

# U.S. Supreme Court Holds Door Open to Challenge Federal Regulations

By Stephanie L. Adler-Paindiris & Patricia Anderson Pryor

July 2, 2024

## Meet the Authors



### Stephanie L. Adler-Paindiris

(Pain-DEAR-is • She/Her)

Principal

(407) 246-8409

Stephanie.Adler-

Paindiris@jacksonlewis.com



### Patricia Anderson Pryor

Office Managing Principal

513-322-5035

Patricia.Pryor@jacksonlewis.com

## Related Services

Litigation

The U.S. Supreme Court has held that a federal regulation can be challenged on its face long after the rule is issued by an agency. *Corner Post, Inc. v. Bd. of Governors of the Federal Reserve System*, No. 22-1008 (July 1, 2024). The six-year statute of limitations under the Administrative Procedure Act to challenge a final agency regulation begins when a plaintiff is injured by a final agency action, not when the regulation was issued, the Court's majority explained.

While many were watching for the Court's decision on "Chevron deference" in *Loper Bright Enters. v. Raimondo*, the *Corner Post* case seems to have flown under the radar. Yet, the opinion could prove just as consequential for federal agency authority.

*Corner Post* involved a truck stop convenience store's time-barred attempt to challenge a 2011 Federal Reserve rule governing "interchange" fees for debit-card transactions. The applicable limitations period allowed plaintiffs only six years to challenge a new rule on its face. *Corner Post* could hardly bring a timely suit — it did not even exist until 2018.

The Court held that the six-year clock begins to run when a plaintiff first suffers a legal wrong because of a rule, not when the rule is originally issued. In this case, *Corner Post*'s clock did *not* start until the first time it paid the interchange fee under the Federal Reserve rule.

Before the Court's decision, plaintiffs who did not sue within six years of an agency's issuance of a formal rule were left with two options: (1) intentionally violate the rule, prompting an enforcement action, then challenge the rule "as applied" to the plaintiff; or (2) petition the agency to revise or rescind the rule and appeal the agency's decision when it refused to do so. *Corner Post*, however, presents an opportunity to file new facial challenges to longstanding agency regulations. The decision in *Loper Bright*, which abandoned the principle that courts must defer to federal agencies, ensures that when courts do revisit these regulations, they will review them with greater scrutiny over whether a rule conforms to the statute it purports to interpret.

Contact your Jackson Lewis attorney if you have questions about the impact of the *Corner Post* decision, the Court's momentous term for federal administrative agencies, and what they mean for your organization.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.