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SCOTUS Update: Corner Post Decision Upends Concept of Administrative Finality and Expands Timeframe for Administrative Challenges

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On the final day of its term, the US Supreme Court rejected the principle of "administrative finality," an additional blow to federal agencies after the Court rejected "Chevron deference" the previous day.

In *Corner Post v. Board of Governors of the Federal Reserve System*, Justice Amy Coney Barrett, writing for a six-justice majority, held that the default limitations period for Administrative Procedure Act (APA) challenges runs from when a particular plaintiff is injured by the agency action, even if the injury was years or even decades after the agency's action.

Corner Post is as an ideological companion to *Loper Bright v. Raimondo*, which overturned "*Chevron*" deference. (We discuss the demise of "*Chevron*" deference here.) Like *Loper Bright*, *Corner Post* fundamentally changes American administrative law. By opening the door to an ongoing series of challenges to agency action that could upset regulatory determinations long after they are made, *Corner Post* undermines administrative finality. "Administrative finality" as a concept promotes stability in regulatory law as — before *Corner Post* — regulated entities could understand when the time to raise facial challenges to regulatory requirements had passed and plan so that their actions conformed to those requirements.

Because *Corner Post* involves an interpretation of the APA's statute of limitations provisions, Congress has the ability to clarify the law and determine when APA regulatory challenges must be filed. Unless and until Congress acts, and as we stressed after the *Loper Bright* decision, the regulated community has an opportunity to review regulations that govern their operations and understand changes that could result from future challenges by parties seeking to exploit opportunities *Corner Post* offers to challenge "old" regulations.

What Happened?

Corner Post v. Board of Governors of the Federal Reserve System resets the clock that determines when administrative determinations can be challenged. The Court held that the default six-year statute of limitations for challenging federal agency actions starts *when the plaintiff is injured by a final agency action*, and *not* when the final agency action is published. This decision, divided along ideological lines, potentially allows decades-old regulations to be challenged.

Dispute Background

In 2011, the Federal Reserve Board introduced Regulation II, which capped debit card interchange fees at $0.21 per transaction, in addition to 0.05% of the transaction's value. Petitioner Corner Post, a truckstop and convenience store, opened in 2018, seven years after the agency implemented Regulation II. Corner Post challenged this regulation in 2021 under the APA, claiming that the Board's Regulation II allowed higher interchange fees than permitted by statute.

The district court dismissed the suit as time-barred by 28 U.S.C. § 2401(a), which serves as the default statute of limitations for suits against the United States. Section 2401(a) mandates that "the complaint [be] filed within six years after the right of action first accrues." The Eighth Circuit affirmed the decision, holding that the statute of limitations clock begins to run when a regulation is *published*. Given that the Board published Regulation II in 2011, the window to challenge it closed in 2017, one year before Corner Post processed its first debit card transaction. The Supreme Court granted certiorari to resolve a circuit split in which the Eighth Circuit held the majority view.

The Majority Decision

Writing for the majority, Justice Barrett reversed the Eighth Circuit's decision. The Court held that an APA claim does not accrue for purposes of the default six-year statute of limitations until the plaintiff is injured by a final agency action. Justice Barrett began by reviewing three relevant statutes: 28 U.S.C. § 2401(a), 5 U.S.C. § 702, and 5 U.S.C. § 704. Section 702 of the APA generally provides a right of review to any person who is injured by an agency action. In *Director, Officer of Workers' Compensation Programs v. Newport News Shipbuilding & Dry Dock Co.*, the Court interpreted § 702 to require litigants to prove injury in fact by an agency action at the outset of their case. Section 704 of the APA provides that judicial review is available only for "final agency action" in most cases.

Justice Barrett then focused on the ordinary meaning of the term "accrues" in § 2401(a). Finding that "a right accrues when it comes into existence," the Justice concluded that a right of action "accrues" when the plaintiff has the right to "file suit and obtain relief," which occurs only when the plaintiff suffers an injury from a "final agency action." The majority rejected the Board's interpretation of § 2401(a), which Justice Barrett described as a defendant-protective (i.e., agency-protective) statute of repose that would curtail the number of challenges brought against agency actions. By arguing that the text of the provision focuses on the date of the plaintiff's injury and not the date of the defendant's culpable act, the majority greenlit Corner Post's challenge to Regulation II.

Turning from the text of the statutes, Justice Barrett further dismissed the government's attempts to use precedent and appeals to policy to support its interpretation of "accrual." Justice Barrett concluded that it was inappropriate to extrapolate the Court's specific holdings in *Reading Co. v. Koons* and *Crown Coat Front Co. v. United States* to support the Board's general proposition that the "right of action first accrues" when an agency's rule is promulgated. Justice Barrett dispatched the

Board's policy arguments, unpersuaded by the government's warning that the Court would upset settled expectations and reliance interests, create greater regulatory uncertainty, and trigger an avalanche of challenges to agency regulations that had long been considered settled and final.

The Dissent

Justice Ketanji Brown Jackson (joined by Justices Sonia Sotomayor and Elena Kagan) dissented. Justice Jackson opined that the majority's reasoning was fundamentally flawed and inconsistent with the Court's other decisions. Justice Jackson reasoned that the Court's holding "means that there is effectively no longer any limitations period for lawsuits that challenge agency regulations on their face" and that "[i]t also allows well-heeled litigants to game the system by creating new entities or finding new plaintiffs whenever they blow past the statutory deadline." The dissent predicts that the majority's decision, coupled with the Court's recent *Loper Bright* decision overruling *Chevron*, will "wreak havoc on Government agencies, businesses, and society at large" and lead to a "tsunami of lawsuits" challenging agency regulations.

Allowing parties to file regulatory challenges when they individually are harmed opens the door for gamesmanship under which new entities can reopen consideration of regulatory decisions made long ago. For example, the dissent uses the US Federal Drug Administration's (FDA) two-decade old approval of the abortion-related drug mifepristone as something that may now be subject to challenge. (See here for our Reproductive Rights Team's take on this term's mifepristone decision in *FDA v. Alliance for Hippocratic Medicine*.)

What Should We Watch for Next?

Even if it does not spawn a "tsunami," Center Post opens the door to new challenges across the regulatory spectrum. By establishing that the statute of limitations does not run until a party is injured, the Court has made it easier for litigants to undo longstanding agency rules. Corner Post magnifies the impact of Loper Bright by allowing a broader class of plaintiffs to challenge agency regulations. It also presents an opportunity for regulated entities to examine whether there is room to bring APA challenges that otherwise would have been time-barred.

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