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Factual Premises of Statutory Interpretation in Agency Review Cases

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Abstract

This article examines factual premises of statutory interpretation in agency review cases, and proposes an approach that would better integrate the treatment of such factual premises into the overall structure of administrative law. Courts frequently encounter questions of statutory interpretation that depend on underlying factual background, context, and implications. When they do so, courts generally assume that they retain the authority to decide the factual premises and thereby to answer questions of statutory interpretation that depend on factual premises. This is problematic from a functional standpoint, because courts often lack the information or expertise necessary to assess these underlying facts and thereby to understand the implications of their interpretive options. The article proposes a new approach to premise facts in agency review cases. In particular, it argues that, under existing principles of administrative law, agencies—and not courts—have primary authority to address premise facts. This means, among other things, that agencies are not bound by prior judicial precedent interpreting statutes based on factual premises, and that agencies have the authority to reconsider such premise facts, and the statutory interpretation based on those facts, in subsequent proceedings. This reconsideration process would allow agencies to bring their superior information-gathering and -analyzing capacity to bear on premise facts, thereby improving statutory interpretation.

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