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High Court Holds That New Challenges Can Be Brought To Old Agency Rules

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In a significant decision issued today, *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, the Supreme Court held 6-3 that the six-year statute of limitations for challenges to agency rules under the Administrative Procedure Act ("APA") does not begin to run until the date the plaintiff is first injured by the rule, even if that does not occur until long after the rule's promulgation. In conjunction with the Court's recent decision holding that administrative agencies' interpretations of ambiguous statutes are not entitled to deference, the decision in *Corner Post* could significantly expand the number of agency rules that are open to challenge.

Corner Post arises from a 2011 Federal Reserve rule capping the fees that a merchant can charge the consumer's debit card issuer per transaction. The challenger is a truck stop convenience store that accepts debit-card payments and was subject to the rule, but was not incorporated until 2017—more than six years after the rule was promulgated. Following a majority of circuits holding that the statute of limitations under the APA begins to run for *all* plaintiffs on the date a rule is promulgated, the Eighth Circuit affirmed dismissal of the challenge as untimely.

The Supreme Court reversed and remanded, holding that the statute of limitations for APA claims starts to run on the date on which the challenged agency action first injures the plaintiff, rather than the date on which a rule or order was promulgated. Writing for the majority, Justice Barrett interpreted 28 U.S.C. § 2401, which sets a six-year time limit that starts when a claim "first accrues." The Court has long held that a claim "accrues" only after the plaintiff suffers the injury required to press her claim in court. This default meaning applies unless Congress has expressly indicated otherwise in the text of the statute, Justice Barrett observed, such as where Congress establishes a "repose" period tied to the date of the challenged action. Justice Barrett reasoned that this reading was strengthened by language in other statutes authorizing judicial review of administrative action, where Congress explicitly tied claim accrual to the promulgation of a final rule. Justice Barrett further rejected the government's policy arguments, concluding that the plain text controls and that the policy implications were overstated.

Justice Kavanaugh joined the majority opinion, but wrote separately to clarify that the APA allows for vacatur of unlawful agency rules, rejecting the government's argument that such relief is not available.

In dissent, Justice Jackson wrote that the consequences of the decision will be "staggering." According to Justice Jackson, the text and context of the statute show that, for facial challenges to agency regulations, the six-year statute of limitations begins to run on the date of the regulation's promulgation. In her view, the statutory term "accrue" is flexible and, in the context of administrative law, has always been tied to the agency action, not the plaintiff's injury.

Corner Post could have a significant impact on administrative law, as it means that rules may be challenged long after they are promulgated. Regulated entities that are formed (or become subject to a rule) years after a rule's promulgation may be able to launch fresh challenges. Of course, as Justice Barrett explains, those challengers will still need to confront *stare decisis* when courts have already upheld the rules on the merits. But, in conjunction with the Court's decision overturning *Chevron* deference in *Loper Bright*, *Corner Post* opens the door for new challenges to old agency rules and creates opportunities for businesses and industry groups to reevaluate their regulatory strategies.

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