



## A New SCOTUS Case Could Undo Decades of Regulation

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February 20, 2024

On Tuesday, the US Supreme Court will hear a little-covered case that has the power to wipe away safeguards for any and all regulations that govern Americans' daily lives.

Plaintiffs in the case, which is ostensibly about a convenience store's challenge to debit-card fee limits, are backed by big business and groups tied to the conservative Koch network, and they're asking the court to overturn a long-standing statute of limitations that currently protects federal rules from certain legal challenges once they've been finalized for six years. If they win, it could unleash an onslaught of attacks on all federal regulations, most of which Americans likely don't even know protect them.

"Health, safety, the economy, food and drug safety, the environment — basically everything that we take for granted has been protected by [federal] agencies," said Devon Ombres, the senior director of courts and legal reform at the public policy advocacy group Center for American Progress, who coauthored a report last week that warned the case "could open a Pandora's box" for federal deregulation.

As the consumer advocacy group Public Citizen noted in its amicus brief in the case, the statute of limitations, which is outlined in the Administrative Procedure Act of 1946, has been used to fend off challenges to decades-old regulations that restrict oil and gas use of public lands, set minimum wages for farm workers, and govern employers' ability to secure work visas for temporary foreign workers, among others.

The case, *Corner Post v. Board of Governors of the Federal Reserve System*, is being litigated by the same powerful conservative law firm that ended affirmative action in July and blocked President Joe Biden's student debt relief, in the hopes that once again, an increasingly right-wing high court will rule in its favor. Tyler Green, the lead lawyer for the plaintiffs, once clerked for Clarence Thomas — and is also the administrative trustee for Leonard Leo's massive dark money fund, the \$1.6 billion Marble Freedom Trust.

Major pro-business groups — including the US Chamber of Commerce — and a host of right-wing groups tied to Koch family foundations, like the Cato Institute, have lined up to support the *Corner Post* case, filing briefs urging the justices to grant a favorable ruling. The court will hear arguments from both sides on Tuesday.

The *Corner Post* case is one of several on the Supreme Court’s docket this term that, Ombres said, were “aiming death blows at federal agency authority,” with the robust support of special interests.

### “A Never-Ending Avalanche of Litigation”

The plaintiff in the *Corner Post* case is a small roadside convenience store in North Dakota. In 2021, the store joined a lawsuit brought by local trade associations that challenged the specifics of a federal rule capping debit card “swipe fees,” a major moneymaker for big banks and credit card companies. According to Corner Post, the fees allowed by the rule were excessive and not proportional to the service costs incurred by banks who issued the debit cards.

That rule, a provision of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, was finalized by the Federal Reserve Board in 2011.

The Administrative Procedure Act, passed in 1946, only allows “facial challenges” — lawsuits that argue a federal regulation is illegal and ask a judge to strike it down — to such rules for the first six years after they are finalized. Proponents of this sort of statute of limitation, which has stood for decades, say it allows the country to operate with a relatively stable regulatory environment.

So after 2017, if a person or business wanted to challenge the debit-card fee cap, they had to do so in other ways, such as by petitioning the Federal Reserve. Such alternative processes usually take longer and provide agencies “an opportunity to invite public comments and review a full record of up-to-date evidence,” according to Public Citizen’s brief — scrutiny and transparency big business would likely prefer to avoid.

Lawyers for the convenience store are arguing that the Administrative Procedure Act intended the six-year window to begin whenever an entity is impacted by a rule, not when the rule was finalized — even if that event occurred years or decades after the rule was put in the books. In the case of the Corner Post store, plaintiffs say the six-year time limit should have begun in 2018, the year the convenience store opened its doors.

In other words, the *Corner Post* case aims to effectively do away with the statute of limitations for government rules entirely.

“By [*Corner Post*’s] logical conclusion, any newly created entity could sue to challenge any regulation ever written,” said Ombres at the Center for American Progress.

Nick Sansone, a staff attorney at Public Citizen, echoed this conclusion. “Pretty much every regulation will be open to lawsuits brought by interested parties, often in the court of their choice, often with no public participation built into the process,” he said.

In 2019, for instance, agriculture industry groups in Nevada launched a challenge against federal wage rules, hoping to avoid paying higher wages to temporary farm workers. Prolabor groups, including Public Citizen, intervened, saying the challenge had been filed after the six-year statute of limitations. The labor advocates won, saving workers potentially \$123 million in lost wages.

If the Supreme Court rules in favor of *Corner Post*, the outcome of such cases may look very different, as corporate interests could flood the courts with challenges to long-standing environmental and consumer protections. Such a scenario could also be economically disruptive, experts say.

“This case could have profound implications for the nation’s small businesses and the country’s economy,” said Skye Perryman, the president of Democracy Forward, a public-interest legal group that has filed a brief in the case representing several small-business interest groups, including Small Business Majority and the American Sustainable Business Council.

Stability is important in federal regulation, Perryman explained. “The real concern here is that what you will have is a never-ending avalanche of litigation against long-standing regulations that will destabilize the rules of the road for industries,” she said.

Yet the special interest groups backing the *Corner Post* case — and others like it — are risking such disruption in their pursuit of deregulation.

“I think they speak for a very particular, motivated group that doesn’t mind sowing a little bit of chaos, or potentially quite a bit of chaos, to free themselves from regulatory regimes that they see as burdensome,” said Sansone with Public Citizen.

#### “Multi-Billion-Dollar Right-Wing Legal Apparatus”

A whole host of right-wing think tanks and business interest groups have filed amicus briefs supporting the plaintiff, including the Cato Institute, the Pacific Legal Foundation, the Americans for Prosperity Foundation, the Manhattan Institute, and the New Civil Liberties Alliance. As Ombres and the Center for American Progress noted this week, all have ties to the Koch network, and have been involved in a host of corporate-funded attacks on regulation.

These groups have framed *Corner Post* and similar cases as necessary pushback to federal overregulation. The Cato Institute, a libertarian think tank, wrote in its November amicus brief on the matter that the case was “essential to ensure that Americans are not unlawfully injured by overzealous bureaucrats,” citing the “immense and growing reach of the administrative state.”

Billionaire Charles Koch cofounded the Cato Institute in the 1970s, and various Koch interests have donated more than \$13 million to the think tank since 2012.

The “administrative state” has long been a key focus for the Cato Institute and related groups, as they’ve championed a flurry of cases challenging government regulations that are before the Supreme Court this term.

The cases include *Security and Exchange Commission v. Jarkesy*, which could dramatically undermine federal agencies’ enforcement authority; *Loper Bright Enterprises v. Raimondo*, which would overturn a landmark case that protects the ability of agencies to set

policy; and *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*, which could completely decimate the Consumer Financial Protection Bureau, a key consumer protection agency.

“The *Corner Post* case is one in a series of concerning cases that are really challenging the ability of our government to serve and deliver for people,” said Perryman at Democracy Forward.

And backing these cases, Ombres said, was “the same multi-billion-dollar right-wing legal apparatus that is supporting these blows against government function, time and time and time again.”

On Tuesday, both sides of the case will present their arguments to the Supreme Court and answer justices’ questions on the matter, likely providing a clearer picture of where the high court stands on the issue. “This issue isn’t really like anything that the court has seen in recent years,” Sansone explained, which he said made it difficult to predict where the justices would fall on the legal questions involved.

“It’s hard to say what they’re going to do,” he said. “Hopefully many of them will be alarmed by the potential consequences of ruling in favor of the petitioners here.”