A Reform Agenda for Administrative Adjudication

Administrative Procedure Act reformers should also pay attention to adjudication.

❧ BY CHRISTOPHER J. WALKER

Last August, the U.S. Justice Department issued a 129-page report entitled *Modernizing the Administrative Procedure Act*, based on a summit the department held at the end of 2019. As the title suggests, the report argues that now is the time to modernize the Administrative Procedure Act of 1946 (APA).

Modernization is needed. The APA is the quasi-constitution of the federal regulatory state. It sets the default rules that govern agency actions and subsequent judicial review. This quasi-constitution celebrates its 75th birthday this year. Yet, the APA has only been amended 16 times since it was originally enacted in 1946, according to the online legal research service Westlaw. The last major amendment happened nearly a quarter century ago with the passage of the Electronic Freedom of Information Act Amendments of 1996.

The lack of substantial legislative reform does not mean the APA has remained constant. As I often tell my students, regulatory lawyers would commit malpractice if they just followed the text of the APA. The statutory text bears little resemblance to modern regulatory practice. On the contrary, the Supreme Court and the lowers courts—with the D.C. Circuit playing a prominent role—have substantially rewritten the rules of the road. They have done so by grafting onto the APA myriad administrative common law doctrines in response to what Boston University law professor Gary Lawson has coined "the rise and rise of the administrative state."

The legislative failure to modernize the APA is not for a complete lack of trying. Over the decades, the American Bar Association (ABA) and the Administrative Conference of the United States (ACUS) have recommended numerous consensus-driven, common-sense reforms. More recently, many Republicans—joined by some Democrats—have introduced a number of bills to modernize the APA. Legislation entitled the Portman–Heitkamp Regulatory Accountability Act of 2017 was perhaps the most comprehensive and promising reform proposal in decades. Harvard professor Cass Sunstein, for instance, declared that the legislation "deserves careful attention" because it was "an intelligent, constructive, complex, imperfect bill" to modernize notice-and-comment rulemaking. Unfortunately, the bill was never voted on by the Senate. (See "Reinvigorating the Paperwork Reduction Act," Fall 2020.)

Like most of the legislative APA modernization proposals in recent years, the Justice Department's reform efforts largely focus on agency rulemaking. Absent from most conversations about APA reform is the modernization of administrative adjudication. Yet, the vast majority of regulatory actions today take place via adjudication, not rulemaking. As ACUS has documented, the United States has roughly 2,000 administrative law judges and more than 10,000 administrative judges who hold hearings and decide millions of cases each year.

If we turn our administrative reform attention toward agency adjudication, here are what seem to me to be the top four areas for reform. First, we must attempt to reconcile the constitutional tensions in administrative adjudication between adjudicator decisional independence and political control of agency adjudication. Second, we must reform the new world of agency adjudication that is not governed by the APA's formal adjudication provisions in order to protect individuals navigating those adjudicative systems. Third, we must modernize mass agency adjudication through quality assurance measures, including improved agency appellate review and effective use of artificial intelligence. Fourth, and related, we must explore ways to eliminate the "refugee roulette" in immigration adjudication by bringing more consistency and procedural fairness to the system.

This reform agenda, sketched out below, identifies some pro-

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posals in each area that have been recommended by scholars, bar associations, federal agencies, and policymakers. In mentioning these various recommendations, I do not intend to endorse each one. In fact, some I would likely oppose. They present difficult policy considerations, and the pros and cons cannot be exhaustively examined in this short essay. But I hope this reform agenda will provide a roadmap for further empirical inquiry, as well as increased scholarly, policy, and political attention. With the 117th Congress and President Joe Biden now in office, the 75th anniversary of the APA may be the ideal time for such legislative reform. And adjudication reform efforts have the potential to draw bipartisan support—for reasons similar to why the First Step Act of 2018 succeeded in the 115th Congress.

RECONCILE CONSTITUTIONAL TENSIONS IN ADMINISTRATIVE ADJUDICATION

In 2018, the Supreme Court decided two cases that could potentially reshape the constitutional future of agency adjudication. In *Lucia v. Securities and Exchange Commission*, the Court held that administrative law judges (ALJs) at the SEC are unconstitutionally appointed because they are, at minimum, inferior "officers of the United States," yet they were not appointed by the president, the head of a department, or a federal court, as required by Article II of the U.S. Constitution. In *Oil States Energy Services v. Greene's Energy Group*, the Court upheld the constitutionality of certain agency adjudications at the U.S. Patent and Trademark Office against challenges that they unconstitutionally strip parties of property rights in issued patents.

The separate opinions issued in these cases illustrate the constitutional tensions in modern agency adjudication. On the one hand, the Court's treatment of the Appointments Clause in *Lucia* dictates that agency adjudicators must be appointed by the president or the agency head to provide for sufficient presidential control over federal regulatory activities. And although not addressed in *Lucia*, under Article II the agency head may also need to have the power to remove agency adjudicators at will. One could frame these appointment and removal concerns in terms of political accountability. As Justice Clarence Thomas, joined by Justice Neil Gorsuch, put it in his *Lucia* concurrence, "the Appointments Clause maintains clear lines of accountability—encouraging good appointments and giving the public someone to blame for bad ones."

On the other hand, such political control over agency adjudication—especially such adjudications that implicate core life, liberty, or property interests—potentially raises due process concerns. One concern is that agencies function as both the enforcer and the adjudicator. Another is the injection of politics into the adjudication of disputes between private parties and/or those implicating private rights. Insulating agency adjudicators from political influence thus becomes a central objective. Indeed, Congress expressly addressed this issue of adjudicator or decisional independence in the APA.

In his *Oil States* dissent, Justice Gorsuch, joined by Chief Justice John Roberts, expressed deep concern about political pressures in agency adjudication (at least in the context of private rights): "Powerful interests are capable of amassing armies of lobbyists and lawyers to influence (and even capture) politically accountable bureaucracies." In other words, in the same term, Justice Gorsuch argued that the Constitution requires agency adjudicators to be hired by the president or agency head (*Lucia*), yet also decried the constitutional dangers of such politically accountable for agency officials adjudicating, at least in the context of what he considers to be the adjudication of private rights (*Oil States*).

As hinted above, the next constitutional question is whether ALJs (and other administrative judges) must be removable at will by the agency head or at least not subject to double-layer removal protections. Earlier this year, in *Fleming v. U.S. Department of Agriculture*, the D.C. Circuit held that the ALJ was unconstitutionally appointed under *Lucia* because his decisions are not reviewable by a principal officer. But the divided panel dodged the removal question by finding the issue not properly exhausted before the agency. Judge Neomi Rao, in dissent, argued that the D.C. Circuit should have reached the constitutional question and that ALJs cannot be subject to two layers of removal protection. It is only a matter of time before the D.C. Circuit (and other circuits) will have to confront this question again.

This constitutional interpretation leads to greater political accountability of agency adjudication but risks undermining the decisional independence of agency adjudicators. That is because the adjudicators may now feel increased political pressure to decide cases for reasons other than faithfully applying law to facts. Because this is constitutional law, Congress is limited in what it can do by statute to address the issue. Congress could, of course, move these adjudications to the traditional federal courts. Under Article III of the U.S. Constitution, those judges are nominated by the president and confirmed by the Senate, and then are protected with life tenure. Northwestern law professor Steven Calabresi, University of San Diego law professor Michael Rappaport, and others have advanced this idea. Congress could also create more courts housed in Article I's legislative branch, discussed later in this article in the context of immigration adjudication. As I have explored elsewhere, it could also embrace the magistrate-judge model by transforming agency adjudicators into true adjuncts of Article III federal courts through the elimination of judicial deference for their decisions.

Congress could even create a standalone administrative judiciary within Article II's executive branch. Under this approach, also known as the federal central panel model, all agency adjudicators across the federal regulatory state would be centralized in a new agency, headed by a chief administrative law judge who would have the power to appoint and remove all agency adjudicators. The heads of the existing federal agencies would cease to have any personnel power over agency adjudicators, but they would retain final decision-making authority to review and reverse ALJ decisions.

In the 1980s, scholars resoundingly rejected the central panel

model at the federal level. Among the reasons given for this rejection: the model would cost a lot more, leverage special expertise less, frustrate agency policy prerogatives, and increase interdecisional inconsistency. But states have been experimenting with central panel structures for decades, with varying levels of success. In light of the recent constitutional developments, George Washington University law professor Robert Glicksman and Kansas University law professor Richard Levy, among others, have argued that the central panel model is the best way to restore ALJ independence.

The executive branch may also be able to help. Drawing on principles of internal administrative law, University of Georgia law professor Kent Barnett has suggested that the executive branch should bind itself by promulgating impartiality regulations that reinstate a merit-based appointment process as well as a good-cause removal standard and accompanying procedural protections from removal. This is a fascinating proposal—one that the Biden administration could implement quickly. If it sounds familiar, that is because it is modeled after the Justice Department's special counsel regulations that facilitated Robert Mueller's high-profile investigation of the 2016 presidential election. If Barnett's approach is adopted, it will be interesting to see if litigants—or future administrations that may disagree with the impartiality regulations—raise constitutional concerns with the regulations or otherwise argue that the president nevertheless retains the constitutional authority to remove agency adjudicators at will. And it will be even more fascinating to see how the courts deal with such challenges.

There are costs and benefits of these various proposals to mitigate the constitutional tensions in agency adjudication. The path forward remains murky. But what is clear is that the growing constitutional concerns about adjudicator decisional independence may be the greatest threat to the federal administrative judiciary today.

REFORM THE NEW WORLD OF NON-APA FORMAL ADJUDICATION

In 1946, the APA established the criteria for "formal" adjudication, requiring an ALJ to make the initial determination and the agency head to have the final word. That is the lost world of agency adjudication. Today, as University of Texas law professor Melissa Wasserman and I have chronicled elsewhere, the vast majority of agency adjudications are not paradigmatic "formal" adjudications as set forth in the APA. This new world involves a variety of less-independent administrative judges, hearing officers, and other agency personnel adjudicating disputes. In the modern regulatory state, these administrative judges outnumber ALJs at least fivefold. In other words, agency adjudication today is yet another example of what Berkeley law professor Dan Farber and Stanford law professor Anne Joseph O'Connell call "the lost world of administrative law": "the actual workings of the administrative state have increasingly diverged from the assumptions animating the APA and classic judicial decisions that followed."

In this new world, it turns out that there is great diversity in procedures by which federal agencies adjudicate. ACUS has exhaustively documented that diversity, observing that these non-APA formal adjudications

> involve types of matters spanning many substantive areas, including immigration, veterans' benefits, environmental issues, government contracts, and intellectual property. Some involve disputes between the federal government and private parties; others involve disputes between two private parties. Some involve trial-type proceedings that are at least as formal as [APA-governed "formal"] adjudication. Others are quite informal and can be decided based only on written submissions. Some proceedings are highly adversarial; others are inquisitorial. Caseloads vary. Some have huge backlogs and long delays; others seem relatively current. The structures for internal appeal also vary.

The new world is further complicated by the array of agency adjudicatory proceedings that not only fall outside of APA-governed "formal" adjudication but do not even involve an agency hearing. Those truly informal adjudications are vast and varied, and I will return to one example—"expedited removal"—when discussing immigration adjudication.

Barnett, UCLA emeritus law professor Michael Asimow, and Notre Dame law professor Emily Bremer, among others, have done critical work to map out the great diversity of adjudicative systems in the modern regulatory state and to identify current procedural deficiencies and structural flaws. As Bremer has underscored, it is not a new world just because the vast majority of adjudications take place outside of the formal provisions of the APA. There is also an APA-departing norm of "exceptionalism" in the new world of agency adjudication—"a presumption in favor of procedural specialization and against uniform, cross-cutting procedural requirements." In surveying this landscape of exceptionalism, Bremer has concluded that administrative adjudications should be more uniform.

Such a move toward uniformity would be, in my view, a welcome development. The simplest—though not least costly—legislative fix would be to amend the APA to require that its formal adjudication provisions apply whenever a statute or regulation requires an administrative hearing. Indeed, back in 2005, the ABA adopted a formal resolution and draft legislation—the Federal Administrative Adjudication in the 21st Century Act—that urged Congress to amend the APA to recognize APA-governed "administrative law judge adjudication as the preferred type of adjudication for evidentiary proceedings conducted under the Administrative Procedure Act." A more incremental legislative reform would be to codify a federal administrative adjudication "bill of rights" that imposes basic procedural protections in every agency hearing (absent a specific statutory carveout). Congress could also codify certain procedural protections in a more piecemeal fashion. One example would be to enact a uniform process for adjudicators to disclose conflicts and for the regulated to seek recusal of adjudicators who have an actual or perceived bias or conflict.

Again, the Biden administration need not wait on Congress.

Many reforms can take place inside federal agencies through internal administrative law, where the agencies provide for additional procedures and safeguards. The president can also move things along. Last year, President Donald Trump's Office of Management and Budget issued a request for information for ways to reform agency adjudication (and enforcement). In August, the Office of Information and Regulatory Affairs (OIRA) issued guidance that identified a number of best practices for agency adjudication (and enforcement). In this memorandum to agency heads, OIRA requested that all agencies assess their current adjudicative procedures and adopt the best practices they deem appropriate.

Most high-volume administrative adjudicative systems today face severe backlogs and long processing times as well as stark inconsistencies and inequities in adjudicative outcomes.

So much can be done to bring more uniformity and procedural protections to this new world of agency adjudication. Hopefully, the 117th Congress and the Biden administration will engage seriously in this important work.

MODERNIZE MASS AGENCY ADJUDICATION

Nearly four decades ago, in his seminal book *Bureaucratic Justice*, Yale emeritus law professor Jerry Mashaw called the administrative law field's attention to issues in mass adjudication in the context of Social Security disability claims. Since then, lawyers, scholars, and agency officials have continued to struggle with how to operationalize mass agency adjudication to increase efficiency, consistency in outcomes, and procedural fairness. Despite those efforts, most high-volume administrative adjudicative systems today face severe backlogs and long processing times as well as stark inconsistencies and inequities in adjudicative outcomes.

Internal administrative law can go a long way toward addressing these issues. ACUS regularly recommends best practices for high-volume agency adjudication, including public availability of practice rules, availability of adjudication materials on agency websites, establishment of recusal rules for adjudicators, best practices for assisting self-represented individuals, and a sweeping suite of procedural protections for agency hearings. These recommendations aim to ensure that adjudicative systems are fairer and more equitable—against the backdrop understanding that few agency adjudication decisions make it to federal court.

Agencies have also adopted appellate review systems and other quality assurance programs by internal law. The Social Security Appeals Council is a prominent example—a creature of internal administrative law that now consists of nearly 100 administrative appeals judges and officers and processes more than 100,000 appeals per year. In reviewing the Social Security Administration's various internal reforms, administrative appeals judge Gerald Ray and American University law professor Jeffrey Lubbers have concluded that the agency has achieved substantial improvement in terms of productivity and the quality of adjudicative decision-making.

The use of artificial intelligence and machine learning (AI/ML) is another promising yet potentially precarious tool to improve mass agency adjudication. Earlier this year, Stanford law professor David Freeman Engstrom et al. issued a pioneering 122-page ACUS report entitled *Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies*. The report provides a comprehensive account of how federal agencies currently utilize AI/ML in their regulatory activities.

On administrative adjudication, the report presents case studies on the Social Security Administration and the U.S. Patent and Trademark Office. The report explores how the Social Security Administration has tried to improve the quality of administrative adjudication through the use of AI/ML. The agency has clustered appeals by issue to be decided by specialized appellate adjudicators. It has accelerated appeals based on predicted likelihood of success. And it has leveraged natural language processing for quality assurance. Similarly, in its case study of informal adjudication at the U.S. Patent and Trademark Office, the report explores how the agency has utilized AI/ML with respect to patent classification, patent prior art search, trademark classification, and prior trademark search. In the patent prior art search context, for instance, the agency developed an in-house tool called Sigma. Yet, it ultimately did not implement Sigma agency-wide because the pilot program revealed that the tool was not helpful for examiners lacking a computer science background.

As Penn law professor Cary Coglianese and his student Lavi Ben Dor have observed, federal agencies—compared to federal courts—seem much more willing to embrace and experiment with AI/ML when adjudicating. Yet, automating the adjudication of individual claims is not risk free. In an article forthcoming in the *Emory Law Journal*, University of Washington law professor Ryan Calo and Boston University law professor Danielle Citron caution that the increasingly "automated administrative state" presents a legitimacy crisis. After all, legislatures delegate broad law-implementation authority to agencies because of regulators' comparative expertise and policymaking flexibility. Yet, these agencies are increasingly subdelegating such implementation authority to "systems in which they hold no expertise, and which foreclose discretion, individuation, and reason-giving almost entirely." Using robots as adjudicators certainly carries certain risks.

Despite those concerns, Calo and Citron do not demand a deconstruction of the automated administrative state. Instead, "agencies should consciously select technology to the extent its new affordances enhance, rather than undermine, the [expertise] rationale that underpins the administrative state." Although further automating agency adjudication raises some concerns, AI/ML also holds great promise for increasing efficiency and consistency in mass agency adjudicative systems. Even then, agencies need resources and support to effectively develop and leverage AI/ML in their high-volume adjudicative systems.

Congress and the executive branch will not fix the pressing problems in high-volume agency adjudication overnight. But we should certainly dedicate as much (if not more) time, study, and resources to improve mass adjudication as we do to modernize rulemaking.

ELIMINATE THE "REFUGEE ROULETTE" IN IMMIGRATION ADJUDICATION

It might seem strange to single out immigration adjudication for special treatment. After all, immigration adjudication falls within the prior two reform categories. It is part of the new world of agency adjudication, as ALJs do not preside over immigration adjudications and the APA formal adjudication provisions do not apply. And it is a high-volume adjudicative system, where the agency adjudicates hundreds of thousands of cases each year. Indeed, it also touches on the first category because the decisional independence of immigration judges has been under attack.

But it deserves special attention for at least three reasons. First, based on my anecdotal experience, more and more law students and young attorneys are drawn to administrative law because of immigration. No doubt the appeal is in part because both President Barack Obama and President Trump have used administrative law to make major changes in immigration law and policy. The Deferred Action for Childhood Arrivals and the Deferred Action for Parents of Americans immigration relief programs come immediately to mind, as do the travel ban, public charge rule, and family separation policy at the border. President Biden will no doubt similarly utilize administrative law to make immigration policy. Second, for years, scholars have produced important empirical studies on immigration adjudication that help shape the reform debate. One influential empirical study, for instance, that documented such stark disparities in adjudicative outcomes led the authors to label the system "refugee roulette." And third, reform efforts in immigration adjudication may serve as helpful models for similar improvements to other high-volume agency adjudicative systems.

Not surprisingly, the immigration court system within the Justice Department's Executive Office of Immigration Review has received a lot of scholarly and policy attention on the reform front. First and foremost, for more than a decade the ABA, the Federal Bar Association, and various immigration lawyer associations have argued that Congress should move the immigration courts out of the Justice Department and into a new legislative court organized under Article I of the U.S. Constitution—similar to the Tax Court, the Court of Federal Claims, and the Court of Appeals of Veterans Claims. These organizations argue that relocation to a new Article I legislative court would address adjudicator decisional independence issues as well as the procedural inadequacies. They also assert that this reform would help address the inefficiency and inconsistency concerns inherent in high-volume adjudication.

Short of relocating the immigration courts from Article II to Article I, there are many potential reforms that could improve the processes and outcomes in the current immigration adjudication system. Among other things, the Justice Department or Congress could rework how immigration judges are hired and retained—including resources to lessen heavy dockets—and what incentives exist to attract top lawyers to become immigration judges. Agency appellate review could be further strengthened and the agency could implement additional quality assurance measures that have proven successful in other high-volume adjudicative systems.

The empirical work to date does not place all blame for the refugee roulette on the adjudicators and the agency. UCLA law professor Ingrid Eagly, political scientist David Hausman, and immigration attorney Steven Shafter, among others, have underscored the effect of legal representation—or the lack thereof—in adjudicative outcomes. This should come as no surprise. After all, the Immigration and Nationality Act and its implementing regulations are a regulatory thicket that even a skilled lawyer has difficulty navigating. Yet, most immigrants navigate the process without legal representation and many without English as their primary language. Government-provided legal representation for all immigrants may be cost-prohibitive, but many groups have argued that Congress should consider paying for legal representation for children at least and maybe also for other categories of immigrants. An "office of goodness," discussed below, may also help address these issues.

It is important to note that Congress has excluded certain immigration removal decisions from judicial review. Last term in *Department of Homeland Security v. Thuraissigiam*, the Supreme Court confronted the constitutionality of expedited removal of noncitizens at or near the border. Expedited removal is one form of what immigration law professor Jennifer Lee Koh has coined "shadow removal," where Congress has generally precluded not only judicial review but even administrative review in an immigration court. The *Thuraissigiam* Court rejected constitutional challenges to expedited removal under both the Due Process Clause and the Suspension Clause. In dissent, Justice Sonia Sotomayor declared that the "decision handcuffs the Judiciary's ability to perform its constitutional duty to safeguard individual liberty and dismantles a critical component of the separation of powers."

The breadth of shadow removals is staggering. In 2018, immigration judges received roughly 300,000 cases and concluded more than 200,000 cases. Those cases receive administrative review in the immigration courts. If the noncitizens are ordered removed at

the conclusion of the administrative proceedings, they generally can seek further review in federal court. But, as Koh has documented, the vast majority of removal orders today never make it to immigration court. They are issued through shadow removals, Koh explains, "by front-line immigration officers acting as investigator, prosecutor, and judge, thus bypassing the immigration courts entirely." Indeed, in 2018, more than four in five removals were shadow removals, conducted without a formal administrative hearing or generally without judicial review.

The simplest legislative fix would be to allow for administrative review of shadow removals in administrative immigration court and then for judicial review in federal court. But that may prove to be too costly or infeasible. Short of that, the agency could establish internal review procedures and additional procedural protections. It could also create what University of Michigan law professor Margot Schlanger has termed an Office of Goodness—an internal ombuds office of sorts that looks out for the rights of noncitizens in the informal adjudicative process and ensures the agency complies with its external and internal laws.

The Internal Revenue Service's Taxpayer Advocate Service provides a model that may be worth adapting in other agency contexts. The Taxpayer Advocate Service, an independent office within the IRS, has two main objectives. First, it has physical offices in every state, where individual taxpayers can get free help with tax problems they have with the IRS. Second, leveraging these tens of thousands of annual individual interactions nationwide, it regularly reports to Congress to recommend systemic reforms to the federal tax system. An Immigrant Advocate Service could play a similar role in the immigration adjudication context—both as to shadow removals at the border and more traditional removals that work their way through the Justice Department's immigration courts system.

There are many more proposals that have been recommended to reform immigration adjudication. I will mention just one more, albeit less-sweeping proposal. Over the years, the Justice Department has utilized immigration adjudication to make major immigration law and policy at the agency level. It has done so through precedential opinions by the Board of Immigration Appeals and through the attorney general's final decision-making authority. It likely chooses to make policy via adjudication instead of rulemaking in part because it is easier and quicker, yet courts accord the same *Chevron* deference to its statutory interpretations regardless of whether they are embraced via adjudication or rulemaking.

In an article just published in the *Duke Law Journal*, Penn State law professor Shoba Wadhia and I argue that the Justice Department should not receive *Chevron* deference for statutory interpretations advanced via immigration adjudication. This reform should be part of any comprehensive immigration reform legislation, which may well become a key legislative initiative in the 117th Congress. The Biden administration can and should embrace this reform internally by not seeking *Chevron* deference for immigration adjudication and by turning to rulemaking instead of adjudication to make major immigration policy. We argue that shifting the default from adjudication to rulemaking for immigration policymaking is more consistent with *Chevron*'s theoretical foundations—to leverage agency expertise, to engage in a deliberative process, and to increase political accountability.

CONCLUSION

As the APA celebrates its 75th birthday, I join the Justice Department's call for modernization. President Biden and the 117th Congress can and should seriously engage in these reform efforts. But Congress and the executive branch should stop fixating on agency rulemaking; administrative adjudication is also in dire need of reform. This essay has sketched out a reform agenda with a number of concrete proposals and a roadmap for further research and policy development.

I will close on a related note. When it comes to administrative adjudication myopia, it is not just about a near-sighted focus on agency rulemaking. We have also lost focus with respect to the federal judiciary. Much has been made of the Trump administration's appointment of some 200 Article III federal judges. Enormous resources have been dedicated to this process, including millions of dollars and thousands of hours by outside organizations like the ABA and other interest groups. Yet the Trump administration's hiring of nearly 250 Article II immigration judges has hardly been noticed (outside of immigration law circles). There is no ABA committee that rates proposed immigration judges or other agency adjudicators. There are no television ads run. The Senate plays no role in their selection. A similar story could be told about other agencies' adjudicators.

The federal judiciary today has moved far beyond life-tenured Article III federal judges. We have also moved beyond the APA's vision of the federal administrative judiciary, which consists of ALJs conducting hearings under the APA's formal-adjudication provisions. Modernizing the federal administrative judiciary is long past due. **R**

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