

GIBSON DUNN



Appellate & Constitutional Law Update

July 1, 2024

Supreme Court Holds That Six-Year Limitations Period For Administrative Procedure Act Claims Runs From The Plaintiff's Injury, Not The Rule's Promulgation

Corner Post v. Board of Governors, Federal Reserve System, No. 22-1008 –
Decided July 1, 2024

Today, the Supreme Court held 6–3 that the six-year clock to bring a claim under the Administrative Procedure Act starts when an agency rule injures the plaintiff, not when the agency issues the rule.

“An APA plaintiff does not have a complete and present cause of action until she suffers an injury from final agency action, so the statute of limitations does not begin to run until she is injured.”

JUSTICE BARRETT, WRITING FOR THE COURT

[Background:](#)

In 2011, the Federal Reserve Board promulgated Regulation II, which caps interchange fees payment networks can charge merchants on debit-card transactions. The D.C. Circuit rejected a challenge under the Administrative Procedure Act (“APA”) to Regulation II in 2014, holding that the rule “generally rest[s] on reasonable constructions of the statute.” *NACS v. Board of Governors of FRS*, 746 F.3d 474, 477 (D.C. Cir. 2014). In 2018, a convenience store called Corner Post opened its doors and first paid fees under Regulation II. Three years later, Corner Post filed an APA claim challenging Regulation II.

The Eighth Circuit held that Corner Post’s suit was untimely. The APA allows suit by any person who has suffered a “legal wrong” or been “adversely affected” by an agency rule. 5 U.S.C. § 702. An APA challenge to an agency rule must be “filed within six years after the right of action first accrues.” 28 U.S.C. § 2401(a). Aligning itself with eight other circuits, the Eighth Circuit ruled that APA claims must be brought within six years of the rule’s promulgation, even if the plaintiff could not have filed its own claim within that initial six-year period. That decision split with the Sixth Circuit, which had held that an APA claim accrues (and the six-year limitations period thus starts) only once the agency rule injures the particular plaintiff. The Supreme Court granted review to resolve the conflict.

Issue:

Whether a plaintiff’s APA claim first accrues when an agency issues a rule—regardless of whether that rule injures the plaintiff on that date—or when the rule first adversely affects the plaintiff.

Court’s Holding:

An APA claim accrues, and the six-year statute of limitations begins to run, only when an agency rule injures the plaintiff.

What It Means:

- Today’s decision means that the timeliness of an APA claim does not turn on when the agency rule was promulgated or when *someone else* could have challenged it. Instead, it turns on when the particular plaintiff challenging the agency rule was first injured by the rule. The Court relied on the APA’s “basic presumption” of judicial review and the “deep-rooted historic tradition that everyone should have his own day in court.” Op. 21–22. As a result, an APA claim challenging an agency rule is timely when the plaintiff was first injured by the rule within six years of filing suit—even if the rule was promulgated more than six years ago.
- The Court’s decision also amplifies the impact of its decision in *Loper Bright* to overrule *Chevron v. NRDC*. As the Court explained, the D.C. Circuit relied on *Chevron* in its 2014 decision rejecting an APA challenge to Regulation II, holding that the regulation “rest[ed] on reasonable constructions of the statute.” Op. 2. On remand, the district court and Eighth Circuit will address Regulation II’s validity without deferring to the Federal Reserve Board’s interpretation of the relevant federal statutes.

- In dissent, Justice Jackson predicted that the Court's adoption of a plaintiff-specific accrual rule for APA claims could clear the way to new challenges to decades-old regulations.

Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

Appellate and Constitutional Law

Thomas H. Dupree Jr.
+1 202.955.8547
tdupree@gibsondunn.com

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Julian W. Poon
+1 213.229.7758
jpoon@gibsondunn.com

Lucas C. Townsend
+1 202.887.3731
ltownsend@gibsondunn.com

Bradley J. Hamburger
+1 213.229.7658
bhamburger@gibsondunn.com

Brad G. Hubbard
+1 214.698.3326
bhubbard@gibsondunn.com

Related Practice: Administrative Law and Regulatory Practice

Eugene Scalia
+1 202.955.8210
escalia@gibsondunn.com

Helqi C. Walker
+1 202.887.3599
hwalker@gibsondunn.com

Stuart F. Delery
+1 202.955.8515
sdelery@gibsondunn.com

This alert was prepared by associates Grace Hart and Patrick Fuster.

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