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Corner Post: SCOTUS Reopens Challenges to Longstanding Federal Regulations

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11.0—Veterans' claims.

On July 1, 2024, the Supreme Court of the United States delivered a significant ruling in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*.[3] The decision addresses 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

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[3] 603 US _ (2024).

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?[4]

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.[5]

Corner Post has far-reaching implications for administrative law, notably the statute of limitations for challenging federal regulations, including those created by the Department of Veterans Affairs (VA). After *Corner Post*, claimants can challenge decades-old VA regulations directly in court without waiting for a decision from the Board of Veterans' Appeals. This can result in considerably earlier decisions.

Background

The APA establishes that final agency actions are subject to judicial review. A regulation published in the Federal Register is generally considered a final agency action. And 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.[6]

To be timely, an APA challenge must be brought within the applicable statute of limitations, which "creates 'a time limit for suing in a civil case, based on the date when the claim accrued.'"[7] 28 U.S.C. § 2401(a) bars most civil claims against the federal government "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

[4] *Id.*
[5] *Id.*
[6] 5 U.S.C. § 702.
[7] CTS CORP. V. WALDBURGER, 573 U.S. 1 (2014).

APA, including challenges to agency rules, unless Congress specifies a different statute of limitations for a particular class of challenges.[8]

Before *Corner Post*, the Supreme Court had not ruled as to when claims accrue under the APA for purposes of § 2401. Nine of the U.S. Courts of Appeals generally agreed that the statute of limitations under § 2401 for APA claims begins to run at the time the agency action becomes final: once six years had elapsed since an agency issued a final action, challenges would be barred (although challenges to an agency action like the application of a rule in enforcement proceedings) could be brought at a later date.

However, the U.S. Court of Appeals for the Sixth Circuit held 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."[9]

The Supreme Court cited the conflict between the Sixth and 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." Corner Post (which first opened for business in 2018) joined a 2021 challenge to "Regulation II (Debit Card Interchange Fees and Routing)," issued by the Federal Reserve in 2011.[10] The

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[8] For example, 33 U.S.C. § 1369 requires that certain challenges under the Clean Water Act must commence "within 120 days from the date of" the final agency action.

[9] HERR V. UNITED STATES FOREST SERV., 803 F. 3d 809, 822 (6th Cir. 2015) (emphasis in original).

[10] NORTH DAKOTA RETAIL V. BD. OF GOVERNORS OF FED., 55 F. 4th 634 (2022).

plaintiffs argued that Regulation II was "arbitrary and capricious, contrary to the APA, and in violation of the Durbin Amendment."[11]

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 other federal circuit courts, the Eight Circuit 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 Supreme Court's Decision

On July 1, 2024, the Supreme Court ruled 6-3 that, for purposes of § 2401(a)'s statute of limitations, a "right of action 'accrues' when the plaintiff has a 'complete and present cause of action,'" which, under the APA, occurs when that plaintiff "suffers an injury from final agency action." As Corner Post filed its challenge within the six-year limit, the Court held that its claim was timely and, accordingly, reversed the Eighth Circuit's decision dismissing the case. The majority opinion was delivered by Justice Amy Coney Barrett.[12]

The Court referenced 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.'"[13] Describing its interpretation of accrual as "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

[11] *Id*., at 636.
[12] CORNER POST.
[13] *Id*., at 7.

that had a well-settled meaning in 1948."[14] The Court also distinguished between statutes of limitations like § 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.'"[15]

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.
- "policy concerns" create the need for finality, noting that parties may always challenge regulations in certain contexts.[16] 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."[17]

Justice Kavanaugh filed a concurring opinion, while Justice Jackson authored a dissenting opinion, joined by Justices Sotomayor and Kagan. The dissent expressed concerns about the potential for this ruling to

[14] *Id*., at 8.
[15] *Id*., at 9.
[16] *Id.*, at 20.
[17] *Id.*, at 21.

undermine regulatory stability and the finality of agency actions, arguing that this effectively eliminated limitations for challenges.[18]

Analysis

Impact on Administrative Law

The Court's decision in *Corner Post* has significant implications for administrative law and the regulatory process:

1. Extended Challenge Period: By tying the accrual of claims to the date of injury rather than the date of promulgation, the ruling potentially extends the period during which regulations can be challenged.
2. Regulatory Instability: The decision may create a more unstable regulatory environment, as longstanding regulations could now be subject to new legal challenges.
3. Agency Burden: Federal agencies may face an increased burden in defending regulations, potentially years or even decades after their initial promulgation.
4. Separation of Powers: The ruling has been criticized as potentially undermining the separation of powers and the ability of federal agencies to effectively carry out their mandates.
5. Congressional Intervention: If Congress disagrees with the Court's decision in *Corner Post* or future decisions applying it, Congress could act to 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 or as-applied challenges. At least one proposal in the 118th Congress would take this approach: the Corner Post Reversal Act,

[18] *Id*.

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."[19] 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.

Implications for Veterans Law

1. Under *Corner Post*, more veterans will be able to go directly to the Federal Circuit to challenge a VA rule or regulation. The advantage of going directly to the Federal Circuit is that a veteran can get a ruling on the validity of the VA rule or regulation much faster than they would from the U.S. Court of Appeals for Veterans Claims. This is because to get to the CAVC, a veteran needs a Board decision, and current wait times at the Board are 3-5 years.
2. Even regulations that have been around for many decades may be able to be directly challenged in the Federal Circuit, as long as VA applied it to the veteran no more than six years ago.
3. It remains unclear whether a veteran will have to keep their claim alive at VA while they wait for the Federal Circuit's ruling, which can be a year or two. However, if a veteran appeals to the Board and does not ask for advancement on the docket, that will likely not be an issue.

Conclusion

Corner Post represents a significant shift in administrative law jurisprudence. By tying the accrual of claims under the APA to the date

[19] H.R. 9014, 118th Cong. (2024).

of injury rather than the date of regulatory promulgation, the Supreme Court has potentially opened the door to challenges of many longstanding federal regulations, including those promulgated by VA.

This decision may lead to increased regulatory uncertainty and litigation, placing a greater burden on federal agencies to defend their actions over extended periods. It also raises important questions about the balance between regulatory stability and the rights of injured parties to seek redress. For veterans, it may also provide a way to bypass the current appeal backlog when challenging VA rules and regulations.

As the ramifications of this ruling become felt, veterans and their advocates will need to monitor its impact and refine legal strategies accordingly.

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