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Legal Sidebar

Corner Post and the Statute of Limitations for Administrative Procedure Act Claims

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On July 1, 2024, the Supreme Court issued its decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, addressing when a plaintiff may bring a facial challenge to a final agency action under the Administrative Procedure Act (APA). Under 28 U.S.C. § 2401, claimants generally must file civil suits against the government "within six years after the right of action first accrues." The petitioners in *Corner Post* asked the Court to decide when a claim accrues under the APA for purposes of facial challenges to agency actions: Does the claim accrue at the time the agency action becomes final or when the plaintiff bringing the suit is injured by the action? The Court, in a 6-3 decision, held that such claims accrue when an injury to the plaintiff occurs, rejecting the government's argument to the contrary. The Court's decision extends the period in which some plaintiffs can bring certain challenges to agency regulations under the APA. The Court's decision, however, does not apply to separate statutes of limitations established for certain agency actions, though it appears likely that courts will consider whether to extend *Corner Post* to some of those statutes in future cases.

This Sidebar begins by providing a brief legal background of the relevant statutes and case law prior to *Corner Post*. It then discusses the procedural history of *Corner Post* and summarizes the opinion and separate statements in that case. The Sidebar concludes with several considerations for Congress.

Legal Background

The APA provides a set of procedural rules for agency actions—such as rulemaking or adjudications—and establishes that final agency actions are generally subject to judicial review. Under the APA, a person "suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action," may bring an action in federal court for appropriate relief. As the Administrative Conference of the United States (ACUS) has explained, the APA rules are "default provisions," which apply "when no specific statute applies in a given case." In other words, the default APA rules will apply unless Congress displaces them by statute. (A separate Legal Sidebar provides more information on judicial review under the APA.)

To be timely, an APA challenge must be brought within the applicable *statute of limitations*, which, as the Court recognized more than a decade ago in *CTS Corp. v. Waldburger*, "creates 'a time limit for suing in a civil case, based on the date when the claim accrued.'" For most civil claims against the federal

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government, 28 U.S.C. § 2401(a) sets a six-year statute of limitations under which a claim is "barred unless the complaint is filed within six years after the right of action first accrues." This catch-all statute of limitations applies to claims brought under the APA, including challenges to agency rules, unless Congress has specified a different statute of limitations for a particular class of challenges. (For example, certain challenges under the Clean Water Act must commence "within 120 days from the date of" the final agency action.)

Before *Corner Post*, the Supreme Court had considered when claims accrue in other contexts (such as the Federal Employers' Liability Act and when disputing certain government contracts) but had not ruled as to when claims accrue under the APA for purposes of § 2401. At least nine federal courts of appeals—including the U.S. Courts of Appeals for the First, Second, Fourth, Fifth, Eighth, Ninth, Tenth, Federal, and D.C. Circuits—had held that the statute of limitations under § 2401 for APA claims begins to run at the time the agency action becomes final. Under the view of those circuits, once six years had elapsed since an agency issued a final action, procedural and "policy-based facial challenges" to the rulemaking would be barred, while as-applied challenges to an agency action (such as an agency's application of a rule in enforcement proceedings) could be brought at a later date. The U.S. Court of Appeals for the Sixth Circuit took a somewhat different approach, holding that "[w]hen a party *first* becomes aggrieved by a regulation that exceeds an agency's statutory authority more than six years after the regulation was promulgated, that party may challenge the regulation without waiting for enforcement proceedings." The Supreme Court cited the differing approaches of the Sixth Circuit and the other circuits as a reason to take the *Corner Post* appeal and resolve the circuit split.

Corner Post: Procedural History

Corner Post involved a challenge by Corner Post, Inc.—a convenience store and truck stop in North Dakota—against the Board of Governors of the Federal Reserve System (Federal Reserve) over debit card "interchange fees"—fees that merchants processing debit card transactions must pay to the banks that issued the debit cards. In 2011, under authority granted by the Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Federal Reserve issued "Regulation II (Debit Card Interchange Fees and Routing)" to regulate interchange fees. Later that year, a group of retail-industry trade associations challenged Regulation II, but the U.S. Court of Appeals for the D.C. Circuit upheld the rule in 2014 as a reasonable construction of the statute.

Corner Post (which first opened for business in 2018) joined a 2021 challenge (initially filed by several trade associations) to Regulation II under the APA. The plaintiffs argued that Regulation II was "arbitrary and capricious, contrary to the APA, and in violation of the Durbin Amendment." The district court dismissed the challenge as untimely under § 2401(a), and the U.S. Court of Appeals for the Eighth Circuit (Eighth Circuit) affirmed. Applying its own precedent and following a majority of other federal circuit courts, the Eight Circuit ruled that "when plaintiffs bring a facial challenge to a final agency action, the right of action accrues, and the limitations period begins to run, upon publication of the regulation." As a result, the court held that Corner Post's challenge—brought more than six years after the Federal Reserve issued Regulation II—was untimely. In April 2023, Corner Post filed a petition for a writ of certiorari seeking Supreme Court review, which the Court granted in September 2023.

The Court's Decision

The Supreme Court issued its 6-3 decision in *Corner Post* on July 1, 2024, with a majority opinion written by Justice Amy Coney Barrett, a concurring opinion by Justice Brett Kavanaugh, and a dissenting opinion by Justice Ketanji Brown Jackson, which Justices Sonia Sotomayor and Elena Kagan joined.

The majority held that, for purposes of § 2401(a)'s statute of limitations, a claim under the APA accrues when a plaintiff is injured by final agency action. Rejecting the Federal Reserve's argument that the statute of limitations began to run when an agency action is final under the APA, the Court instead ruled that a "right of action 'accrues' when the plaintiff has a 'complete and present cause of action,'" which, under the APA, occurs when the plaintiff "suffers an injury from final agency action." As a result, the statute of limitations does not begin to run until the plaintiff is actually injured by an agency action. As Corner Post filed its challenge within that six-year period, the Court held that its claim was timely and, accordingly, reversed the Eighth Circuit's decision dismissing the case.

In reaching its conclusion, the Court relied on dictionaries contemporaneous to the 1948 enactment of § 2401, which "explained that a cause of action accrues 'on [the] date that damage is sustained and not [the] date when causes are set in motion which ultimately produce injury.'" Explaining that its interpretation of accrual was "the 'standard rule for limitations periods,'" the Court found "good reason to conclude that Congress codified the traditional rule in § 2401(a)," as that statute "uses standard language that had a well-settled meaning in 1948." The Court also distinguished between *statutes of limitations* such as § 2401(a), which are measured from when a claim accrues, and *statutes of repose*, which place "an outer limit on the right to bring a civil action" and stop "any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered a resulting injury."

Relying on the plain language of § 2401(a) and the Court's own precedent interpreting that statute and other statutes of limitations, the majority rejected the Federal Reserve's arguments that § 2401(a) should be read against other statutes of limitations that (1) start the clock at finality (as opposed to when a plaintiff's injury occurs) and (2) disfavor a "challenger-by-challenger" approach to calculating when a claim accrues. The Court also rejected the Federal Reserve's "policy concerns" regarding the need for finality, noting that parties may always challenge regulations in certain contexts. It also recognized that "courts entertaining later challenges often will be able to rely on binding Supreme Court or circuit precedent" and that, "if no other authority upholding the agency action is persuasive, the court may have more work to do, but there is all the more reason for it to consider the merits of the newcomer's challenge."

The Court, however, left open the question of when, for the purposes of Section 2401(a), a plaintiff is injured by an agency action that was procedurally defective. A claim of procedural deficiency is based on alleged violations of the procedural requirements of a statute—typically the APA—governing the relevant agency's procedures in finalizing its administrative action. Courts and legal scholars often contrast procedural claims with *substantive* claims, which typically allege that the agency action violated a statute or the Constitution. The most commonly applicable procedural requirements are known as "informal rulemaking" in the APA. The APA codified informal rulemaking procedures in § 553 of Title 5. Those procedures include requirements to (1) post a notice of proposed rulemaking, (2) submit that notice for public comment, and (3) publish the final rule in the *Federal Register*. In a footnote in its *Corner Post* opinion, the Court explained that the petitioner, Corner Post, "suggest[ed] that only parties that existed during the rulemaking process can claim to have been injured by a 'procedural' shortcoming, like a deficient notice of proposed rulemaking." The Court declined to address this issue, because Corner Post raised "a prototypical substantive challenge"—that Regulation II violated the Durbin Amendment.

Prior to *Corner Post*, lower courts have addressed this issue, on occasion, in the context of as-applied challenges. With respect to as-applied substantive challenges, courts have held that a plaintiff's claim accrues when the plaintiff is injured by the application (i.e., enforcement) of the agency action against the plaintiff. *Corner Post* did not disturb this general rule for substantive as-applied challenges. In fact, *Corner Post* expanded it to facial challenges. Conversely, with respect to as-applied procedural challenges, courts have generally held that a claim challenging a procedural deficiency accrues when the agency adopts an action, thus limiting procedural challenges to six years after the date of adoption. In the aftermath of *Corner Post*, at least one court has suggested that *Corner Post* "likely abrogated" this

approach but withheld a decision on the issue until after a lower court weighs in. Whether courts will continue to adhere to the approach for procedural claims that obtained prior to *Corner Post* is yet to be seen.

Justice Kavanaugh's Concurrence

In his concurring opinion, Justice Kavanaugh explained what he views as a "crucial additional point: Corner Post can obtain relief . . . only because the APA authorizes vacatur of agency rules." Under the APA, a court has the authority to "set aside agency action, findings, and conclusions" that it deems unlawful. Although courts routinely vacate—or set aside—agency actions, the government argued that district courts do not have the authority under the APA to *universally* vacate (i.e., nullify the legal effect of the action for anyone nationwide) unlawful agency *rules*; rather, they have authority only to direct the agency not to apply the rule against a particular litigant. Justice Kavanaugh opined that courts must have the power to universally vacate unlawful rules, because unregulated parties such as Corner Post (i.e., those that are not directly regulated by an agency enforcing its rules) would otherwise have no way to challenge the rule on the basis of its "adverse downstream effects." As Justice Kavanaugh explained, a court could not issue an injunction preventing the Federal Reserve from enforcing Regulation II against Corner Post, because the Federal Reserve does not regulate Corner Post directly. In his view, only vacatur provides a remedy to unregulated parties such as Corner Post.

Justice Kavanagh's concurrence raises an as-yet-unresolved issue flowing from *Corner Post*'s reasoning: If the APA permits a court to vacate an agency action universally, at least in some circumstances, a party such as Corner Post can secure relief not just for itself but also for parties whose claims are now time-barred by the statute of limitations. For instance, parties that existed at the time Regulation II was promulgated could no longer challenge the regulation at the time Corner Post brought its suit. Nonetheless, if Corner Post were to prevail on the merits of its suit and the only remedy available is universal vacatur of Regulation II, as Justice Kavanaugh suggests, then those parties that existed when the regulation was promulgated—both those that could have challenged the regulation but did not and those that *did* challenge the regulation but lost—would no longer be required to comply with Regulation II, even though they could not now challenge the regulation.

This result appears to put Justice Kavanaugh at odds with Justices Gorsuch, Thomas, and Barrett. In a concurring opinion in *United States v. Texas* joined by Justices Thomas and Barrett, Justice Gorsuch argued that traditional principles of the law of equity limits the scope of remedies such as vacatur to the parties before the court. The APA, Justice Gorsuch stressed, did not disturb that traditional limitation. After *Corner Post*, at least one district court has adopted Justice Kavanaugh's reasoning, finding that unregulated parties may be entitled to universal vacatur. The broader question of whether the APA permits universal vacatur at all, however, remains unresolved by the Supreme Court and may be the subject of future litigation.

Justice Jackson's Dissent

Justice Jackson, joined by Justices Sotomayor and Kagan, dissented. Relying on the "text and context of the relevant statutory provisions," she asserted that, "for facial challenges to agency regulations," a cause of action accrues when the agency publishes the rule. This result, she noted, is consistent with other statutes of limitations that "uniformly run from the moment of agency action" and the idea that facial challenges to agency rules are agnostic to individual plaintiffs' injuries. The majority's conclusion to the contrary, Justice Jackson opined, "effectively eliminate[s] any limitations period for APA lawsuits," meaning that "administrative agencies can be sued in perpetuity over every final decision they make." This result, she predicted, will be "profoundly destabilizing for both Government and businesses" while allowing "well-heeled litigants to game the system."

In addition to disagreeing with the majority's holding, Justice Jackson also faulted the majority's characterization of the courts of appeals' rulings as creating a circuit split. In particular, she observed that *Herr v. United States Forest Service*—the Sixth Circuit case that, in the majority's view, created the circuit split—dealt with an *as-applied* challenge to a rule, not a facial challenge. The Sixth Circuit, she noted, has not extended its decision in *Herr* to facial challenges to final agency actions.

Considerations for Congress

The majority and dissent acknowledge that the Court's decision in *Corner Post* represents a departure from the approach taken by a majority of federal courts of appeals. As a result, the dissent and some commentators have suggested that the decision could create instability for administrative agencies and the entities they regulate, depriving them of certainty in how agency rules will be applied. Other commentators welcomed the Court's decision as increasing federal agencies' accountability.

Although *Corner Post*'s full impact will likely become evident only after future litigation, it appears that the decision may result in several changes to the status quo of administrative law. For example, plaintiffs' ability to challenge agency regulations beyond the six-year period after publication may result in challenges to regulations that agencies have considered immune to procedural challenges under the APA. Such challenges could impact both federal agencies and private parties that have based their conduct on those rules.

Along similar lines, district courts could, at different times outside the six years following a rule's promulgation, issue rulings that result in potentially conflicting interpretations of regulations. This patchwork could be compounded by the Court's decision in *Loper Bright Enterprises v. Raimondo* (issued three days before its decision in *Corner Post*) in which it invalidated the *Chevron* framework, which required courts, when faced with statutory ambiguity or silence, to defer to the reasonable interpretation of the agency responsible for administering the statute. (This Legal Sidebar discusses *Loper Bright* in more detail). Some commentators predict that *Loper Bright* will result in an increased number of challenges to agency regulations previously upheld under *Chevron*. The Court's ruling in *Corner Post* may permit some of those challenges to move forward in cases where they were previously understood to be barred by the statute of limitations. *Corner Post* may also affect other review statutes that employ language similar to that of § 2401 and the APA regarding when a cause of action accrues. (ACUS has identified more than 650 statutes governing judicial review of agency actions, a number of which employ language similar to the APA.) Although *Corner Post* will not automatically apply outside of the APA context, courts may find its reasoning persuasive, if not controlling, with respect to similar review statutes. Such future rulings would likely impact those other statutory review provisions in ways similar to *Corner Post*'s effect on APA challenges.

The majority and dissent agree that "the ball is in Congress' court": If Congress disagrees with the Court's decision in *Corner Post* or future decisions applying it, Congress could change the timing of review. For example, Congress could amend either § 2401(a) or the APA to clarify when certain types of claims accrue, potentially differentiating between facial and as-applied challenges. At least two proposals in the 118th Congress would take this approach: The Corner Post Reversal Act, introduced on July 11, 2024, by Representatives Jerrold Nadler and Lou Correa, would amend the APA to require that most APA claims "be commenced within 6 years after the date on which the relevant agency action was finalized." A similar bill, the Agency Stability Restoration Act of 2024, was introduced by Senator Chris Coons on July 23, 2024. Congress could also enact a *statute of repose* that sets an outer time limit on some or all challenges to final agency actions under the APA, or it could set longer or shorter statutes of limitations for certain types of challenges. If Congress does not act, *Corner Post* and future cases applying it will control the timing of challenges under § 2401(a) and the APA.

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