, this time period also saw significant development of the writ itself. In discussing the legal evolution of quo warranto, Professor Jenks writes:

> **Quo Warranto was originally intended solely as a royal weapon.…But it is equally clear that, at a later time, by the process of 'informing' the royal officials of an alleged usurpation, a private person could make use of the writ…the information in the nature of a Quo Warranto took its place during the eighteenth century as a process open to the ordinary citizen.**[42]

This division of quo warranto—a writ of quo warranto which was issued from the Crown and an information in the nature of quo warranto which could be filed by a private individual—was codified in England in 1711.[43] **Because the English law was the foundation for American law, the information in the nature of quo warranto was adopted by America as well.**[44]

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reorganization by James II. *Id.* As a result Governor Andros was quickly arrested and the former colonial governments came back to power. *Id.*

[41] ***Id.*** **(discussing the political changes colonists made to create ideological solidarity against further royal intrusion).**

[42] **Jenks, *supra* note 10, at 527–528 (explaining how quo warranto became expanded to the individual).**

[43] **9 Anne, c. 20, 12 Stat. at Large, p. 190. The purpose of this statute was to allow any person to defend the king's rights and gain favor, possibly a ransom, for their services in identifying and removing a royal usurper. Bradley S. Clanton, *Standing and the English Prerogative Writs*, 63 BROOK. L. REV. 1001, 1036–37 (1997) (explaining the evolution of quo warranto in England). It should be noted that these two separate and distinct actions are often generally called quo warranto without specificity, and therefore the use of one term over another does not necessarily signify that the action is on the relation of an individual or an action by the state itself. *Id.***

[44] **Kathleen A. Keffer, *Choosing a Law to Live by Once the King is Gone*, 24 REGENT U. L. REV. 147, 152–53 (2011) (discussing the history of American jurisprudence after the Revolution).**

B. Early American Uses of Quo Warranto

The writ has been used most prolifically during a developmental stage, for example: the broadening of Parliament in England, the creation of the United States, the reconstruction after the Civil War, and the organization of the state of Minnesota.[45] Often, during these developmental stages there are opportunities for a change in the political power regime.[46] One way that people have resisted an undesirable political shift is to use the ancient writ of quo warranto.[47] The writ offers a judicial alternative to bloody revolt.[48] The following are two illustrations of the use of quo warranto, which may have avoided violent confrontation, during times of significant power shifts.

The Federalist government of President John Adams[49] produced a highly partisan political climate in his party's push to control the new country.[50] So

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[45] *See infra* Part II (highlighting examples of quo warranto as a force of political development).
[46] Donald J. Kochan, *You Say You Want a (Nonviolent) Revolution, Well Then What? Translating Western Thought, Strategic Ideological Cooptation, and Institution Building for Freedom for Governments Emerging Out of Peaceful Chaos*, 114 W. VA. L. REV. 897, 905 (discussing the philosophy of post-revolution nations).
[47] This sentiment was held by the Federalists who feared the outcomes of the 1792 national election, understanding that if the Republicans won at the polls the only recourse would be quo warranto in the courts. Edward B. Foley, *The Founders' Bush v. Gore: The 1792 Election Dispute and Its Continuing Relevance*, 44 IND. L. REV. 23, 31 n.54 (2010) (quo warranto was considered a separation-of-powers fix between the Legislature and election boards).
[48] *See infra* Part II.B.1 and 2 (highlighting the plight of Federalists and former Confederates in relation to quo warranto).
[49] John Adams (1735-1826) was the second President of the United States of America (1797-1801). A founding father of the country, he assisted Thomas Jefferson in drafting the Declaration of Independence. Despite this common ground, Adams and Jefferson were political rivals in the fledgling nation. Jefferson won the presidency in the 1800 elections when his party swept Adams and the Federalists from power.
[50] LINDA K. KERBER, FEDERALISTS IN DISSENT: IMAGERY AND IDEOLOGY IN JEFFERSONIAN AMERICA 135 (Cornell Univ. Press 1980) (a historical analysis of the Federalists after the defeat of 1800 at the hand of the Republicans).

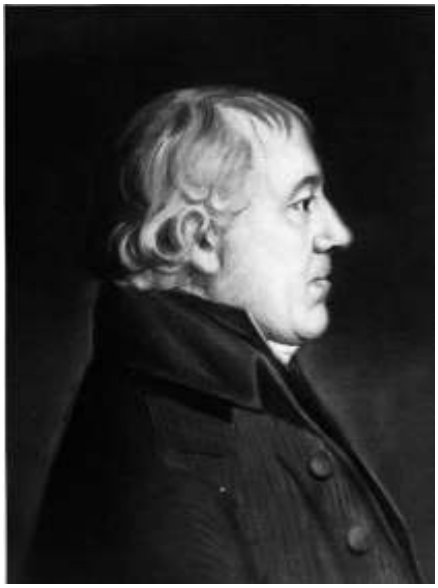
when the Republican Party swept the general elections of 1800, and captured both houses of Congress and the presidency, Adams rushed the Judiciary Act of 1801 through Congress.[51] President Adams' actions rushed to fill judicial vacancies and even created a number of new judgeships on the United States circuit courts, which provided the Federalists with a measure of governmental control through the judiciary. These "midnight appointments" were quickly vacated following the 1802 repeal of the Judiciary Act of 1801 by the new Jeffersonian Congress.[52] The repeal also abolished some federal courts thereby strengthening state courts in the process.[53]

John Adams

One of the removed judges was Richard Bassett, and the Federalists capitalized on his plight in an effort to encourage Congressional review of his removal from judgeship.[54] A special committee was formed and eventually

[51] *Id.* at 136 (illustrating the last ditch efforts of John Adams before leaving the presidency).
[52] *Id.* The bulk of the judicial reforms were sensible, such as ending the practice "riding circuit" and establishing permanent circuit courts and principal judges thereof. *Id.* However, the act also exclusively installed Federalists. *Id.* One such famous "midnight appointment" was the central issue in Marbury v. Madison, 5 U.S. 137 (1803), although the *Marbury* appointment was unrelated to the Judiciary Act of 1801. Jerry W. Knudson, *The Jeffersonian Assault on the Federalist Judiciary, 1802–1805; Political Forces and Press Reaction*, 1 AM. J. LEGAL HIST., 55–56 (1970) (discussing the Republican reaction to the "midnight appointments").
[53] KERBER, *supra* note 50 at 146. Repeal offered the Republicans both a sweep of judicial Federalists as well as winning support with delegates who feared the rapid rise of the federal government. *Id.*
[54] Jed Glickstein, *After Midnight: The Circuit Judges and the Repeal of the Judiciary Act of 1801*, 24 YALE J.L. & HUMAN. 543, 572–74 (2012) (discussing the multiple strategies employed by the Federalists to politically overcome their election defeat).

proposed that President Jefferson instruct the Attorney General to institute quo warranto proceedings as a remedy for his removal.[55] But the use of a quo warranto action was fiercely debated in Congress and was seen as an example of the Federalist preference for the English common law, an unpopular connection after the Revolution.[56] The Federalists lost the debate and the use of quo warranto was avoided by a party line vote.[57]



Richard Bassett

The writ was later used to purge former Confederates from public office following the Civil War (1861-1865).[58] When the Thirty-Ninth Congress was seated in December 1865, its first order of business was to form a joint

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[55] *Id.* at 573 (detailing the proceedings in Congress which contemplated a directive quo warranto).

[56] Kerber, *supra* note 50 at 169. The committee's recommendation was opposed by Republican Senator William Cocke of Tennessee who debated the Federalists over their motion to proceed in quo warranto. *Id*. Senator Cocke asked, "I wish to know where we are to stop; and whether we are to follow this common law until it leads us to . . . royal robes." *Id.* Federalists were well acquainted with quo warranto, having successfully used the device to oust Republican Senator Albert Gallatin, because in 1794 in a vote along party lines. *Albert Gallatin*, *available at* http://english.turkcebilgi.com/Albert+Gallatin. Sen. Gallatin may have incurred the wrath of the Federalists by challenging the Treasury Department, a critical component to the Federalist vision for America. *Id.*

[57] Senate Vote 76. TO ADOPT THE RESOLUTION REQUESTING THE PRESIDENT TO CAUSE A "QUO WARRANTO" PROCEEDING TO BE FILED BY THE ATTORNEY GENERAL AGAINST RICHARD BASSET FOR THE PURPOSE OF TESTING THE VALIDITY OF THE ACT OF MAR. 8, 1802, REPEALING THE ACT OF FEB. 13, 1801, ESTABLISHING CERTAIN INFERIOR COURTS; *See* 12 ANNALS OF CONG. 59–60 (1803). Senator James Jackson of Georgia condemned the attempted action and saw it as an attack on the executive and legislative by the judiciary, which raised significant issues of separation of powers. WILLIAM O. FOSTER, JAMES JACKSON: DUELIST AND MILITANT STATESMAN, 1757–1806 173–74 (Univ. Georgia Press 2009) (discussing reception of the Federalist desire to pursue quo warranto for the "midnight judges").

[58] David P. Currie, *The Reconstruction Congress*, 75 U. CHI. L. REV. 383, 385 (2008) (detailing the political infighting of Congress following the Civil War).

committee in order to determine the level of political representation from the former Confederate states.[59] Within two months, the joint committee resolved that the representatives from the secessionist states be excluded from Congress until their right to representation was determined by Congress.[60] This resolution was passed by the full House the very same day.[61] The Senate quickly approved the measure,[62] and eleven states were officially excluded from Congress.[63]

Among the excluded states was Tennessee, which was formally readmitted into the Union and allowed representation in Congress by a resolution signed by President Andrew Johnson on July 24, 1866.[64] The basis for Tennessee's re-entry was the ratification of the Thirteenth Amendment, which satisfied national policy goals but left the issue of loyalty on the table.[65]

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[59] *Id.* (detailing the immediate action Congress took on the former Confederate states).
[60] *Id.* at 385–386; CONG. GLOBE, 39TH CONG., 1ST SESS. 943 (Feb. 20, 1866) (providing the committee findings).
[61] Currie, *supra* note 58, at 386; CONG. GLOBE, 39TH CONG., 1ST SESS. 950 (Feb. 20, 1866) (illustrating the zeal with which the House received and quickly affirmed the findings of the special joint committee).
[62] Currie, *supra* note 58, at 386; CONG. GLOBE, 39TH CONG., 1ST SESS. 1146–47 (Mar. 2, 1866) (describing the Senate approval of the measure to block Southern states that occurred within ten days of the House vote).
[63] Currie, *supra* note 58, at 387–88 (describing the Congressional wariness surrounding Southern representation).
[64] *Id.* at 389–390 (Tennessee's re-entry was seen as seminal considering the state's resolve during the Civil War).
[65] *Id.* at 389. Passage of the 13th Amendment, abolishing slavery, was ceremonial in nature since slavery was already abolished after Union victory. But passage was a stepping stone to winning back Congressional representation. *Id.*

President Grant

The solution was found in Section Three of the Fourteenth Amendment which banned former Confederates from political representation;[66] and in Section Five, the enforcement clause, which enabled Congress to legislate the Confederate purge.[67] Section Fourteen of the Enforcement Act of May 31, 1870, specifically prescribed the use of quo warranto against former Confederates who were currently holding public office.[68] The Enforcement Act was signed into law by President Ulysses Grant[69], the former Union general who had recaptured Tennessee during the Civil War.[70] This

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[66] U.S. CONST. amend. XIV, § 3. "No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability." *Id.* "Disfranchisement of willing rebels was replaced by disqualification of their leaders from state or federal office." Currie, *supra* note 58, at 403.

[67] U.S. CONST. amend. XIV, § 5 (allowing Congress to pass any act necessary to enforcing the amendment).

[68] 16 Stat. 140 (1870). This legislation was also known as the Civil Rights Act of 1870 or Force Act. Todd E. Pettys, *The Intended Relationship Between Administrative Regulations and Sections 1983's 'Laws'*, 67 GEO. WASH. L. REV. 51, 55 n.36 (1998). Quo warranto proceedings weren't the only effect of this legislation; the new Act, which was amended one year later [16 Stat. 433 (1871)], criminalized the restriction of voting rights pursuant to the 15th amendment. *Id*. This amended statute later came to be known as the Ku Klux Klan Act or Antilynching Act. *Id.* at 51. Accordingly, many enforcement actions were filed against Southern election officials as well as the Ku Klux Klan for voter suppression and intimidation. *See, e.g.*, U.S. v. Reese, 92 U.S. 214 (1875); The Ku Klux Cases, 110 U.S. 651 (1884).

[69] Ulysses S. Grant was the commanding general of the Union forces during the Civil War and oversaw the Reconstruction efforts in the Confederate states. He served two terms as the 18th U.S. President (1869-1877).

[70] Currie, *supra* note 58, at 458. Grant's endorsement of quo warranto is similar to King Edward I's endorsement. *See supra* note 19 and accompanying text (Edward a veteran of the Battle of Evesham, which ended the Second Baron's War, used quo warranto to suppress future

legislation mandated that U.S. Attorneys prosecute and oust the former rebels from public office, thus politically cleansing the post-Civil War South.[71] Over 180 writs of quo warranto were issued, including writs against the Tennessee attorney general and three justices of the state supreme court.[72]

III. A History of Quo Warranto in Minnesota

Quo warranto was an effective tool for shaping the new state of Minnesota, as well as limiting the influence of any one actor or institution.[73] It was a device for checking opposition forces, filling power vacuums and settling political feuds. Quo warranto was an influential legal device in Minnesota's history and remains an extraordinary writ available today.

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rebellions just as President Grant did who himself was a veteran of the Battle of Shiloh which turned the western front of the Civil War in the Union's favor).

[71] 16 Stat. 140, § 14 (1870) ("And be it further enacted, That whenever any person shall hold office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States, *it shall be the duty of the district attorney of the United States for the district in which such person shall hold office, as aforesaid, to proceed against such person, by writ of quo warranto*, returnable to the circuit or district court of the United States in such district, and to prosecute the same to the removal of such person from office; *and any writ of quo warranto so brought, as aforesaid, shall take precedence of all other cases on the docket* of the court to which it is made returnable, and shall not be continued unless for cause proved to the satisfaction of the court.")(emphasis added).

[72] Sam D. Elliott, *When the United States Attorney Sued to Remove Half the Tennessee Supreme Court*, 49-AUG TENN. B.J. 20, 24–25 (2013) (detailing the political struggle against former, sometimes assumed, Confederates). The Memphis papers decried the actions as federal intervention in state matters. *Id.* No public officer was spared during this political reorganization which ruined many careers. *Id*. The issue became moot following the passage of the Amnesty Act on May 22, 1872. 17 Stat. 142 (1872) (relieved most former Confederates from future prosecution).

[73] Current usurper statutes can be found at M.S.A. § 556.01 *et seq.* (2012).

A. Sources of Quo Warranto in Minnesota

Minnesota's legal traditions were inherited through its geographic evolution from territory to statehood. The area that is now Minnesota began as part of the Michigan Territory, and then the Wisconsin Territory, and finally the Minnesota Territory.[74] First, the Michigan Territory adopted the English common law.[75] Next, Wisconsin's founding legislation incorporated a legal provision of the Northwest Ordinance which guaranteed common law procedures.[76] Finally, Minnesota's Organic Act established that the Territory would incorporate and continue the laws of the Wisconsin Territory when Wisconsin split off and joined as a state.[77] When the Minnesota Constitution was adopted in 1857, it continued this tradition of legal adoption thereby bringing the English common law—and its writs, including quo warranto—into the Minnesota judicial system.[78] This implementation of legal tradition has been repeatedly affirmed by the Minnesota Supreme Court.[79]

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[74] *See* William Wirt Blume & Elizabeth Gaspar Brown, *Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions*, 61 MICH. L. REV. 467, 469 n.4 (1963). Minnesota was part of the Michigan territory from 1834 to 1836 and then part of the Wisconsin Territory from 1836 to 1849. *Id.* Minnesota became its own territory in 1849. *Id.*

[75] *Id.* at 488 (discussing the lineage of Minnesota common law).

[76] Wisconsin Organic Act of 1836, ch. 54, § 12, 5 Stat. 15 (1836); *see also* Blume & Brown, *supra* note 74, at 495.

[77] Minnesota Organic Act of 1849, ch. 54, § 12, 9 Stat. 407 (1849); *see also* Blume & Brown, *supra* note 74, at 499.

[78] MINN. CONST. of 1857 sched. § 2 (1857); *see also* Blume & Brown, *supra* note 74, at 500.

[79] *See* Dutcher v. Culver, 24 Minn. 584, 591 (1877) (holding that an English statute, passed long before the revolution, which gave right to sell a distress, thus changing the common law, was part of the Wisconsin common law and hence part of the Minnesota common law); *see also* In re Lauritsen, , 109 N.W. 404, 407 (Minn. 1906) (declaring that the district courts have "succeeded historically to the ancient English Court of King's Bench).

Minnesotans may have also been influenced by the quo warranto action following the Wisconsin gubernatorial election of 1855,[80] Governor William A. Barstow was ousted from office for forging electoral returns from non-existent precincts in his favor.[81] Edward F. Parker[82] may indeed have been influenced by Wisconsin's heavy-handed quo warranto, as he was one of the first successful quo warranto petitioners in Minnesota.[83] His case shows that Minnesota courts were products of the English common law.[84] Despite this legal adoption it would be almost twenty years before quo warranto was commonly heard in Minnesota courts.[85]

It will be helpful to distill the legislative history surrounding these points. It is important to note that Minnesota laws recognized two forms of quo warranto (a writ by the attorney general and an information by a private citizen) which, at one time, had separate original jurisdictions of either the state supreme court or

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[80] Attorney General *ex rel.* Bashford v. Barstow, 4 Wis. 567 (1855) (ousting the Wisconsin state governor).
[81] *Id*. This marks the most powerful use of quo warranto in America- the removal of a state governor. *Id.*
[82] Edward F. Parker was born in 1825 in Pennsylvania and was one of the first settlers of Hastings, Minnesota. Admitted to the Minnesota bar in 1856, he served as District Attorney of Dakota County, Minnesota. He died in Duluth in 1886 after a celebrated career serving as the St. Louis County District Attorney. Notably, in 1870 Parker successfully prosecuted Tom Stokely for the murder of legendary frontier and Civil War hero George Northrup. Within a year, Parker later petitioned for Stokely's pardon as did the Republican Party of Pennsylvania who was supporting Stokely's father in a mayoral contest in Philadelphia.
[83] Territory of Minnesota *ex rel.* Parker v. Smith, 3 Minn. 240 (1859) [hereinafter *Parker I*] (successfully challenging the election of District Attorney of Dakota County by virtue of respondent's ineligibility having been in territory for less than six months). This action was so reviled that Parker needed a separate claim against the county for refusing to pay him his salary. Parker v. Bd. of Supervisors of Dakota Cnty., 4 Minn. 59 (1860).
[84] Blume & Brown, *supra* note 74, at 500 (discussing the relative ease of adopting English common law as an American tradition).
[85] *Infra* note 97 and accompanying text.

the district courts.[86] When the Minnesota Constitution was adopted by the voters in 1857, the Supreme Court was prohibited from holding jury trials and thus also lost the ability to hear certain writs.[87] However, the Supreme Court continued to proceed under an analogous mandamus order to show cause why a peremptory writ should not issue.[88] In 1866 the Legislature gave exclusive original jurisdiction for writs of mandamus to the state district courts.[89] Later that same year, the Legislature abolished the statutory writ of quo warranto,[90] but not as a common law remedy.[91] This reasoning was not finally decided until 1894 though, which explains the lapse in effect.[92] The Supreme Court's authority for writs was thus limited by these provisions and the ability to issue writs of mandamus was confined to the district courts.[93] Because quo warranto relief was available as writs of mandamus, the legal device of quo warranto was intimately connected to the writ of mandamus.[94]

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[86] *Supra* note 100 and accompanying text.
[87] MINN. CONST., art. VI, § 2 (prescribing that the supreme court shall have "original jurisdiction in such remedial cases as may be prescribed by law, and appellate jurisdiction in all cases, both in law and equity, but there shall be no trial by jury in said court"); *see Harkins I*, supra note 96, at 342–43 (holding that because defendants in actions of mandamus are entitled to a jury if demanded, the supreme court has thus lost original jurisdiction of the writ because a court cannot take jurisdiction of an action in which it lacks the power to reach a final judgment).
[88] *Crowell II*, *supra* note 96 (detailing the alternate action and the similar remedy it offered).
[89] State *ex rel.* Colter v. Burr, 28 Minn. 40, 41–42 (1881) (discussing an order to show cause why a peremptory writ should not issue, and the legal evolution of this device and quo warranto within Minnesota).
[90] Whitcomb v. Lockerby, 58 Minn. 275, 278 (1894) (reasoning the current status of quo warranto).
[91] *Id.* (discussing the transition from statutory to common law quo warranto).
[92] *Id.* The carefully outlined holding indicates an aura of confusion which surrounded the use of quo warranto.
[93] *Colter, supra* note 89, at 41. Although, it should be noted that this concurrent jurisdiction was later revoked and returned to the exclusive domain of the districts courts by legislative act in 1881. *Id.* at 43.
[94] *Supra*, note 89 (explaining that an order to show cause was analogous to quo warranto). Quo warranto often went by various other names, but the remedy always remained the same. *Id.*

The Legislature's Act of March 5, 1869 granted concurrent jurisdiction in writs of mandamus to both the Supreme Court and the district courts.[95] Early Minnesota cases appear to have avoided the writ of quo warranto as a political remedy, and plaintiffs typically petitioned for writs of mandamus directly to election officials.[96] One such case was *State ex rel. Atherton v. Sherwood* where, in 1870, Chief Justice Chirstopher Ripley writes that the writ of quo warranto was abolished because it was not "speedy and adequate" and thus preempted by statute.[97] Finally in 1876, quo warranto was formally vested in the Minnesota Supreme Court.[98]

Justice John Berry

The legal confusion as to the availability of quo warranto to the individual was resolved in 1880 in the case of *State v. Sharp*, where Justice John Berry[99]

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[95] *Id.* Discussing the back and forth history of quo warranto in Minnesota.

[96] *See* O'Ferrall v. Colby, 2 Minn. 180 (1858) (issuing a mandamus to correct the faulted elections of State Senators); Clark v. Buchanan, 2 Minn. 346 (1858) (unsuccessfully challenging the election of treasurer in Ramsey County by petitioning the clerk to issue electoral certificates); Harkins v. Bd. of Supervisors of Scott Cnty., 2 Minn. 342 (1858) [hereinafter *Harkins I*] (unsuccessfully contesting the election of the office of register of deeds in Scott County); Harkins v. Sencerbox, 2 Minn. 344 (1858) [hereinafter *Harkins II*] (unsuccessfully contesting the election of the office of register of deeds in Scott County, in a proceeding against the incumbent); *see also* Crowell v. Lambert, 9 Minn. 283 (1864) (unsuccessfully seeking a mandamus for the Ramsey County Probate Judge to surrender his office to petitioner); Crowell v. Lambert, 10 Minn. 369 (1865) [hereinafter *Crowell II*] (finally securing the mandamus to oust the Ramsey County Probate Judge).

[97] State *ex rel.* Atherton v. Sherwood, 15 Minn. 221, 225–26 (1870) (holding that changes in Minnesota law had in effect removed quo warranto as an available remedy because the statute provided "other and very adequate provisions are made for the full and speedy trial and determinations of questions as to *title* to office").

[98] *Id.* (detailing the judicial understanding of quo warranto procedure). This was by action of statute; the court did not address the common law quo warranto jurisdiction. *Id.*

reasoned that a private quo warranto action did exist within the statutes, and that such an action would be dictated by common law procedures.[100] Justice Berry, resurrecting English common law, held that Minnesota recognized the two separate actions of quo warranto: one for the individual (information in the nature of), and another for the attorney general (writ of quo warranto).[101] *Sharp* not only affirmed the formation of the Moorhead School District, but it importantly clarified the available writs of quo warranto in Minnesota. Critical to the *Sharp* case, it allowed a quo warranto claim to proceed as a standard writ, by the attorney general, even when the information in the nature of quo warranto, by an individual, may be arguably closed by the relator's actions, such as active acquiescence. This allowed the state to pursue a quo warranto claim even when the individual claim may fail because of a technicality.

Justice Berry noted that the writ in *Sharp* was conducted by the attorney general and that, "It is for him to determine whether the public good requires

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[99] Born in Pittsfield, New Hampshire, on September 18, 1827. Attended Phillips Academy and graduated from Yale in 1847. Admitted to practice in New Hampshire in 1850. Came to Minnesota in 1853, served as a member of the Territorial Legislature (1856 - 1857) and as a Regent of the University of Minnesota (1860-1861). Chaired the House and then the Senate committees on the judiciary in 1863 and 1864, respectively. Elected an Associate Justice of the Minnesota Supreme Court, he took office on January 10, 1865, and remained on the court by virtue of successive reelections until his death on November 8, 1887. MN STATE L. LIB., *Biographies of the Justices of the Minnesota Supreme Court*. http://mn.gov/lawlib/judgebio.html.

[100] State *ex rel.* Probstfield v. Sharp, 6 N.W. 408 (1880) (holding that a proceeding by information in the nature of quo warranto brought forth by a private individual was a common law procedure under Chapter 63 of the general statutes, and not governed by Chapter 79 which is the 'usurper' provision allowing for the state attorney general to proceed in quo warranto against a public officer or corporate franchise without a relator). Because the Minnesota Constitution provided that the Supreme Court would have "original jurisdiction in such remedial cases as may be prescribed by law," the provisions of an 1876 law came into effect. *Colter*, *infra* note 89, at 41 (explaining that the 1876 act amended Chapter 63 "by inserting in it the words quo warranto in enumerating the writs which the court might issue).

[101] *Id*. The division of quo warranto dates back to 1711 and the St. Anne statute. *Supra* note 43.

him to proceed in the matter."[102] This importantly defined quo warranto as two distinct devices and also expanded the right of redress by allowing either government or private action. Additionally, he emphasized that the spirit of quo warranto was as a mechanism for the public good. Justice Berry's reasoning was affirmed by the court in subsequent decisions.[103] For ease of discussion, both actions are referred to as writs of quo warranto within this article.

B. Quo Warranto Cases of Early Minnesota

The device of quo warranto was used to challenge many officeholders in early Minnesota.[104] For the purposes of this article only select cases will be reviewed, which have been chosen to illustrate the political targets of the writ of quo warranto. Quo warranto may often appear as a direct challenge to the

[102] *Sharp, supra* note 100, at 408.

[103] *See* State *ex rel.* Wetzel v. Tracy, 48 Minn. 497 (1892) (holding that a writ of quo warranto was vested in the attorney general under Ch. 79, whereas a writ of information in the nature of quo warranto is a common law action by the individual under Ch. 63); *see also* State *ex rel.* Young v. Village of Kent, 96 Minn. 255, 269 (1905) ("A proceeding under chapter 63, § 1, Gen. St. 1878 [Gen. St. 1894, § 4823], is the common law information in the nature of quo warranto, as it was known and used in England after the enactment of St. 9 Anne, c. 20, and long before the date when English statutes were embodied in the common law which became a part of the law of this country in 1776. This common law clearly distinguished between proceedings by the attorney general ex officio and proceedings on the relation of a private person with the consent of the attorney general.")

[104] Among the disputed public offices were: city council members, village trustees, town alderman, building inspectors, assessors, supervisors, police chiefs, sheriffs, county treasurers, county attorneys, district attorneys, school district superintendents, district judges, lieutenant governor, and even the state militia commander; not to mention the trivial public office of member of the St. Paul Courthouse and City Hall Committee.

usurper[105], however there are often deep political—even personal—undertones which accompany these judicial actions.[106]

Quo warranto is certainly the proper remedy when a public officer is unfit to hold office.[107] An example is the case of *State v. Clough*[108] which sought the removal of an elected county attorney because Clough was not a trained attorney, nor was he admitted to practice in any state's court.[109] However in other cases the writ was used to repress minorities: the first woman to hold the office of school district superintendent was challenged,[110] as were recent immigrants who were elected to public office.[111]

Quo warranto became an effective means of deciphering the effect of various changes to the election laws as Minnesota's political process evolved.[112] One such instance was the Act of January 31, 1887, a comprehensive geopolitical restructuring statute, which created a second election district in the

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[105] In quo warranto actions, the usurper is the respondent, who has usurped the right or power or public office which the petitioner, or relator, is testing by filing the action of quo warranto.
[106] State *ex rel.* Wah-we-yea-cuming v. Olson, 107 Minn. 136 (1909) (cleverly masked quo warranto, which purported to test the validity of Mahnomen County, was found to be a circumvention of a grand jury indictment with the strategy of undercutting the existence of the county and thereby dissolving the grand jury and the indictment).
[107] 17 McQuillin Mun. Corp. § 50:7 (3d ed.) (discussing quo warranto in municipal government).
[108] State *ex rel.* Knappen v. Clough, 23 Minn. 17 (1876) (attempted ouster of county attorney).
[109] *Id.; See also* State *ex rel.* Trebby v. Nichols, 83 Minn. 3 (1901) (quo warranto used to override city mayor's refusal and enforce payment of salary to elected attorney of Little Falls, who was not duly admitted attorney at law).
[110] State *ex rel.* Hahn v. Gorton, 33 Minn. 345 (1885) (unsuccessful action to oust a county superintendent of schools on the basis that the public officer was a woman).
[111] *See* State *ex rel.* Taylor v. Sullivan, 45 Minn. 309 (1891) (ousting a county attorney who had not yet become a naturalized citizen); State *ex rel.* Childs v. Streukens, 60 Minn. 325 (1895) (ousting an elected auditor who had not yet become a naturalized citizen). *See also Parker I*, *supra* note 83 (challenging election on the basis that the respondent had not resided in the territory for the required amount of time).
[112] *Infra* note 119 and accompanying text (explaining the election law changes and the quo warranto which resulted).

town of Belle Plaine, in Scott County.[113] The Minnesota Supreme Court, through a quo warranto action, ruled the act unconstitutional because it deprived the electors of the new district from having a political voice in their town officers.[114] A special law was later passed in 1889 which further redefined the state's municipalities, and in effect the electoral districts as well.[115] This second round of legislation threatened the continued existence of the village of Park Point.[116] Despite a quo warranto effort, the village was summarily removed from the state maps and the political voice of Park Point was suppressed when it was merged into Duluth.[117]

In the late 1880s the Minnesota legislature enacted significant measures to reform the municipal elections within the state.[118] The city of Saint Paul was especially affected by these changes, particularly when the precise day for electing certain officials was changed.[119] The various acts and amendments—some of which were later held to be unconstitutional—made local election law difficult to discern by municipal officials.[120] The problems were not always mere confusion. In one notorious case the trustees of Mendota used the new changes

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[113] State *ex rel.* McCarthy v. Fitzgerald, 37 Minn. 26 (1887) (holding redistricting to be improper); *see also* State *ex rel.* Smith v. Gallagher, 42 Minn. 449 (1890) (discussing the various effects of the legislation).
[114] *Id.* at 28 (ruling that all citizens must have a voice in their local government).
[115] *Id.* at 450 (illustrating legislative efforts to balance representation in the state).
[116] *Id.* Park Point adjoined Duluth and attempted to use its isolating geography to its independent advantage. *Id.*
[117] *Id.* at 451 (holding that not every village will survive the development of Minnesota).
[118] *See, e.g. infra* note 119 and accompanying text (showing how changes to election law impacted the courts).
[119] State *ex rel.* Holman v. Murray, 41 Minn. 123 (1889) (discussing the effects of various electoral law changes).
[120] *Id.* at 128 (discussing various other election law mistakes by an ever-changing cast of government officials). *See also* State *ex rel.* O'Leary v. Steward, 46 Minn. 126 (1891) (quo warranto used to discern actual terms of office for district court clerks, and rights of relator to the office, following various amendments to election laws).

to trick the public into a fake election (on the traditional day) only to hold a secret election later (on the newly mandated day).[121]

The issues with these broad reforms even extended to property disputes of schoolhouses which suddenly belonged in different municipalities.[122] Not only did municipalities spar with each other, but residents also fought against municipalities.[123] The state as well fought the incorporation of municipalities.[124] The reasons for such attacks—at least on the part of the state—are illuminated in this comment from a 1925 decision by the Minnesota Supreme Court:[125]

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[121] State *ex rel.* Murphy v. Bernier, 98 Minn. 1 (1888) A quo warranto action was filed alleging that town officers held a pretend annual election on a different date from the last year's election. *Id.* Although the real election's date was in accordance with recent legislative updates, there was no notice given to the townspeople. *Id.* The factual allegations paint a picture of a group of friends who elected themselves, and even acted as the election judges. *Id.*

[122] City of Winona v. School Dist. No. 82, 40 Minn. 13 (1889). Quo warranto was filed when legislative action moved boundary lines such that the school district lost territoriality over its own schoolhouse. *Id.* at 15. The court held that the expansion of the city of Winona did not give the city title to the schoolhouse. *Id.* at 21. Ironically, the school district was also held to be ineligible to operate the schoolhouse. *Id.* at 22. Such disputes, although superficially trivial, were the small battles in a larger fight for state political power, education influence, and economic wealth.

[123] *See* State *ex rel.* Wetzel v. Tracy, 48 Minn. 497 (1892) (testing the validity of the incorporation of Minneapolis Park); State *ex rel.* Lee v. City of Thief River Falls, 76 Minn. 15 (1899) (unsuccessful attempt to reorganize the city of Thief River Falls); State *ex rel.* Ruesswig v. McDonald, 101 Minn. 349 (1907) (quo warranto to test the validity of Koochiching County). Ironically, the relator Ruesswig, was eventually a target of quo warranto which challenged his right to hold the office of chairman of school district in Itasca County. State *ex rel.* Hughes v. Ruesswig, 110 Minn. 473 (1910). *See also* Castner v. City of Minneapolis, 92 Minn. 84 (1904) (private taxpayer prevailing in quo warranto action to prevent city from reimbursing election recount costs to defeated candidate).

[124] State *ex rel.* Childs v. Village of Minnetonka, 57 Minn. 526 (1894) (quo warranto initiated by attorney general which dissolved an early incarnation of a mostly rural village of Minnetonka); State *ex rel.* Childs v. Holman, 58 Minn. 219 (1894) (attorney general dissolving Minneapolis election laws, and ousting the public officers elected thereby, which were in conflict with constitutional provisions); State *ex rel.* Childs v. Village of Fridley Park, 61 Minn. 146 (1895) (attorney general dissolving the village of Fridley Park); State *ex rel.* Douglas v. Village of Holloway, 90 Minn. 271 (1903) (attorney general dissolving the village of Holloway). Perhaps the most seminal case was that of the *Village of Kent*, *supra*, note 103 and accompanying text.

[125] State *ex rel.* Hilton v. So-Called "Village of Minnewashta", 165 Minn. 369 (1925) (attorney general dissolving an incorporated village that consisted mainly of rural land, and was without a nucleus or population).

> It is enough that an illegal attempt has been made to create another municipal subdivision of the state with its attendant increase of public officers, and their salaries or other compensation to be paid by taxation. It is enough that an attempt has been made to bring about a further delegation of the sovereign powers of police and legislation to a new and additional set of local officers. When any such attempt is made and is illegal, the mere illegality of its furnishes a prime public necessity, one which not only justifies his action but also requires the attorney general to do what he has so properly done in this case.[126]

Municipalities not only posed a threat to residents but also took power from the state. Municipalities fought each other for electoral representation and tax revenue.[127] School districts also litigated for continued existence and ownership of government facilities.[128] The writ of quo warranto was used to challenge new institutions and balanced the rapid growth by actings as a remedy against improper incorporation, taxation, and general usurpation of powers and revenue.

C. Communities Fight for Existence Against the Threat of Annexation

Rural Minnesota has been significantly shaped by the writ of quo warranto.[129] Quo warranto lawsuits followed the sweeping municipal reform movement of the late 1880s, the 1890 census,[130] and the continual

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[126] *Id.* at 373–74.
[127] State *ex rel.* Town of Stuntz v. City of Chisholm, 199 Minn. 403 (1937) (quo warranto ousting the City of Chisholm from governing over the Town of Stuntz and the Town of Balkan).
[128] State *ex rel.* Parker v. Indep. School Dist., 42 Minn. 357 (1890); State *ex rel.* Childs v. School Dist. No. 152 of Blue Earth Cnty., 54 Minn. 213 (1893); State *ex rel.* Douglas v. School Dist. No. 108, Dakota Cnty., 85 Minn. 230 (1902); State *ex rel.* Young v. Henderson, 97 Minn. 369 (1906).
[129] *Supra*, Part II.C.2 (detailing the impressive impact of quo warranto on Minnesota' formation).
[130] *Id.; see also* State *ex rel.* Norwood v. Holden, 45 Minn. 313 (1891). The 1890 census further compounded the issues of redistricting and municipal recognition. *Id.*

reorganization of Minnesota's counties.[131] Also, unincorporated territories were provided with a statutory path to annexation with an existing municipality, and were often challenged by quo warranto.[132] The residents of those territories created a new municipality, which was often done as a defense against annexation efforts.[133] Frequently, neighbors in unincorporated territories or lesser-order municipalities were divided as to the best course of action.[134] Complicating the matter were higher-order municipalities which acted mischievously—sometimes aggressively—in their annexation efforts.[135] The zenith of the confusion was the inconsistent and often conflicting laws for annexation and incorporation.[136]

Annexation and incorporation are recognized reallocations of police power, taxation base, and political representation.[137] Annexation is worth examining in the context of its political nature and the subsequent quo warranto

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[131] *Supra*, Part II.C.2; *See also* MINN. CONST. art. XI, § 1. "The legislature may, from time to time, establish and organize new counties." *Id.*

[132] *See, e.g.* Laws of Minn. 1909, c. 113, § 2. "Five or more of the legal voters residing within such territory may petition to the governing body of such city or village to call an election for the determination of such proposed annexation." *Id.* An older version of the statute required a petition signed by fifty-five percent of the territory's residents. Laws of Minn. 1895, c. 298.

[133] Incorporation statutes at the time required at least 2/3 of territory residents to sign a petition stating their intention to form a new municipality themselves. State *ex rel.* Hilton v. City of Brookside, 161 Minn. 171 (1924).

[134] *See, e.g.* State *ex rel.* Harrier v. Village of Spring Lake Park, 245 Minn. 302 (1955). Residents of the community of Blaine had petitioned annexation by Spring Lake Park while simultaneously instituting proceedings for self-incorporation. *Id.* The elections were held one day apart, and both petitions passed. *Id.* at 304. The court eventually ruled to allow Blaine to incorporate and issued a judgment of ouster to Spring Lake Park. *Id.* at 312.

[135] *See* State *ex rel.* Smith v. Village of Gilbert, 127 Minn. 452, 455 (1914) (finding that residents of Gilbert, including town officers and employees, "colonized" the territory to be annexed prior to the election in order to ensure a favorable vote in the annexation election proceedings).

[136] MINN. OFF. ADMIN. HEARINGS, HISTORY OF MUNICIPAL BOUNDARY ADJUSTMENTS IN MINNESOTA, *available at* http://www.mba.state.mn.us/History.html [hereinafter MOAH].

[137] *See So-Called "Village of Minnewashta"*, *supra* note 125 and accompanying text (explaining the ulterior motives behind annexation).

actions. Annexation in Minnesota was first questioned by quo warranto in 1897 in an action brought by the attorney general against Crow Wing County.[138] The court appointed a referee who found that the original petition for annexation was insufficient, despite the county's destruction of evidence.[139] The State was granted a judgment of ouster[140] and Crow Wing County was returned to its pre-annexation boundary lines.[141] Such heavy handed actions by the state were necessary to secure the economic liberties of citizens as well as limiting the political power of municipalities.[142] However, the state also instituted quo warranto proceedings in furtherance of its political objective to retain ultimate

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[138] State *ex rel.* Childs v. Board of Comm'rs of Crow Wing Cnty., 66 Minn. 519 (1897) (first contested annexation).

[139] State *ex rel.* Childs v. Board of Comm'rs of Crow Wing Cnty., 66 Minn. 519, 535 (1898). The original reporter entry was amended following a year of fact-finding by a court appointed referee. *Id.* Although the two cases are technically the same proceeding, they have been cited to separately for their unique holdings. *Id.*

[140] An ouster is a win for the petitioner, or relator, who was successful in their claim of quo warranto against the respondent, or usurper, who is then ousted from their unlawful franchise, public office, commission, etc.

[141] *Id.* When a county had been found to usurp, the annexation was simply reversed with boundary lines reset. *Id.*

[142] *See Village of Minnetonka, supra* note 124 at 533. Statutes which provided a means of incorporation were not meant to "clothe large rural districts with extended municipal powers, or subject them to special municipal taxation for purposes which they were wholly unsuited." *Id.* *See also* State *ex rel.* Hilton v. Village of Buhl, 150 Minn. 203 (1921) (state quo warranto action that ousted an annexation effort which nearly doubled the taxation value of the village to a total of nine and a half million dollars).

authority over Minnesota industry.[143] Quo warranto was also an effective tool for individuals and lesser-order municipalities who were resisting overzealous or deceptive annexation efforts.[144] In a 1958 suit, contesting Crookston's annexation of Lowell in Polk County, the Supreme Court issued a judgment of ouster because procedural provisions of Crookston's city charter were not followed.[145] The courts were typically guided by the powerful obiter dicta[146] of Chief Justice Charles Start who said in regards to victims of annexation that "their land cannot arbitrarily be brought into the village simply for the purpose of increasing its revenues by taxing it."[147]

Chief Justice Charles Start

[143] State *ex rel.* Hilton v. Village of Kinney, 146 Minn. 311 (1920) (attorney general bringing quo warranto against village that annexed mine for revenues). The attorney general brought quo warranto proceedings against the village of Kinney when it annexed nearby territory that was about to be mined by the Cleveland Cliffs Iron Company. *Id.* at 312. The writ was quashed. *Id.* at 316. Note that Cleveland Cliffs had previously tried to stop the annexation election with an injunction. Cleveland Cliffs Iron Co. v. Village of Kinney, 262 F. 980 (D. Minn. 1919). The ultimate failure of this strategy, coupled with the quo warranto by the attorney general, reasonably infer a sinister undercurrent in the latter proceeding which was meant to defend the profits of the Company as well as strengthen the political power of the state over the municipality. *Id.* This was despite the expressed wishes—memorialized in an annexation petition—of the residents of the mining town. *Id.*

[144] State *ex rel.* Town of Lowell v. City of Crookston, 252 Minn. 526 (1958) (quo warranto over annexation).

[145] *Id.* at 530. Quo warranto is often the only way to cure procedural overreaching. *Id.*

[146] Obiter dicta are remarks or observations found in a legal opinion which do not directly relate to the issues which the opinion decides. Because of this obiter dicta is not binding on future decisions, but can be persuasive arguments.

[147] State *ex rel.* Simpson v. Village of Alice, 112 Minn. 330, 332 (1910) (ousting annexation based on taxation).

Quo warranto challenges to municipal actions accelerated in the 1950s and were correlated with the expansive growth of municipalities.[148] When Long Lake attempted to annex surrounding territory in Hennepin County, the community of Orono instituted incorporation proceedings to defeat the measure.[149] Minnetonka used quo warranto to defend itself from annexation by St. Louis Park.[150] The community of Webb, in Clearwater County, attempted to incorporate as a means of avoiding taxation by Copley Township. But the Copley Township successfully used an action of quo warranto to retain its revenues from Webb which the Supreme Court said could not incorporate because it lacked a "community of interest."[151]

Municipalities were ravenous in their desire to obtain more land or become established as independent political units.[152] Incorporation and annexation proceedings regularly collided with each other, and were often done so clumsily that it was difficult to discern greed from mistake.[153] This geopolitical

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[148] MOAH, *supra* note 136. In one decade, forty five new villages were established in the metro area. *Id.*

[149] State *ex rel.* Village of Orono v. Village of Long Lake, 247 Minn. 264 (1956). Because the original petition for annexation had been improperly amended, the court allowed the disputed area to be incorporated as Orono while retaining the schedule of the original petition for annexation to Long Lake. *Id.* at 276.

[150] State *ex rel.* Village of Minnetonka v. City of St. Louis Park, 248 Minn. 581 (1957) (ousting St. Louis Park).

[151] State *ex rel.* Township of Copley v. Village of Webb, 250 Minn. 22, 31 (1957). The plaintiffs pleaded that the incorporation of Webb would deprive Copley of seventeen percent of its tax revenue. *Id.* at 23. The court ultimately acquiesced and issued a judgment of ouster to the new village which had no schools, barber shops, post office, or any other recognizable business center or community feature. *Id.* at 31.

[152] MOAH, *supra* note 136. This concept has been increasing in recent years given the rapid rise of mining operations in Minnesota. *See infra* note 154 and accompanying text.

[153] State *ex rel.* Northern Pump Co. v. So-Called Village of Fridley, 233 Minn. 442 (1951). The incorporation proceedings of Fridley "by inadvertence and mistake" claimed an additional forty-eight acres which were already incorporated within the city of Columbia Heights. *Id.* at 443. The

chaos was most prevalent during the post-World War II boom in population and expansion of development across Minnesota.

D. The Ortonville Annexation Drama: A Case Study

The Ortonville drama is a modern example of the continued threat of annexation.[154] Currently, Minnesota is experiencing a boom in mining development which is having a disastrous impact on local townships.[155] In Ortonville, a mining company wanted to establish a granite quarry on land within the township. The rural township's response was to issue a moratorium on mining activities within their jurisdiction, thus preserving its rural landscape and keeping its residents safe from pollution.[156] However, the landowner of the proposed mining site circumvented the township's ruling and appealed to the city of Ortonville for annexation.[157] Ortonville officials, in favor of mining and its revenue potential, planned to extend the city's boundaries to include the proposed quarry;[158] by taking the quarry out of the township's jurisdiction the moratorium was no longer an obstacle to the mining project.[159]

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court ousted the mistaken land from Fridley and allowed incorporation on the remaining unincorporated land in the petition. *Id.* at 451.

[154] *See* Mark Steil, *Ortonville tussles over mining proposal, a familiar fight in Minn.*, MINN. PUB. RADIO (Nov. 5, 2012), *available at* http://minnesota.publicradio.org/display/web/2012/11/05/environment/ortonville-granite-minining-proposal. *See also* Rebecca Terk, *The Outcrop Chronicle, Parts One and Two*, BLUESTEM PRAIRIE (Oct. 22, 2013), *available at* http://www.tcdailyplanet.net/blog/anonymous/outcrop-chronicle-parts-one-and-two.

[155] Steil, *supra* note 154 and accompanying text (discussing annexation threats of today).

[156] Steil, *supra* note 154 and accompanying text (explaining the landowner's strategy).

[157] Steil, *supra* note 154 and accompanying text (explaining the landowner's strategy in achieving annexation).

[158] Steil, *supra* note 154 and accompanying text (illuminating the city's strategy to increase revenues).

[159] Steil, *supra* note 154 and accompanying text (discussing the municipal bickering).

Cities have tremendous powers in annexation proceedings.[160] The situation is heavily imbalanced because the township has no voice in the annexation election, or in the city council decision, which would affect their homes and livelihoods.[161] Conversely, the city of Ortonville which holds the discretionary power to annex stands to increase utilities' revenues while risking environmental destruction outside the city core.[162] A similar story is being played out across the state with the increased attention toward frac sand mining and processing.[163]

The Ortonville drama was eventually submitted to the Municipal Boundary Adjustment Docket as a petition for annexation by ordinance.[164] The petition was administratively denied when the Board realized that the landowner was not only circumventing the township ruling but also the annexation laws themselves.[165] Because of the tense publicity surrounding the quarry, the city of Ortonville decided to move forward with annexation by ordinance (requiring a vote amongst city council members) instead of the annexation election which would have been open to all city of Ortonville residents.[166] But annexation by

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[160] Steil, *supra* note 154 and accompanying text (lamenting the disparate realities of municipal law).
[161].Steil, *supra* note 154 and accompanying text (lamenting the disparate realities of municipal law).
[162] Steil, *supra* note 154 and accompanying text (explaining the motives behind annexation).
[163] Steil also highlights the plight of St. Charles Township which is under annexation attack by the city of St. Charles for a frac sand processing plant. *Supra* note 154 and accompanying text.
[164] MBA OA-7832, *available at* http://www.mba.state.mn.us/DocketResource.html?Id=33027. The petition was submitted on Dec. 14, 2012 and eventually denied on Mar. 14, 2013. *Id.*
[165] *Id.*; *See* Terk, *supra* note 154. Explaining how Gayle Hedge subdivided his land to, at least technically, conform to annexation procedures. *Id.*
[166] *See* Terk, *supra* note 154. One event which angered many local area residents was underhanded dealing by the company proposing the granite quarry, Strata Corporation. *Id.* Clark Mastel is a rancher who leases land from Gayle Hedge, the owner of the proposed quarry site land. *Id.* Mastel spoke out publicly about a 2007 encounter he had with Strata employee Bill

ordinance is limited to one hundred twenty acres per owner per year, and the proposed mining site was over five hundred acres.[167]

The site's landowner decided to subdivide his land into awkward shapes so that a small portion of each would still abut the city of Ortonville.[168] Although the subdivisions were placed under title of various relatives, the Board determined that the original landowner would receive any benefit of sale and therefore a wholesale annexation would violate the annual per owner restrictions on annexation by ordinance.[169] While the broad annexation was struck down, Ortonville has moved forward with the first annexation which is the most critical to the operation.[170] The only effect of the Board's ruling was to delay annexation, not stop it.[171]

The Ortonville drama prompted the Minnesota Legislature to clarify the 12-month limit of the annexation laws by refining the definition of property owner.[172] The law "prohibits annexation by ordinance of property contiguous to annexed property that was owned by the same person(s) at any point during the

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LaFond whom had visited Mastel's ranch, posing as a Montana rancher, and asking for a tour of the property. *Id.* When Mastel learned the true identity of LaFond, he spoke out publicly against the project and Strata's deceptive tactics. *Id.* Strata then contacted Hedge to arrange for Mastel to sign a letter apologizing for his negative comments and pledging support for the new quarry operation. *Id.*

[167] *See* Terk, *supra* note 154 (providing background on annexation law).

[168] *See* Terk, *supra* note 154 (examining the landowner's strategy to circumvent annexation laws).

[169] *See* Terk, *supra* note 154 (discussing the Board's decision and reasoning).

[170] *See* Terk, *supra* note 154 (explaining the city's continued push forward through legal loopholes).

[171] *See* Terk, *supra* note 154. The Ortonville debacle was a driving factor in the crafting of HF 1425 which seeks to limit the power of cities in annexation. *Id.* However, the legislation has been tabled with no plans to resurrect the issue. *Id.*

[172] MINN. HOUSE OF REP., 2014 LEGISLATION RELATING TO LOCAL AND METROPOLITAN GOVERNMENT, July 2014. http://www.house.leg.state.mn.us/hrd/pubs/14localleg.pdf.

12 months before the proposed annexation if the cumulative total annexed is over 120 acres."[173]

E. Quo Warranto Becomes a Restricted Remedy: 1959-1992

Minnesota's response to the post-War development craze was to create a quasi-judicial commission, the Minnesota Municipal Board, to rule on local incorporation and boundary adjustment questions.[174] With the advent of the Minnesota Municipal Board in 1959, the rate of municipal actions subjected to quo warranto challenges decreased sharply. Furthermore, the passage of the Uniform Declaratory Judgments Act in 1933 offered a new option to Minnesota courts.[175] Courts were able to hear declaratory judgments which afforded a more comprehensive scope than a narrowly defined writ.[176] Finally in 1959, when Rule 81.01(2) of the Minnesota Rules of Civil Procedure was adopted, the writ of quo warranto and information in the nature of quo warranto were virtually abolished by removing their jurisdiction from the district courts.[177] One consequence of this procedural change was that the Minnesota Supreme Court

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[173] *Id.* The 2014 law was a result of the city and town associations coming together to come to an agreement over the annexation loophole, known as the 120-acre rule. *Id.*

[174] MOAH, *supra* note 136. (detailing the need to consolidate municipal disputes in order to preserve long-term state goals). The Board is still highly active and hears municipal disputes on the Municipal Boundary Adjustment Docket. *See, e.g.* MBA OA-7832, *supra* note 164 (Ortonville annexation petition).

[175] Minnesota, Laws 1933, ch. 286, p. 372; M.S.A. § 555.01 *et seq.* (2012). A declaratory judgment is a "binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement." BLACK'S LAW DICTIONARY.

[176] Edwin M. Borchard, *The Uniform Declaratory Judgments Act*, 18 MINN. L. REV. 239 (1934). "There is no legal question which cannot become the subject of a declaration." *Id.* at 249.

[177] Williams v. Rolfe, 257 Minn. 237, 243 (1960) (discussing options available to plaintiff who challenged consolidation of school district). However, there were statutory provisions which allowed for the same processes as quo warranto, although the codifications do not mention the term quo warranto. M.S.A. § 556.01 *et seq.* (2012). Quo warranto was enumerated as a writ that the Supreme Court may issue. M.S.A. § 480.04 (1990).

was sometimes forced to remand the proceedings to district court for fact-finding purposes.[178] Often, the petition for quo warranto was denied because of other adequate and available remedies.[179]

Between 1959 and 1992, while the number of quo warranto actions declined, several writs challenged gubernatorial appointments including one to future Chief Justice Douglas Amdahl.[180] A classical contested election revealed an interesting quo warranto against the Lieutenant Governor.[181] However the last significant quo warranto action of this time period was a controversy between the State Legislature and Governor Carlson.[182] But even this action was remanded to district court, with additional proceedings heading for the United

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[178] *See, e.g.* State *ex rel.* Mattson v. Kiedrowski, 391 N.W.2d 777 (1986) (state treasurer was successful in petitioning a writ of quo warranto against the state commissioner of finance for usurpation of duties, but only after the proceeding was remanded to district court for fact-finding purposes). This suit uniquely was not seeking removal, but instead used the courts to restrain the respondent by declaring a usurpation of duties and thus achieving the political goal. *Id.* This may have increased the suit's chances of prevailing by asking the courts for a lesser degree judicial-political interference, instead of an outright removal from public office. *Id.*

[179] *See, e.g.* Latola v. Turk, 310 Minn. 395 (1976) (court denying the petition for quo warranto and instructing that the proceeding be commenced in district court as a declaratory judgment action).

[180] *See, e.g.* State *ex rel.* Hennepin Cnty. Bar Ass'n v. Amdahl, 264 Minn. 350 (1962) (failed petition to oust Judge Amdahl after his near-election appointment by the governor); State *ex rel.* Todd v. Essling, 268 Minn. 151 (1964) (failed petition to oust Board of Tax Appeals appointee, who was nominated by departing governor and disfavored by incoming governor, before the Senate could confirm or reject the nomination).

[181] State *ex rel.* Palmer v. Perpich, 289 Minn. 149 (1971). The Lieutenant Governor refused to seat a Senator who was engaged in an election contest. *Id.* at 151. The court rejected the Lieutenant Governor's actions in rejecting the election certificate, but declined to issue a formal writ. *Id.* at 156.

[182] Seventy-Seventh Minnesota State Senate v. Carlson, 472 N.W.2d 99 (1991). The Democratic-Farmer-Labor Party sponsored a redistricting plan in response to the 1990 Census. Laws of Minnesota 1991, Ch. 246. However, Governor Carlson attempted to veto the bills beyond the constitutional limit to do so and the Legislature filed suit in Supreme Court. *Carlson*, 472 N.W.2d at 100. The matter was temporarily resolved in Ramsey District Court. C3-91-7547 (Aug. 2, 1991). But the situation grew in complexity and partisanship and was eventually escalated to the United States Supreme Court. Growe v. Emison, 507 U.S. 25 (1993).

States Supreme Court.[183] The Minnesota courts, the Supreme Court in particular, were sending a strong message that writs of quo warranto would not be commonly heard. The judiciary may have been avoiding the partisan politics of the times, or simply preserving judicial efficiency.[184]

III. MINNESOTA'S QUO WARRANTO REVIVAL

In 1992, James Rice filed an information in the nature of quo warranto, directly to the Minnesota Supreme Court, challenging the 1991 telephone gaming expansion of state-sanctioned gambling under the 1982 amendment.[185] The case was remanded to Ramsey District Court to establish an evidentiary record.[186] However, the Supreme Court took the opportunity to reflect on the recent resurrection of quo warranto.[187] Chief Justice Alexander Keith recognized the need for quo warranto jurisdiction to be reinstated in the district courts, and noted the requirement for an evidentiary record to resolve complex issues of public significance.[188] The court cited two recent controversies, both involving Governor Carlson who vetoed a controversial labor bill and later urged

[183] *Id.*; *supra* note 182 and accompanying text (describing the escalation of the state controversy).
[184] *See, e.g., supra* note 182 and accompanying text.
[185] Rice v. Connolly, 488 N.W.2d 241 (Minn. 1992). An information in the nature of quo warranto is the classic term for a quo warranto action brought at the relation of a private individual. *Supra* note 43 and accompanying text.
[186] *Id.* at 242 (remanded because the Supreme Court has no jury or evidence protocols).
[187] *Id.* at 243–44 (giving a brief history of how quo warranto evolved in Minnesota).
[188] *Rice, supra* note 185, at 244 (explaining the inevitability of remand, and thus the necessity for origination in district courts).

irregular electoral redistricting; complex claims which required extensive records.[189]

> **We comment further that the reinstatement of quo warranto jurisdiction in the district court is intended to exist side by side with the appropriate alternative forms of remedy heretofore available.**[190]

The court retained its original jurisdiction—reserving the power to be exercised only in the most exigent of circumstances—and declared that petitions for quo warranto should be filed in the first instance in the district court.[191]

By ruling in this manner, the Minnesota Supreme Court effectively restored quo warranto as an available remedy, as petitions to the Supreme Court are less likely to be heard (because it has discretionary review), while preserving other available remedies.[192]

A. Return of the Informational Writ

The ability to file a writ of quo warranto increased once jurisdiction was

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[189] **Michael H. Leroy, *The* Mackay Radio *Doctrine of Permanent Striker Replacements and the Minnesota Picket Line Peace Act: Questions of Preemption*, 77 MINN. L. REV. 843, 858 (1993). Governor Carlson initially vetoed the Minnesota Picket Line Peace Act, which made it illegal for employers to hire permanent replacement workers when union workers were on strike. *Id.* The legislature's petition was rejected by the Supreme Court, and remanded to district court for a declaratory judgment. Seventy-Seventh Minnesota State Senate v. Carlson, 472 N.W.2d 99, 100 (1991). The district court later found the veto to be invalid and the law was passed. Seventy-Seventh Minnesota State Senate v. Carlson, No. C3-91-7547 slip op. at 20-21. (Minn. Dist. Ct. Aug. 2, 1991). *See also supra* note 182 and accompanying text (electoral redistricting also a legislative concern, eventually being resolved by the United States Supreme Court).**

[190] ***Id.*** **(clearly prescribing the perpetual availability of quo warranto, despite other available remedies).**

[191] ***Id.*** **(discussing the need for an evidentiary record and thus restoring original jurisdiction of quo warranto to the district courts).**

[192] ***Id.*** **Because district courts have a higher threshold for dismissal than the Supreme Court, the return of original jurisdiction to district courts greatly expanded the possibility for having a quo warranto actually heard in court.**

restored to the district courts.[193] However, the procedure and relief of quo warranto was statutorily preserved for the attorney general.[194] However, even after the *Rice v. Connolly* decision, there have been relatively few writs and fewer still in the form of private actions.[195] There have been claims which operate analogously to quo warranto, but which are not termed petitions of quo warranto.[196] The similarity between these actions and quo warranto shows how electoral claims under Minn. Stat. § 204B.44 are merely modern evolutions of the ancient writ.[197]

Among these electoral analogues were two significant actions both for the redress of personal harms stemming from gubernatorial appointments to the judiciary.[198] Both were against Governor Carlson, who was no stranger to judicial circumvention as a response to his executive actions.[199] However, these two judicial appointments became contentious issues.[200]

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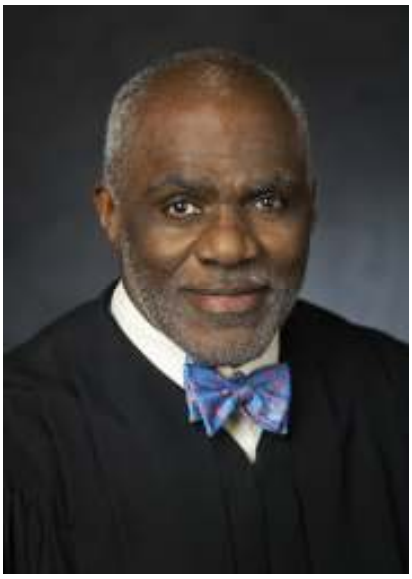
[193] *See supra* notes 191 and accompanying text (explaining the restoration of quo warranto jurisdiction to district courts).
[194] *See supra* note 73 and accompanying text (statutory vestment of quo warranto powers for the attorney general).
[195] *See infra* Part IV (showing the decline of quo warranto filings).
[196] *See, e.g.,* Republican Party of Minnesota v. O'Connor, 712 N.W.2d 175 (Minn. 2004). This was a petition brought pursuant to Minn. Stat. § 204B.44 which is a private right of redress for election errors, frauds, or mistakes. *Id.* The availability of this remedy may be an additional factor in the decreased utility and prevalence of quo warranto.
[197] This is no different than the order to show cause why a preemptory writ shall not issue. *See Colter*, *supra* note 89 and accompanying text (holding that the order to show cause is a permissible challenge to public office).
[198] *See* Page v. Carlson, 488 N.W.2d 274 (Minn. 1992) (associate justice candidate petitioning for name to appear on election ballot); Diemer v. Carlson, 550 N.W.2d 875 (Minn. 1996) (challenging the governor's executory powers).
[199] *See e.g., supra* note 198. *See also* Johnson v. Carlson, 507 N.W.2d 232 (Minn. 1993) (challenging the governor's redistribution of taconite tax proceeds); Inter Faculty Org. v. Carlson, 478 N.W.2d 192 (Minn. 1991) (challenging the governor's budgetary item vetoes for educational expenditures).
[200] *See supra* note 198 and accompanying text (gubernatorial appointments often became quo warranto targets).



Justice Alan Page

The *Page* controversy began when Minnesota Supreme Court Associate Justice Lawrence Yetka applied to Governor Carlson for an extension on his judicial term as a means of avoiding the 1992 election.[201] The governor granted Justice Yetka's request.[202] This however, did not prevent Alan Page, who was a staff attorney in the office of attorney general, from attempting to file for the seat's election contest.[203] When Secretary of State Joan Growe refused Page's filing on the grounds that there wasn't a vacancy on the court due to the extension, Page filed suit. His claim was not termed a quo warranto but brought under Minn. Stat. § 204B.44.[204] Nevertheless, it was a quo warranto action in every sense of the writ.[205] Yetka's extension was declared

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[201] MARY JANE MORRISON, MINNESOTA STATE CONSTITUTION: A REFERENCE GUIDE 200 (2002). The extension was a provision under Minn. Stat. § 490.124(2) which would have increased Yetka's retirement benefits and removed the threat of the 1992 election, as well as affording Governor Carlson the opportunity to appoint another justice to the bench once the extension was complete. *Id.* This type of control over the judiciary has become commonplace and the 1992 election was the first time since 1966 that there was an election for an open Supreme Court seat. DOUGLAS A. HEDIN, RESULTS OF ELECTIONS OF JUSTICES TO MINNESOTA SUPREME COURT 1857–2010 (Minnesota Legal History Project 2010), *available at* http://www.minnesotalegalhistoryproject.org/assets/Election%20Results%201858-2010.pdf. The importance of judicial appointments is best illustrated by the fact that no incumbent Minnesota Supreme Court Justice has been defeated in a popular election since 1946. *Id.* at 61.

[202] *Id.* (Governor Carlson extended Yetka's term until next election).

[203] *Id.* (Page was aware of the extension and used his election challenge as a basis for the lawsuit).

[204] *Page, supra* note 198 (using analogous devices to obtain quo warranto remedies).

[205] *Id.* (although the devices were different, the remedy of ouster was the same).

invalid and Page was allowed to file for the election contest.[206] Page ultimately won the contest.

This history is helpful in laying the foundation for the subsequent *Diemer* controversy.[207] When Gerald Kalina resigned from the First Judicial District in 1996—an election year—Governor Carlson quickly appointed Rex Stacey, a private practice attorney, to fill the vacant seat.[208] Consequently, the Secretary of State did not intend to designate the office on the ballot in 1996.[209] The First Judicial District is located in Dakota County; Charles Diemer was the Assistant Dakota County Attorney who hoped to run for the vacant judgeship.[210] The controversy reached the Minnesota Supreme Court, which held—in a rather brief majority opinion—that the appointment was valid.[211] The vote was 6-1 with a sharply worded—twice lengthy—dissent by Associate Justice Alan Page.[212]

In both of these controversies, Governor Carlson attempted to fill a judgeship with a particular appointee, who might not have won an open election.[213] Although the resulting claims were not quo warranto in name, they sought the same remedy. This illustrates how the enactment of specific statutes,

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[206] *Page, supra* note 198 and accompanying text. MORRISON, *supra* note 201 at 200. Interestingly, the entire bench recused themselves because of the conflict of interests involving their own retirement benefits (the extension would have greatly increased Yetka's pension) and the justices' friendship with Yetka. *Id.*
[207] *Diemer, supra* note 198 at 875 (challenging the Governor's appointment once again).
[208] *Id.* at 875–76 (outlining the facts of the controversy).
[209] *Id.* at 876 (this decision was based on the governor's appointment).
[210] Jim Adams, *State Supreme Court upholds Carlson judicial appointment*, MINNEAPOLIS STAR-TRIB. (JUNE 29, 1996), *available at* http://www.highbeam.com/doc/1G1-62631935.html (admonishing the judicial ruling).
[211] *Diemer, supra* note 198 at 878 (rejecting the quo warranto claim).
[212] *Id.* at 878–83 (the dissent took aim at the majority's reluctance to rule in favor of democracy). Justice Page accused the majority of "subverting our Constitution." *Id.* at 883.
[213] *See supra* note 198 and accompanying text (Carlson's appointments were often controversial if not partisan).

as an available and adequate remedy, decreased the necessity for the extraordinary writ. Even though Minn. Stat. § 204B.44 contributed to the decreased use of quo warranto, the procedure and relief of the new law was analogous to the writ.

Education Minnesota v. Pierson Yecke **was a quo warranto and shows that statutory provisions will not cover every possible situation.[214] Education Minnesota, the state's largest public school teachers' union, filed a quo warranto claim against the Commissioner of Education for certifying an online school and thereby publicly funding homeschooling.[215] The court notes that the dispute was the reallocation of education funding which reduced the resources available to current schools.[216] Specifically, the certification of the online school impacted Minnesota Virtual Academy; the school was forced to reject six hundred applicants as a result of the budget reallocation.[217]**

But the Minnesota Appeals Court evaded the merits of the quo warranto, and dismissed the claim by asserting that the proper action should have been a writ of certiorari.[218] The lawsuit was seen as a struggle between traditional and alternative education, with one challenging the other's right to exist in the

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[214] Education Minnesota v. Pierson Yecke, 2005 WL 1331251 (Minn. Ct. App. 2005) (public school teacher's union using quo warranto to challenge and restrain the Commissioner of Education's certification of online schools).

[215] Andrew Trotter, *Identity Crisis*, TEACHER MAG. (Jan. 2004) (discussing the *Pierson Yecke* case), *available at* http://susanohanian.org/atrocity_fetch.php?id=1556.

[216] *Id.* "With so much money at stake, it should be no surprise that two Minneapolis-area school systems have joined Education Minnesota's lawsuit." *Id.* School systems feared a rapid growth of alternative schools drastically cutting resources.

[217] *Teachers Union Sues to Stop Online Program Used by Homeschoolers*, PIONEER PRESS (Oct. 11, 2003) (covering the *Pierson Yecke* case), *available at* http://www.freerepublic.com/focus/f-*Governor Tim Pawlenty*

Pierson Yecke, *supra* note 214 at *3 (classically avoiding endorsement of any claim and turning the action on procedural deficiencies instead of merit-based failures).

education system.[219] The right of existence for school districts has a history of litigation in Minnesota, indicating the institutions' public importance as a source of political power as well as a beneficiary of public funding.[220]

B. Quo Warranto and Government Shutdowns

In May 2005, the Minnesota Legislature ended the legislative session unable to reach an agreement and pass a budget appropriations bill to fund the operation of the state government past July.[221] Republican Governor Tim Pawlenty called a special session to continue debates.[222] During this time, on June 15, the attorney general filed a petition in Ramsey County District Court seeking a judicial order declaring that the executive branch must continue core functions and authorizing the Commissioner of Finance to disburse funds accordingly.[223] On June 23, 2005 the District Court issued an order authorizing

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[219] Cynthia Boyd, *The rise of 'virtual schools' divides education world*, MINNPOST (June 2, 2008) *available at* http://www.minnpost.com/politics-policy/2008/06/rise-virtual-schools-divides-education-world (outlining the threats of online school systems to traditional brick-and-mortar schoolhouses).

[220] *Supra* note 128 and accompanying text (describing quo warranto actions against school districts, which have the power to levy taxes).

[221] State *ex rel.* Sviggum v. Hanson, 732 N.W.2d 312, 316 (Minn. Ct. App. 2007) (unsuccessfully using quo warranto to attempt to restrain the Commissioner of Finance from disbursing government funds pursuant to a trial court order).

[222] *Id. See also* Rachel Weiner, *Minnesota government shuts down*, WASH. POST (Jul. 1, 2011) *available at* http://www.washingtonpost.com/blogs/the-fix/post/minnesota-government-shuts-down/2011/07/01/AGvBVTtH_blog.html. Governor Pawlenty has caused several financial controversies to escalate to judicial resolution. *See, e.g.* Rukavina v. Pawlenty, 684 N.W.2d 525 (Minn. Ct. App. 2004) (challenging the governor's appropriation of mineral funds); Brayton v. Pawlenty, 2009 WL 5150309 (Minn. Dist. Ct. 2009) (holding that the governor did exceed his unallotment authority and enjoining his actions).

[223] *Hanson, supra* note 221, at 316 (this was necessary to release funds to restore emergency services).

the Commissioner to fund the continuing core functions of the government in case the Legislature was unable to pass a budget for the upcoming biennium.[224]

Governor Pawlenty

Under the temporary funding court order, the Commissioner disbursed $569,000,000.[225] However on July 8 and July 13 the legislature passed budget appropriations bills and included language that superseded and replaced the funding that had been authorized by the temporary funding court order.[226] However, the Commissioner continued to make disbursements under the June 23 court order. In August, a bipartisan group of legislators petitioned the Minnesota Supreme Court for a writ of quo warranto against the Commissioner of Finance.[227] The suit aimed to declare the disbursements unconstitutional and to require the Commissioner to cease making further disbursements pursuant to the trial court order.[228] However the state high court dismissed the suit on September 9, 2005, for failure to originate the action in district court.[229] The

[224] *Id.* The order provided that it would remain effective until the earliest of three dates: July 23, 2005; the date of a budget enactment that would fund all core functions after June 30, 2005; or the effective date of a further order of the court. The district court also appointed a special master to identify core government functions. *Id.*
[225] *Id.* (making clear that the commissioner followed the district court's order).
[226] *Id.* (voted in after the district court order).
[227] *Id.* (when the district court order was not automatically lifted, an affirmative action as required).
[228] *Hanson, supra* note 221, at 316 (this was a suit about retaining legislative powers in the legislature).
[229] MINN. LEGISLATIVE REFERENCE LIBRARY, MINNESOTA STATE GOVERNMENT SHUTDOWN, 2005 [hereinafter MLRL] *available at* http://www.leg.state.mn.us/webcontent/lrl/issues/shutdown/quowarranto.pdf. *See also Rice, supra* note 185 (providing that quo warranto must begin in the district courts).

group of legislators, including Senator Warren Limmer, then filed an amended petition for a writ of quo warranto in Ramsey County District Court.[230] But on March 3, 2006, the petition was denied.[231] The group of legislators filed an appeal on July 25, 2006, and the Minnesota Senate passed a resolution authorizing the Office of Senate Counsel to file an amicus brief in support of the individual legislator's claim.[232]

The situation raised serious issues implicating the political question doctrine, which guided that courts not decide matters that are left to another branch of government.[233] However, the court once again evaded the merits of the controversy and affirmed the lower court's holding on procedural grounds because quo warranto was for a continuing usurpation and not for challenging official conduct that, by the time of the appeal, was not presently continuing.[234]

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[230] MLRL, *supra* note 229 (providing chronological history of the dispute).
[231] *Id.;* State *ex rel.* Svigum v. Ingison, 2006 WL 6112095 (Minn. Dist. Ct. 2006). It was unlikely that the same district court that authorized the temporary funding order would now hold its own actions to be unconstitutional. Under a mandamus analysis the Supreme Court would have been the proper venue, but under the *Rice* holding a quo warranto action must originate in a district court. *Rice, supra* note 185. The trial court's denial of the petition was unique, holding that quo warranto was a remedy intended for "a continuing course of unauthorized usurpation of authority" as opposed to a limited episode of usurpation. *Hanson, supra* note 221 at 317.
[232] MLRL, *supra* note 229 (providing the history of the government shutdown and legal consequences thereof).
[233] It could be argued that the legislative group was forced to file quo warranto and employ judicial intervention as a response to the prior judicial intervention of the 2005 temporary funding court order. *See supra* note 231 and accompanying text (forcing the courts to resolve two standing, albeit contrary, legal mandates).
[234] *Hanson, supra* note 221, at 324 (using procedural loopholes to evade the merits).

The petition did raise serious questions of fiduciary authority and separation of powers, and given the bipartisan composition of the plaintiffs it could not be said to be a merely political statement.[235] It can be argued that the quo warranto addressing the 2005 state government shutdown showed a new use of the extraordinary writ, as a device to resolve disputes between different branches of government.[236] In essence, the Legislature was asserting its power over the executive branch as represented by the Governor Pawlenty.[237]


Senator Warren Limmer

In 2011, there was another bout of partisan legislative deadlock in Minnesota.[238] Once again the attorney general asked the Ramsey County District Court to issue a temporary funding order.[239] And once again Senator Warren Limmer filed a petition for a writ of quo warranto to test the validity of expenditures from the state treasury in the absence of a legislative appropriation.[240] This first appearance before the Supreme Court netted a denial

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[235] ***Id.*** **(there was never a mention of political parties in any court documents).**
[236] ***Ingison***, ***supra*** **note 231 (the lawsuit did not ask for ouster).**
[237] **MLRL,** ***supra*** **note 229. The Senate Resolution supporting the lawsuit and the subsequent filing of an amicus brief indicate a larger institutional level struggle for judicial declaration of a respective, if not dominant, role in governance.** ***Id.***
[238] **Weiner,** ***supra*** **note 222 (outlining the two struggles' similarities and shared key players).**
[239] ***In Re*** **Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota, No. 62–CV–11–5203 (Minn. Dist. Ct. 2011).**
[240] **Limmer v. Swanson, 2011 WL 2473302 (Minn. 2011) [hereinafter** ***Swanson I***] **(denying the quo warranto petition). Ironically, the legislators also challenged the Ramsey County District Court's order of mediation between the Governor and the Legislature.** ***Id.*** **It is pathetically humorous that a political dispute, capable of resolution by mediation, which was turned over to the judiciary was then ordered to undergo mediation.**

of petition with an order that once again evaded the merits in favor of ordering mediation.[241]

Senator Limmer filed a second petition for quo warranto which was denied on grounds of mootness.[242] It was no surprise that Justice Page, who was acquainted with quo warranto (both as a claimant and as a jurist) filed a sharply worded dissent against this new use of quo warranto as a device to resolve disputes between different branches of government.[243] Justice Page explained the fundamental problems raised by judicial intervention in political fights:

> Here, at some level, it seems that each of the two political branches, along with their surrogates, is using the judicial branch as a tool to reach their respective political ends. And once the judicial branch is perceived to be part of the political process, we have put at risk the independence of the judiciary that is fundamental to our tripartite system of government. Our silence on the limits of the district court's authority allows others to question whether the judiciary has already become politicized.[244]

The matter was left unresolved, leaving the Minnesota government vulnerable to future similar breakdowns.[245] The majority even commented on the

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[241] *Id.* (throwing out the case on procedural issues).
[242] Limmer v. Swanson, 806 N.W.2d 838, 840 (Minn. 2011) [hereinafter *Swanson II*]. Because the appropriation bills were eventually signed in mid-July and the second petition was brought in November, the issue had expired in mootness. *Id.* at 838–39.
[243] *Id.* at 841–43. Justice Page observed that the executive and legislative branches were using the judiciary as a tool to reach their respective political goals. *Id.* at 843. Justice Page was elected to the bench following a quo warranto action of his own. *Page, supra* note 198. Page was also the lone dissenter in a quo warranto action which was similar to his own. *Diemer, supra* note 198 (denying quo warranto to judicial candidate).
[244] *Swanson II,* 806 N.W.2d at 843.
[245] *Id.* Justice Page himself avoided the merits but expressed his hope "that the judiciary can no longer be used as a pawn in the two political branches' partisan disputes." *Id.*

dissent and defended their holding saying that their actions did not condone violations of constitutional provisions.[246]

Justice Page's warnings were well-timed considering the circus which precipitated the quo warranto actions of the 2011 government shutdown.[247] Former litigants from the 2005 shutdown were major figures who contributed significantly to the political entrenchment in 2011.[248] The judicial restraint was a missed opportunity and, as Justice Page noted the court effectively validated the state's highly partisan political process.[249] Minnesota courts had early on decided the winners of elections, later weighed in on the existence of municipalities, and were now thrust into resolving disputes between different branches of government.

It is of significance that as quo warranto evolved in Minnesota, the goals of the writs evolved from removing a person from office to limiting an official's actions. Courts were now asked to evaluate the specific actions of public officers. The question remains as to whether this use reflects and furthers democratic ideals, as a device for checks and balances, or whether quo

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[246] ***Id.*** **at 840 n. 1. (directly addressing the dissent and the nature of the majority). The majority staunchly defended its decision to not rule on the merits of the case.** ***Id.***

[247] ***See infra*** **note 248 (discussing the partisan bickering by Pawlenty and Bachmann).**

[248] ***Sviggum, supra*** **note 221. Republican Michelle Bachmann, who was a named plaintiff in the** ***Sviggum*** **action, blamed Democrats for the 2011 shutdown and applauded the Republican reluctance to negotiate. Weiner,** ***supra*** **note 246. Former Governor Pawlenty, who blamed Democrats for the 2005 crisis, took the opportunity to place partisan blame once again for the 2011 shutdown. Jordan Fabian,** ***Pawlenty, state Dems lock horns over Minnesota shutdown,*** **THE HILL (July 1, 2011),** ***available at*** **http://thehill.com/homenews/campaign/169453-pawlenty-dems-lock-horns-over-minn-shutdown. Pawlenty was engaged in a run for the 2012 Presidential election at the time.** ***Id.***

[249] ***See, e.g. Sviggum*****,** ***supra*** **note 221 (the controversy centered around prominent political figures).**

warranto is simply a judicial writ that has been over-manipulated by the political partisans.[250]

IV. FUTURE POTENTIAL USE OF QUO WARRANTO

Over time, the Minnesota judiciary has decreased active participation in the political processes.[251] The judicial reluctance may have contributed to an empowering of the legislative and executive branches.[252] It is clear that Justice Page's warning against the partisan use of the judiciary has been ignored.[253]However, the judiciary represents a relatively static institution which is capable of reasoning past the dynamic disagreements between the executive and legislative branches.[254] It remains to be seen whether this trend of intergovernmental quo warranto usage will continue.

Quo warranto actions generally challenge a claimed right: to office, to power, and so on. The writ gains utility in those areas which have not been overly regulated or for which specific remedies are not otherwise available. The writ is so powerful because it empowers the court to take actions to remedy an injustice of a claimed right, including replacing an office holder. Knowing these conditions we can forecast on future uses of the writ.

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[250] *See, e.g. supra* notes 50 (describing Federalist manipulation of quo warranto).
[251] *See, e.g. Ingison* note 231 and accompanying text (avoiding the merits in a case which challenged the outcomes of a government shutdown).
[252] *Id.* The judicial reluctance to exercise supervisory powers retreats the bench from the forefront of partisan bickering which has occupied the center stage of modern politics, if not governance altogether. Fabian, *supra* note 271 (describing the political climate of the government shutdowns).
[253] *See supra* note 198 and accompanying text (dissenting on the basis of the political use of the judiciary).
[254] *See supra* Part II (Minnesota courts were called upon and able to respond to a multitude of contradicting legislation regarding the state's geopolitical boundaries).

There are various emerging issues whose development outpaces the development of regulations or statutory protections. For instance, technology, medical treatment, and education often advance faster than public policy. While these areas present opportunities for dispute resolution through actions of quo warranto, the political realm is the traditional forum for the writ and represents the common modern use of the writ of quo warranto.

Quo warranto offers a judicial remedy for behavior by public officers when elections are too timely or impractical.[255] However the critical element in a successful quo warranto is judicial reception.[256] When a court avoids the merits of a quo warranto by employing the doctrines of political question and separation of powers, the result is a denial of the claim and an effective condoning of the complained action.[257] Minnesota courts' avoidance of political questions is actually askew from modern jurisprudence;[258] the United States Supreme Court has shown a willingness to entertain and ultimately resolve a variety of politically sensitive issues.[259]

Touching on Justice Page's concerns, one could argue that there is no suit which could indenture the judiciary as a political pawn, so long

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[255] ***See supra*** **note 68 and accompanying text (purging Confederates through judicial action instead of military intervention).**
[256] ***See*** **Part II.C.4 (the judiciary reluctant to resolve quo warranto claims on the merits).**
[257] ***See*** **Part II.C.4 (the judiciary using political question doctrine to avoid constitutional issues).**
[258] **Part II.C.4 (the Minnesota judiciary's reluctance to resolve quo warranto claims on the merits).**
[259] ***See, e.g.*** **Zivotofsky *ex rel.* Zivotofsky v. Clinton, 132 S.Ct. 1421 (2012) (political question was not a bar to review of the State Department's refusal to follow the law by listing Jerusalem as a birthplace on American passports); N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014) (holding that presidential recess appointments were unconstitutional). If the United States Supreme Court will decide on executive appointments which circumvent normal channels, then the Minnesota high court should not restrain itself in conducting this very same review.**

as the controversy was resolved in a constitutional manner.[260] Objective adjudication can overcome politically sensitive claims. In the past five years there have been two Minnesota government shutdowns.[261] A judicial order might have ended these stalemates sooner.[262]

Government shutdowns temporarily closed state facilities and laid off state workers.

This is not to suggest that quo warranto will be openly welcomed in the political process because it is such a foreign device. The reason this extraordinary writ seems so awkward and foreign to modern politics is because of the sheer power of quo warranto.[263] But even if the writ does not become an integral part of the political process, it remains an availability for private residents and municipalities during times of development. Given the extraordinary effect of quo warranto on the geopolitical development of Minnesota the use of the writ might be shown to validly correlate with the rapid development in the late 19th century and again after World War II. Such a trend shows the utility of the writ as a judicial device for dispute resolution when development outpaces the political process.

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[260] *Swanson II, supra* note 242 at 843. *See supra* note 266 and accompanying text (the lawsuit sought resolution of who held the state's purse strings).
[261] Fabian, *supra* note 248 and accompanying text (examining the 2005 and 2008 government shutdowns).
[262] Fabian, *supra* note 248 and accompanying text (explaining the tense political climate of government shutdowns).
[263] *Bashford, supra* note 80 (quo warranto used to remove a state governor)

V. CONCLUSION

Inevitably a controversy will arise for which there is no specific action to undertake or administrative review board to appeal to, and where a declaratory judgment or a limited writ would be inadequate. This is why quo warranto is such a necessary, albeit powerful, device for dispute resolution when development outpaces public policy. Quo warranto does not oust or restrain an individual or institution in favor of another; quo warranto ousts the respondent in favor of the law. It is an ancient and extraordinary writ which has certainly shaped our world, particularly in Minnesota. Of course the sheer power of the writ is what restrains its consistent use, since such repeated use of the dramatic device is improbable or at least unreasonable.

We can see that quo warranto may be used in areas or industries that are rapidly developing, those which are often science based. We have also seen a consistent political trend of quo warranto when state actions require immediate resolution before another election can take place. And we have also seen the dramatic impact of quo warranto on geopolitical organization (school districts, municipalities, etc.), particularly in times of rapid development. Understanding this correlation we can forecast how quo warranto may be used in the future. ■

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