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NCLA Amicus Brief Asks Supreme Court to Uphold a Small Business's Right to Judicial Review

Corner Post, Inc. v. Board of Governors of the Federal Reserve System

Washington, DC (November 21, 2023) – The U.S. Court of Appeals for the Eighth Circuit upheld the dismissal of Corner Post's lawsuit challenging a Federal Reserve regulation, ruling that the six-year statute of limitations to challenge the rule had already expired. However, Corner Post did not exist until more than six years after the rule issued, and it filed suit less than four years after opening for business. The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, urging the U.S. Supreme Court to allow the lawsuit to go forward in such circumstances and protect judicial review.

The Board of Governors of the Federal Reserve System (the Fed) adopted Regulation II in 2011, establishing maximum debit card transaction interchange fees. Corner Post, a North Dakota convenience store and truck stop, began operating in 2018 and filed its lawsuit challenging Regulation II in 2021, claiming it had incurred excessive interchange fees under the rule. The Eighth Circuit ruled that Corner Post's opportunity to file suit had expired in 2017. Federal law allows Corner Post to sue within six years of when its injury from Regulation II began to accrue, regardless of when the rule was originally promulgated. Placing the statute of limitations within six years of the regulation's promulgation would absurdly require Corner Post to have taken legal action before it was even founded. This standard deprives Corner Post of adequate and meaningful judicial review of the rule in court, an opportunity to which the Administrative Procedure Act entitles it.

The Government claims Corner Post's ability to petition the Fed to change Regulation II via rulemaking, and subsequently challenge any denial of such a petition, is a viable alternative to a suit asking courts to strike down the rule. But this alternative is meaningless as federal agencies routinely use lengthy delays to avoid review petitions, circumventing petitioners' constitutional and statutory rights. The Fed could easily delay a petition by Corner Post in this manner. Requesting review of a petition's eventual denial would then occur, if at all, under a far more deferential standard of review that would make obtaining relief unlikely. The Supreme Court should overturn the Eighth Circuit's decision, not force Corner Post to take the doomed rulemaking petitioner's path.

NCLA released the following statements:

"The Government's contention that an injured business's lawsuit can be time-barred even before the business comes into existence would create a major gap in the right to judicial review."

— **Richard Samp, Senior Litigation Counsel, NCLA**

"Agencies say that shutting the courthouse doors on injured parties is not a problem because some theoretical other way to remedy their injuries exists. But those options, like petitioning the agency to change a regulation, are hollow in practice. Direct judicial review is a powerful tool to check the administrative state, and litigants must be permitted to bring claims based on when their harm accrued, not when the regulation was adopted."

— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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