

Federal Court Applies SCOTUS Holding in *Corner Post* Decision allows a new challenge to an old NEPA-streamlining rule

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After the Supreme Court issued its 2024 decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, holding that far older agency rules could be subject to new challenges than previously thought, many commentators worried that the decision would have significant destabilizing effects. While no tidal wave of new challenges has materialized, a recent district court decision provides a reminder that *Corner Post* gives litigants a pathway to [challenge even long-settled rules](#).

How did *Corner Post* change when challenges to rules may be filed, and what did commentators expect would result?

After Corner Post directed that the default statute of limitations for challenges to agency rules allowed a plaintiff to file a case within six years of being injured by a rule, rather than within six years after the rule being issued, many worried that an onslaught of litigation seeking to invalidate old agency rules would follow.

The Supreme Court held in *Corner Post* that for Administrative Procedure Act (APA) claims, the default federal six-year statute of limitations begins running when a rule *injures a plaintiff*, rather than when an agency issues a rule.¹

Before this case, courts predominately held that challenges to agency rules had to be filed within six years after the rule's issuance.² Indeed, that understanding led the district court to dismiss the challenge at issue in *Corner Post* as barred by the six-year statute of limitations: a 2021 challenge by a convenience store that opened in 2018 to a Federal Reserve Board rule issued in 2011.³ The Court of Appeals for the Eighth Circuit upheld that decision.⁴ The Supreme Court disagreed and held that the statute of limitations analysis is plaintiff-specific: while entities who were first injured by a rule immediately after it was issued cannot challenge it more than six years later, a plaintiff who is injured for the first time only years later has a timely claim if it brings a challenge within six years of that injury. The Court reasoned that no claim "accrues" until this injury occurs, which is a necessary part of a plaintiff's cause of action. Accordingly, the convenience store's 2021 challenge was timely because it was filed within six years of the store's first exposure to and injury from the

¹ *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve*, 603 U.S. 799 (2024) (analyzing the statute of limitations at 28 U.S.C. § 2401(a)).

² *Corner Post*, 603 U.S. at 846 (Jackson, J., dissenting).

³ *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve*, No. 1:21-cv-00095, 2022 WL 909317 (D.N.D. 2022).

⁴ *N. Dakota Retail Ass'n v. Bd. of Governors*, 55 F.4th 634, 638 (8th Cir. 2022).

challenged rule, notwithstanding that the challenge came more than six years after the rule's issuance. As a result of this decision, plaintiffs may now challenge long-established rules under a wide array of statutes that use the default federal statute of limitations so long as their challenge comes within six years of their first injury (or, put another way, so long as their first injury occurred within the six years preceding their challenge).

Justices Jackson, Kagan, and Sotomayor dissented from the decision in *Corner Post*, highlighting concerns about how the decision could rattle well-settled foundations in government and thwart long-held understandings of the law. Justice Jackson wrote, “the Court’s ruling in this case allows for every new entity to challenge any and every rule that an agency has ever adopted,”⁵ and allow for “new groups being brought in (or created) just to do an end run around the statute of limitations.”⁶ The dissent also points out that when combined with other major changes in administrative law doctrine, this decision could be “profoundly destabilizing for both Government and businesses.”

Others quickly echoed those concerns, especially in the context of the Supreme Court’s decision overruling the *Chevron* doctrine during the same time.⁷ [EELP analyzed how the decision would apply](#) – or not – to a variety of major environmental statutes, concluding that most would be safe from *Corner Post*’s effects because they do not use the default statute of limitations at issue in that case. For example, *Corner Post* does not alter when a claim is timely under many key environmental statutes that contain statutes of repose (including the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation and Recovery Act), which work differently than statutes of limitations.

⁵ *Corner Post*, 603 U.S. at 863 (Jackson, J., dissenting).

⁶ *Corner Post*, 603 U.S. at 845 (Jackson, J., dissenting).

⁷ See, e.g., Allison Zieve, *The Scope of Change: Not only Loper Bright, but Corner Post Too*, NOTICE & COMMENT (July 16, 2024), <https://www.yalejreg.com/nc/the-scope-of-change-not-only-loper-bright-but-corner-post-too-by-allison-zieve/>; American Constitution Society, *SCOTUS Update: Corner Post, Inc., v. Board of Governors of the Federal Reserve System* (July 1, 2024), https://www.acslaw.org/scotus_update/corner-post-inc-v-board-of-governors-of-the-federal-reserve-system/; Earthjustice, *Supreme Court Decision on Corner Post Jeopardizes Environmental Protections* (July 1, 2024), <https://earthjustice.org/press/2024/supreme-court-decision-on-corner-post-jeopardizes-environmental-protections>; Ethan Howland, *Supreme Court’s Chevron, Corner Post decisions could delay energy investments, spur litigation: analysts*, UTILITY DIVE (July 2, 2024) (reporting what some industry lawyers saw as significant hurdles to large-scale investment), <https://www.utilitydive.com/news/supreme-court-chevron-corner-post-energy-sector-ferc-transmission/720413/>. Cf New Civil Liberties Alliance, *Corner Post, Inc. v. Board of Governors: A Major Readjustment for APA Claims*, (July 23, 2024), <https://nclalegal.org/corner-post-inc-v-board-of-governors-a-major-readjustment-for-apa-claims/> (celebrating the decision as a path to “correcting many long-standing wrongs wrought by agency rules and regulations” and “a long-needed reordering and rectification”).

What was at issue in *Oregon Wild*, the recent decision applying *Corner Post*?

Oregon Wild concerned a challenge to a 1992 Forest Service categorical exclusion that allowed the agency to avoid more detailed environmental review for many logging projects. Environmental organizations argued that the agency did not adequately explain its conclusion that projects within the broad category were unlikely to have significant environmental effects.

A January 2026 decision in *Oregon Wild v. U.S. Forest Service* is one of the first to invalidate a rule after relying on *Corner Post* to find that a challenge was timely.⁸ In *Oregon Wild*, nonprofit organizations challenged three United States Forest Service forest treatment projects in the Freemont-Winema National Forest in southern Oregon. The projects involved tree and brush thinning, controlled burning, commercial logging, and other treatments that the Forest Service had determined would benefit animal species in the area.

The projects triggered the National Environmental Policy Act (NEPA), which requires agencies to consider the expected environmental effects of qualifying federal actions. That statute prescribes three levels of review. Actions with reasonably foreseeable significant environmental effects receive the fullest level of analysis, in an environmental impact statement. Agencies may prepare an environmental assessment, a more streamlined review, for actions without reasonably foreseeable significant environmental effects or where the significance of environmental effects is uncertain. NEPA also allows agencies to designate types of actions that ordinarily have no significant impact and may thus receive the most streamlined review: after agencies establish these categorical exclusions, they make project-specific determinations to decide whether a project falls within the categorical exclusion; even if a project is nominally covered by a categorical exclusion agencies may still be required to do site-specific analysis in an environmental impact statement or environmental assessment if extraordinary circumstances require more thorough review.

The Forest Service has established many categorical exclusions and relies heavily on them for approving forest management projects.⁹ One such categorical exclusion, adopted in 1992 through rulemaking — first published in the Forest Service Handbook and later in the Code of Federal Regulations — applies to certain timber stand or wildlife habitat improvement activities (CE-6).¹⁰ Three decades later, the Forest Service decided that the

⁸ *Oregon Wild v. U.S. Forest Service*, No. 1:22-cv-01007, 2026 WL 96908 (D. Or. 2026).

⁹ Forest Service Response to Questions from Chairman Westerman, Committee on Natural Resources (Apr. 26, 2023), <https://www.congress.gov/118/meeting/house/115654/documents/HHRG-118-II10-20230426-SD008.pdf> (reporting that over an approximately five-year period, the Forest Service used categorical exclusions more than 2000 times). The categorical exclusion at issue in *Oregon Wild* was the single most frequently invoked.

¹⁰ 36 C.F.R. § 220.6(e)(6); see also National Environmental Policy Act, revised Policy & Procedures, 57 Fed. Reg. 43,180 (Sept. 18, 1992). CE-6 exempts “[t]imber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to: (i) Girdling trees to create snags; (ii) Thinning or brush control to

three forest treatment projects at issue in this case fell within the scope of this CE-6 and did not require additional analysis and documentation under NEPA. Each project included commercial logging — together up to 29,000 acres — as part of the mix of forest treatment activities. The Forest Service approved the projects in December 2021 and May 2022.

Three environmental groups challenged the approval of the projects in 2022, arguing that the Forest Service’s reliance on CE-6 was arbitrary and capricious. They also challenged CE-6 itself, arguing that the Forest Service violated NEPA and the APA when it issued CE-6 in 1992 because it failed to make needed factual findings that commercial logging operations do not cause significant environmental effects.

How did the court address the timeliness of the challenge to a categorical exclusion established in 1992 before the Supreme Court’s *Corner Post* decision?

The district court initially concluded that the groups’ challenge was barred by the statute of limitations, which expired six years after the Forest Service adopted CE-6.

When the district court initially considered whether the groups’ challenge to the 1992 categorical exclusion was timely, the court concluded — pre-*Corner Post* — that the challenge was well outside the statute of limitations in the Administrative Procedure Act, which requires that claims be filed “within six years after the right of action first accrues.”¹¹ The district court reasoned that the organizations’ claims were at heart about the process the Forest Service used to establish CE-6 in 1992 and that to be timely the challenge should have been brought within six years of that date, no later than 1998.¹² (Separately, the court also ruled against the organizations on their argument about the Forest Service’s application of CE-6 to the projects at issue, a question that did not implicate the same statute of limitations question.)

The environmental groups appealed their loss to the Court of Appeals for the Ninth Circuit, arguing that their challenge to CE-6 was timely,¹³ the categorical exclusion was substantively defective, and its application to the projects was invalid. After the parties filed their briefs but before oral argument, the Supreme Court issued *Corner Post* in July 2024. Two months

improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand; (iii) Prescribed burning to control understory hardwoods in stands of southern pine; and (iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.”

¹¹ *Oregon Wild v. U.S. Forest Service*, No. 1:22-cv-01007, 2023 WL 5002473 (D. Or. 2023) (discussing 28 U.S.C. § 2401(a)).

¹² *Id.* at *7–8.

¹³ The thrust of the groups’ timeliness argument rested on a Ninth Circuit case holding that “[a] substantive challenge to an agency decision alleging lack of agency authority may be brought within six years of the agency’s application of that decision.” *Wind River Mining Corp. v. United States*, 946 F.2d 710, 715–16 (9th Cir. 1991). Briefing on the timeliness question thus focused on whether the groups’ claim fit into the *Wind River* exception or whether it was better understood as a procedural challenge to the regulation’s adoption (meaning the general rule should apply).

later, the Ninth Circuit issued a short decision, affirming the district court’s judgment that the Forest Service had properly determined that the projects fell under the scope of CE-6, but vacating the district court’s ruling that the challenge to CE-6 itself was too late.¹⁴ The Ninth Circuit reasoned that *Corner Post* had changed the legal landscape for determining the timeliness of this type of claim. The Ninth Circuit thus remanded “the claim to the district court to apply *Corner Post* in the first instance to determine whether this claim is time barred.”¹⁵

How did the district court apply *Corner Post* on remand?

Applying Corner Post, the district court assessed each organization individually to determine when it was first injured by CE-6, and thus when the organization’s claim about its validity accrued. Only groups first injured by CE-6 within the six years before the 2022 challenge could have timely claims.

In a January 13, 2026, decision on remand from the Ninth Circuit, the district court applied *Corner Post* to the organizations’ claims.¹⁶ The court looked at each of the plaintiffs separately, as *Corner Post* directs that the analysis of when a claim accrues is plaintiff-specific.

The court concluded that the first organization’s challenge was time-barred because its claim had first accrued long before the Forest Service approved the projects at issue in the current lawsuit. The court determined that Oregon Wild had participated in the decisionmaking process for other projects in which the Forest Service had involved CE-6 as its basis for not conducting an environmental assessment or environmental impact statement to comply with NEPA. Thus, the court reasoned, Oregon Wild’s claim about the validity of CE-6 accrued in 2006, when the Forest Service approved those challenged projects. Accordingly, because Oregon Wild had been injured by any defects in the categorical exclusion in 2006, its six-year window to sue closed in 2012, and its 2022 claim in this case came too late.¹⁷

Unlike Oregon Wild, the second organization, WildEarth Guardians, had not previously filed comments about Forest Service projects where the agency invoked CE-6. But the court examined the government’s argument that the organization had nonetheless been injured by the Forest Service’s use of CE-6 for a forest project in the vicinity of that organization’s office. The government argued that though the group did not challenge this project, WildEarth Guardians should have been aware of it and thus been on notice of the Forest Service’s use of the allegedly defective categorical exclusion. The district court rejected this

¹⁴ Oregon Wild v. U.S. Forest Service, No. 23-35579, 2024 WL 4286965 (9th Cir. 2024).

¹⁵ *Id.* at *3.

¹⁶ Oregon Wild v. U.S. Forest Service, No. 1:22-cv-01007, 2026 WL 96908 (D. Or. 2026).

¹⁷ *Id.* at *6.

argument, finding no evidence that the organization was in fact aware of and injured by past invocations of CE-6, relying in part on the fact that the Forest Service never published a notice of the project in the Federal Register.¹⁸ WildEarth Guardians' claim was thus not barred by *Corner Post*.

The government did not contest the timeliness of the third organization's claims. GO Alliance was founded in 2020, and thus — like the convenience store in *Corner Post* — could not have been injured by the Forest Service categorical exclusion any earlier than that date. Its 2022 claim was necessarily timely.¹⁹

What did the court decide about the substance of the organizations' challenge to a Forest Service categorical exclusion that streamlined NEPA review?

The court held that the Forest Service had not adequately explained its conclusion that projects within CE-6's broad scope would normally have no significant environmental impacts. The court saw no sign that the agency had used its expertise, leaving the court nothing to defer to. The court vacated CE-6 and the decisions approving the three projects at issue in this case.

Having concluded that two of the three organizations' challenges were timely — and after considering other preliminary questions that would have prevented it from addressing the organization's claims — the court turned to the merits of their arguments about the validity of CE-6.

The organizations argued that when the Forest Service adopted CE-6 in 1992, it did not adequately consider the environmental consequences of commercial logging projects that the agency might consider to be within the categorical exclusion's scope. The court agreed. The court explained that an agency's decision to issue a categorical exclusion is subject to review under the APA's arbitrary and capricious standard and that an agency must ensure that the new categorical exclusion will apply only to actions with insignificant effects.²⁰ The court observed that the record of the Forest Service's decision to adopt CE-6 included only "conclusory statements" about the expected environmental effects of the types of projects exempted from more detailed NEPA review.²¹ The court recognized that while courts defer to an agency's informed decisionmaking that is the [product of an agency applying its substantive expertise](#), an agency asserting that an area is within its substantive expertise is

¹⁸ *Id.* at *7.

¹⁹ *Id.*

²⁰ *Id.* at *10 (citing *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007), and explaining why the recent [Supreme Court decision](#) in *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168 (2025), did not alter that decision).

²¹ *Id.* at *11.

no substitute for explaining the basis for its decision.²² Because the court saw no sign in the record of the Forest Service considering the environmental effects of thinning projects of any scale – commercial or otherwise – there was no such reasoned explanation to which the court might defer. The court concluded that the Forest Service’s decision to categorically exempt from more detailed NEPA review a broad class of projects that the agency had not studied was arbitrary and capricious.²³

The court then considered the proper remedy – vacatur of CE-6 or something else – looking at the seriousness of the agency’s errors and the disruptiveness of vacatur. The court decided that the Forest Service’s error in issuing CE-6 was serious enough to warrant vacatur because the categorical exclusion would allow the agency to continue approving large forest thinning projects without analyzing them through an environmental assessment or environmental impact statement. It further concluded that the Forest Service would likely not be able to provide better explanation for adopting the same categorical exclusion, as an exemption for this kind of category of actions “on an unlimited scale, is highly unlikely to authorize only activities that have no significant environmental impacts.”²⁴ The court observed that the Forest Service retained other categorical exclusions that it could use to address wildfire risk or could continue analyzing needed projects via full environmental assessments or environmental impacts statements. And the court explained that the agency was free on remand to develop a new categorical exclusion with reasonable limits and based on a reasonable explanation.²⁵ The court thus set aside CE-6 as to future Forest Service actions and set aside the agency’s approvals of the three forest projects directly at issue in the organizations’ challenge.²⁶

What does this case tell us about *Corner Post*?

While the destabilizing wave of regulatory challenges some feared after *Corner Post* has not yet materialized,²⁷ the *Oregon Wild* decision is a reminder that the Supreme Court decision provides an avenue for new challenges to even very old agency actions. No rule subject to the normal statute of limitations is ever fully safe from challenge: as Justice Jackson observed in her *Corner Post* dissent, “from this day forward, administrative agencies can be

²² *Id.*

²³ *Id.*

²⁴ *Id.* at *12.

²⁵ *Id.*

²⁶ On February 10, 2026, the government filed a motion asking the court to reconsider its remedy and to either amend its order to not vacate CE-6 in its entirety or to allow further proceedings on the question of a proper remedy.

²⁷ See Arnold & Porter, *One Year after Corner Post, Has the Litigation Tsunami Arrived?* (Nov. 18, 2025), <https://www.arnoldporter.com/en/perspectives/blogs/major-questions-an-administrative-law-and-regulatory-blog/2025/11/one-year-after-corner-post>.

sued in perpetuity over every final decision they make.”²⁸ While rules under [many environmental statutes are not directly affected](#), policy areas that are affected by *Corner Post* will remain subject to new claims.

Corner Post was lauded by many who saw its potential to assist a deregulatory agenda, but in *Oregon Wild* its result was to allow vacatur of a rule that reduced regulatory burden. Deepening that tension is that the decision arrives at a time when many across the political spectrum are concerned about long lead-times for permitting decisions and agency projects, including Forest Service projects.

Although the district court’s decision in *Oregon Wild* is not necessarily the final word in the case (the government has asked the court to reconsider its ordered remedy and has not yet indicated whether it will appeal the decision), it provides an example of how one court applied *Corner Post* to three differently situated plaintiffs, and thus provides insight about how other courts may approach their own application. We will continue watching to see how other courts apply this new approach to statutes of limitations in regulatory challenges.

²⁸ *Corner Post*, 603 U.S. at 861 (Jackson, J., dissenting).