

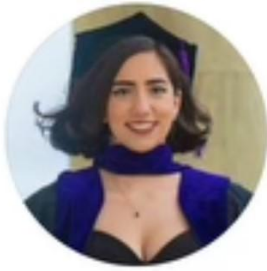
SCOTUS Unleashed

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MECC – September 24, 2024




Tahmineh Dehbozo... 

@DeTahmineh

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In case you were wondering why
Chevron was overturned 

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Peanut Butter is a liquid. We said what
we said.

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

Sarah Struby, Stinson LLP



Facts of *Corner Post*

- Since **2018**, Corner Post has operated a truck stop and convenience store in North Dakota
 - Like most other merchants, Corner Post accepts payment by debit card
- Corner Post filed suit in **2021** challenging the validity of a rule issued by the Federal Reserve Board in **2011** regulating fees accrued by small businesses processing debit card transactions

Statute of Limitations for Filing Suit Against the United States

- The Administrative Procedure Act does not include a statute of limitations provision
- Courts apply the default six-year statute of limitations in 28 U.S.C. § 2401(a):
 - “[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years ***after the right of action first accrues.***”

Key Issue in *Corner Post*

- When does a claim brought under the Administrative Procedure Act “accrue” (i.e., when does the SOL start to run)?
- **Federal Reserve Board’s Position:** The claim accrued in 2011 the final rule was issued.
- **Corner Post’s Position:** The claim accrued in 2018 when the Corner Post was injured by the final rule.

Supreme Court Decision

- 6-3 decision by Justice Barrett
- **Holding**: An APA claim does not accrue for purposes of 28 U.S.C. § 2401(a)'s 6-year statute of limitations until the plaintiff is injured by the final agency action
- Litigants can now bring “facial” challenges to agency actions within 6-years of their injury, even if 6-years has passed since the rule was issued

Key Impacts of *Corner Post*

- **Justice Jackson's Dissent:** The ruling could effectively write the statute of limitations out of existence, a result “profoundly destabilizing for both Government and businesses.”
- Potential increase in challenges to existing administrative rules (and likely more success?)
- Together, *Loper Bright* and *Corner Post* will require agencies to pursue defensible rules and adjudications

Any Questions

Thank You

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Federal “Good Neighbor” Rule for Ozone NAAQS

Ohio v. EPA – Issued July 27, 2024

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MECC – September, 2024

Good Neighbor Rule

- 23 states (including Missouri) must reduce NO_x that “significantly” contributes to problems attaining EPA’s 2015 Ozone National Ambient Air Quality Standards (NAAQS), in downwind states.
- EPA Identified downwind receptors expected to have problems attaining or maintaining the NAAQS and determined which upwind states significantly contribute to nonattainment or interfere with maintenance of a standard in any area.
- Contributors must implement emissions reductions. The program begins with reductions starting in 2023 of NO_x through a cap-and-trade program for power plants and moves to reductions to other industrial sources in 2026.

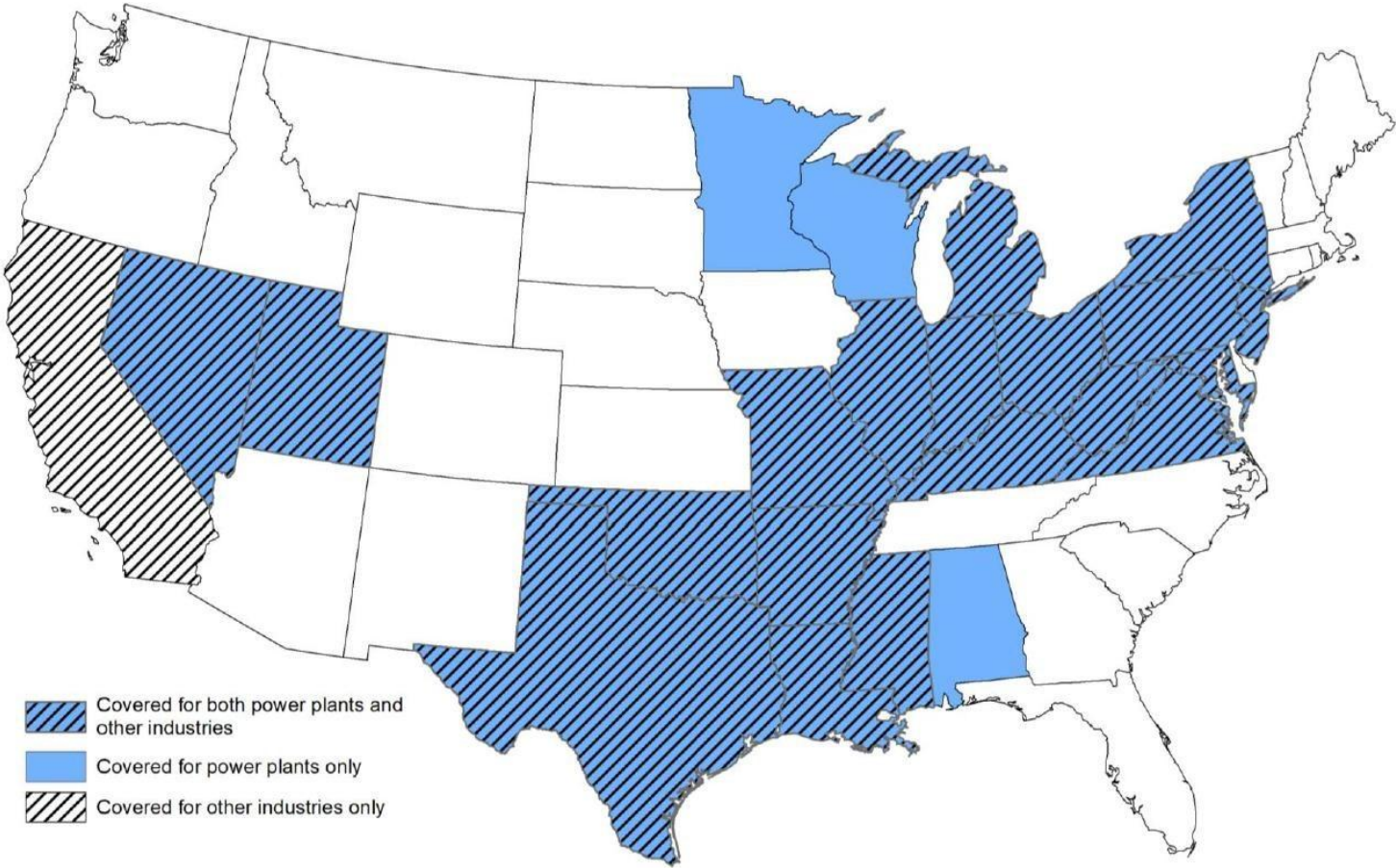
Transport Linkages for 2015 Ozone NAAQS

Transport Linkages from Final Rule Modeling



- Interstate air pollution refers to pollution from upwind emissions sources that impact the air quality in another state.
- These pollutants can travel great distances.
- Transport of pollutants across state borders can make it difficult for downwind states to meet the NAAQS for ozone and potentially other pollutants.

Final Rule Covered Geography



State SIPs

- States (including MO) were required to submit a SIP to EPA to comply with the Rule BUT EPA declared the MO SIP and many others to be inadequate.
- EPA issued FIPs replacing State SIPs.
- Lawsuits followed.

Ohio v. EPA

- Parties appealed asking courts to stay the rule pending a decision on the merits.
- The Supreme Court on July 27, a day before the *Loper* decision was issued, issued a stay of the Rule.
- Issuance of a stay by the Supreme Court is extremely unusual, with only one other stay related to an EPA rule (the Former Clean Power Plan).
- One reason a stay is unusual is that the court has to find that there is a “likelihood of success on the merits”.

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