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If Established by Law, Then an Administrative Judge Is an Officer

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Administrative Judges (AJs) are a large and often overlooked group of federal agency adjudicators. While courts have examined Article II Appointments Clause challenges to Administrative Law Judges (ALJs), courts have yet to encounter a legal challenge to the constitutionality of AJs' appointment procedures. The constitutionality of any federal government actor's appointment is dependent upon whether that actor is an "officer" or an "employee" under the Article II Appointments clause. It is apparent that the current "significant authority" test that the Supreme Court has espoused to distinguish between officers and employees is unworkable. This Note endeavors to set forth a bright-line test to distinguish between officers and employees that better serves the purposes of the Appointments Clause and is more easily applicable. The test is simple: if an AJ is "established by Law," then that AJ is an officer and must be appointed according to the Appointments Clause.

Related People



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