

Ultra Vires

Someone or something acting outside of their authority.

Federal Law is clear, California law has the same consequence, your nemesis can be a Corporation or an Agency. The people still have to act within their authority. Are you faced with someone demanding that you repeat a course, or rewrite a policy to suit the person's, agency's or the corporation's whim (Outside of their authority) or capricious demand. Perhaps they want you to do a job in a very inefficient manner. Perhaps they want costly un-needed mitigation or extra measures. Perhaps they want you to retake a complex education program to be able to do your job.

In U.S. administrative law, a legal response to an agency's resolution that exceeds its authority relies on the doctrine of ultra vires ("beyond the powers") and the principles of judicial review. The Administrative Procedure Act (APA) allows courts to "hold unlawful and set aside" agency actions that are "in excess of statutory jurisdiction, authority, or limitations".

A legal response should generally follow these steps:

1. Evaluate the nature of the agency action

The first step is to determine the nature of the agency action and the specific authority it allegedly exceeded. Key questions to consider are:

What was the specific action? Was it a final rule, an order, a policy interpretation, or another decision?

What is the source of the agency's power? Agency authority comes from "enabling legislation" passed by Congress. The agency only has the power that Congress has delegated to it.

How did the agency exceed its authority? This is the core of the legal argument. Common forms of overreach include:

- Acting without any statutory authority for a given action.

- Misinterpreting the governing statute in a way that is not a "permissible construction" of the law.

- Implementing a rule that is contrary to the clear text of the statute.

- Failing to follow required legal procedures, such as the notice-and-comment process for rulemaking.

2. Craft a legal argument

The argument against the agency's action will need to be made in a formal legal document, such as a petition for judicial review.

State the facts clearly and concisely

Provide a complete, impartial statement of the facts, including current and past legal

proceedings related to the issue. This helps frame the legal question accurately.

Argue the ultra vires doctrine

An ultra vires act is void and invalid because it is done without legal authority. Argue that the agency's resolution is a classic case of ultra vires because it exceeds the power granted to it by the enabling statute.

Challenge the agency's statutory interpretation

Under the APA, courts can set aside actions that exceed an agency's statutory authority. Explain why the agency's interpretation of the statute is incorrect or impermissible. Citing specific language from the statute is crucial.

Argue the arbitrary and capricious standard

Under the APA, courts may also invalidate agency decisions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". This requires demonstrating that the agency's action was not based on a reasoned analysis of the relevant factors.

3. Seek a remedy

Based on the legal arguments, a court may offer several remedies:

Set aside the agency action: A court can declare the resolution invalid and overturn it.

Issue an injunction: The court can order the agency to stop enforcing the unlawful resolution.

Compel agency action: In cases of delay or failure to act, the court can compel the agency to fulfill its legal duty.

4. Consult legal precedent

An effective legal response cites relevant case law that establishes the limits of agency power.

Key cases include:

Loper Bright Enterprises v. Raimondo (2024): The Supreme Court overturned the Chevron doctrine, holding that courts, not agencies, must use their own judgment to interpret ambiguous statutes. This severely limits the power of agencies to create law and provides new grounds for challenges.

Food and Drug Admin. v. Brown & Williamson Tobacco Corp. (2000): The Supreme Court found that the FDA could not regulate tobacco as a drug, as doing so exceeded its statutory authority.

5. Follow the proper procedure for judicial review

Generally, judicial review of agency actions proceeds as follows:

Exhaustion of administrative remedies: A party must typically go through all available internal agency appeal processes before seeking review in court.

Standing: The challenging party must prove they have been harmed by the agency's action to have a legal right to sue.

Final agency action: The challenged agency action must be a final decision, not a preliminary or procedural one.

Jurisdiction and timing: The lawsuit must be filed in the correct court and within the applicable statute of limitations.

You will need a good lawyer who knows the ins and outs of both Federal and California law for this, but in my humble opinion the law is on your side. I can help you find the right lawyer and help with environmental and health and safety issues. Give me a call working together we can find the right lawyer and get your job finished on time, safely and without meaningless interference.

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