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In NCLA *Amicus* Win, Supreme Court Upholds Small Business’s Right to Judicial Review

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

Washington, DC (July 1, 2024) – Today, U.S. Supreme Court revived Corner Post’s lawsuit challenging a Federal Reserve regulation, [ruling](#) 6-3 that the six-year limit on challenging the rule had not yet expired for the North Dakota convenience store and truck stop when it filed suit. Corner Post did not exist until 2018, more than six years after the 2011 rule issued, and it filed suit just over three years after opening for business. The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Corner Post, Inc. v. Board of Governors*, urging the Court to treat the Administrative Procedure Act’s (APA) six-year time bar on agency action as the statute of limitations that it is.

The Board of Governors of the Federal Reserve System (the Fed) adopted Regulation II in 2011, establishing fees for debit-card transactions. Corner Post began operating in 2018 and filed its lawsuit challenging Regulation II in 2021, claiming it had incurred excessive interchange fees under the rule. The U.S. Court of Appeals for the Eighth Circuit ruled that Corner Post’s opportunity to file suit had expired in 2017, six years after the rule first issued.

Agreeing with arguments in NCLA’s *amicus* brief, the Supreme Court recognized that federal law allows Corner Post to sue within six years of when its injury from Regulation II began to accrue—which it did—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. The Justices ruled that the APA entitles Corner Post to adequate and meaningful judicial review of the rule in court.

“Because an APA plaintiff may not file suit and obtain relief until she suffers an injury from final agency action, the statute of limitations does not begin to run until she is injured,” Justice Barrett wrote.

The Government claimed Corner Post’s ability to petition the Fed to change Regulation II via rulemaking, and then to challenge any denial of such a petition, was a viable alternative to a suit asking courts to strike down the rule. But the Supreme Court recognized that this would not be “a sufficient substitute for *de novo* judicial review[.]” As NCLA pointed out, federal agencies routinely use lengthy delays to avoid review petitions, circumventing petitioners’ constitutional and statutory rights. The Fed could have easily delayed a petition by Corner Post in this manner. Requesting review of a petition’s eventual denial would then have occurred, if at all, under a far more deferential standard of review favoring the government, which would have made obtaining relief unlikely.

NCLA released the following statements:

“This decision is a tremendous win for individuals and businesses who have been subject to problematic regulations but were barred from challenging them because of the passage of time. As this case shows, it makes

little sense to deny a party the opportunity to challenge harmful regulations based on when they were promulgated versus when the harm occurred. Doing so would flip the traditional claims-accrual process on its head.”

– **Kara Rollins, Litigation Counsel, NCLA**

“The APA’s language clearly indicates that the six-year bar on rule challenges is a statute of limitations. Such a limit accrues, that is, it begins to run, only when the rule has harmed the plaintiff. The Court was absolutely correct to recognize that Corner Post’s challenge to Regulation II is not time barred under the APA.”

— **Mark Chenoweth, President, 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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