

Stuart Buck

Salerno v. Chevron: *What to Do About Statutory Challenges*

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Abstract by Brooksley Crisman

The author provides a lens through which to reconcile conflicting case law addressing the *Chevron* doctrine. The article begins with a discussion of the *United States v. Salerno*, a case in which the Supreme Court created a standard where in order to mount a facial challenge to a statute, the plaintiff must demonstrate that there is not one set of circumstances in which the law could be applied constitutionally.

The article endeavors to reconcile the standard in *Salerno* with the established *Chevron* doctrine. The author draws upon Marc Isserles's research and writings in which Isserles views *Salerno* not as a "test" but rather as a consequence of a court declaring a statute facially invalid. The author opines that when the Court invalidates a statute it is critical to examine the chain of causation; the invalidity of all applications does not cause facial invalidity, but is a result of the invalidation. Therefore, the first step is facial invalidation, and then *Salerno* describes the second step: invalidation of all applications of the statute.

The first part of the article examines the application of the *Salerno* doctrine in constitutional challenges and in statutory cases. The second part of the article advances Isserles' reconceptualized view of *Salerno*. The third part argues that the *Salerno* analysis is tantamount to the first step of the *Chevron* analysis.