***Corner Post, Inc.* v. *Board of Governors of the Federal Reserve System*, No. 22-1008**

Today, the Supreme Court held in a 6-3 decision that the six-year time limit to challenge a federal agency regulation under the Administrative Procedure Act (APA) does not start to run until the plaintiff is injured by the regulation.

Background: In 2011, the Federal Reserve Board issued a regulation setting a maximum rate for "interchange fees" that payment networks such as Visa and Mastercard charge for debit card payments.

Corner Post is a North Dakota truck stop and convenience store. It opened for business in 2018. Many of its customers have used debit cards to pay for purchases. As a result, it has had to pay thousands of dollars in interchange fees. In 2021, it sued the Federal Reserve Board, arguing that the interchange-fee regulation was invalid under the APA because it allows higher fees than allowed by statute.

The default statute of limitations for civil claims against the federal government is six years. The statute setting out that statute of limitations, 28 U.S.C. § 2401(a), provides that the plaintiff's complaint must be "filed within six years after the right of action first accrues." The government argued that the lawsuit was barred by the six-year statute of limitations, since the regulation was finalized in 2011 and Corner Post did not sue until 2021. Corner Post argued that it was injured by the rule starting in 2018, so it had six years from that time to sue.

The district court dismissed the suit as barred by the statute of limitations. The Eighth Circuit affirmed, joining several other circuits that held that the statute of limitations for facial APA challenges begins to run on the date of final agency action, not the date a particular plaintiff is injured.

Issue: Whether a plaintiff's facial challenge to a regulation under the APA first "accrues" under 28 U.S.C. § 2401(a) when an agency issues a regulation, or when the regulation first causes injury to the plaintiff.

Court's Holding: In an opinion authored by Justice Barrett, and joined by Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Kavanaugh, the Supreme Court held that an APA claim does not accrue for purposes of Section 2401(a)'s six-year statute of limitations until the plaintiff is injured by the final agency action. Because Corner Post sued the Federal Reserve Board within six years of being injured, its lawsuit was timely.

The Court noted the APA authorizes people to sue the United States when they have been injured by federal agency actions – specifically, when they have "suffer[ed] legal wrong because of agency action" or have been "adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702. In the Court's view, a plaintiff's APA claim does not "accrue" until the plaintiff has a "complete and present cause of action" – which requires an injury. This rule, the Court added, is consistent with the traditional rule in other contexts that a claim does not accrue as soon as the defendant acts, but only when the plaintiff has suffered an injury.

In support of its proposed rule, the Federal Reserve Board explained that agencies and regulated parties need finality, and it expressed concern that Corner Post's position, if accepted, would lead to more lawsuits that would upset settled reliance interests. The Court dismissed those concerns as "overstated," noting that regulated parties typically challenge major regulations right away, and so courts deciding later challenges often can rely on case law from earlier suits brought by other plaintiffs.

Justice Kavanaugh concurred to emphasize that vacatur is an appropriate remedy under the APA when a federal court holds that an agency regulation is unlawful.

Justice Jackson authored a dissent, joined by Justices Sotomayor and Kagan. In their view, for a facial challenge to an agency regulation under the APA, the six-year limitations period begins to run when the regulation is published. The dissenting Justices expressed concern that, under the Court's rule, there is "effectively no longer any limitations period for lawsuits that challenge agency regulations on their face." And they predicted that the Court's holding – combined with last week's decision in *Loper Bright Enterprises* v. *Raimondo* – will unleash a "tsunami of lawsuits against agencies."

Read the opinion here.