California's Administrative Procedure Act requires that an administrative law judge preside over contested administrative hearings. Cal. Gov't Code § 11512(a). However, the agency determines whether the administrative law judge (ALJ) hears the case alone or whether the agency hears the case with the administrative law judge. Id. If the proceeding is heard solely by an ALJ, the ALJ is required to prepare a "proposed decision." Cal. Gov't Code § 11517(c). The agency then may adopt the decision in its entirety; reduce or mitigate a proposed penalty and adopt the balance of the decision; make technical or other minor changes and adopt it as the decision; reject the proposed decision and refer it back for the taking of additional evidence; or reject the proposed decision and decide it upon the record. Id.

In California, the Office of Administrative Hearings provides ALJs for over 1,500 state and local agency hearings. Although it describes itself as "independent", it is under the direction and control of a gubernatorial appointee. The Governor, of course, is in charge of the state agencies that bring the administrative actions to be heard by these ALJs. The fact that hearings are conducted and decided entirely within the executive branch is sufficient cause to question whether due process is afforded to the respondents in these proceedings.
The Arizona Corporations Commission apparently follows a similar procedure in which an ALJ provides a "recommended decision" with the ultimate decision being made by the full Commission. Unlike California, the ALJ who hears the case does not need to be the ALJ who prepares the recommended decision. Not surprisingly, this procedure has been challenged as not providing due process. The Arizona Court of Appeals, however, held that the process provides litigants sufficient due process. *Wales v. Ariz. Corp. Comm’n*, 2020 Ariz. App. LEXIS 563. One wonders whether the judges would feel the same if they were the subject of an administrative decision drafted by a judge that did not hear the witnesses and arguments.

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