Per Curiam

SUPREME COURT OF THE UNITED STATES

Nos. 07–01 and 07–02

IN RE FEDERAL GOVERNMENT

No. 07-01

ON SUA SPONTE PETITION FOR WRIT OF REVIEW TO THE UNITED STATES GOVERNMENT

KIRKMAN, PETITIONER

No. 07-02 *v.*

STATE OF COLUMBIA, ET AL.

ON PETITION FOR WRIT OF REVIEW TO THE UNITED STATES GOVERNMENT

[March 3, 2019]

PER CURIAM.

These cases involve challenges to the constitutionality of S. 127, a recently-passed Act of Congress which seeks to drastically reshape the existing American system of government. At issue are the provisions relating to the formation of a so-called "State of Columbia." These provisions claim to join the City of Las Vegas and the City of Washington, D. C. into a single Municipality. The Constitution, however, provides that no "Municipality [may] be formed by the Junction of two or more Municipalities, or Parts of Municipalities, without the Consent of the Legislatures of the Municipalities concerned." Art. IV, §3. Thus, for the reasons set forth more fully below, we

must hold and declare §§101–104 of S. 127 unconstitutional and therefore invalid. Those provisions are struck down.

Additionally, as further explained below, we deem §§106–107 of S. 127 inseverable from the provisions declared unconstitutional and therefore strike them down as well.

I

At the foreground of this case is the basic fact, well observed and recognized for a substantial period of time, that the Cities of Las Vegas and Washington, D. C. are proper Municipalities. Cf. *United States* v. *District of Columbia*, 5 U. S. 95, 96 (2018). Given that fact, the relevant inquiry in this case is whether the Municipalities consented to their junction. Evidence illustrates that the answer is flatly "no."

Indeed, there appears to be no record whatsoever of any vote by either of the Municipalities even pertaining to the junction imposed by S. 127, much less one clearly, publicly, and unambiguously consenting to it as the Constitution is understood to require. In fact, evidence from the public record actually suggests that the Municipalities were blindsided by the federal move and did not receive any prior notice. If that is the case, S. 127 represents nothing less than an egregiously unconstitutional attempt to subvert the legitimate rights of the Municipalities. Nonetheless, even if prior notice was provided, the absence of clear, public, unambiguous consent to the junction from both Municipalities makes the asserted junction completely invalid.

As the junction is invalid, all the provisions of S. 127 which endeavor to give effect to it are likewise invalid and unconstitutional. Those provisions are §§101–104.

The first, section 101 asserts the merger of two Municipalities, the Cities of Las Vegas and Washington, D. C. The section attempts to justify the merger by pointing to the "demunicipalization of the City of Las Vegas" by H. R. 179. The legality of H. R. 179 is not before this Court in this case and is assumed for the moment, although the bill, rather than purporting to revoke Las Vegas' status as a Municipality, in fact confirms and solemnizes it. Indeed, the law specifically refers to the "Municipality of the City of Las Vegas." Section 101 of S. 127, therefore, is baseless. The attempt to circumvent the requirement of Municipal consent fails.

Section 102 of S. 127 grants a name and assigns a march and anthem for the so-called "State of Columbia." As the reference to the State of Columbia incorporates the unconstitutional junction provision of §101, it is likewise unconstitutional. Section 103, which proclaims Congress' intent to establish the State of Columbia as a "municipality in a swift manner" is unconstitutional for the same reason. Section 104, finally, provides for the establishment of a provisional government of the illegitimate State of Columbia. It attempts to transfer the sovereign powers of the Municipalities being involuntarily joined to a so-called provisional governor. This provision, §104, is unconstitutional.

II

Having struck down the bulk of S. 127, our inquiry turns now to what remains. When conducting this analysis, the severability analysis, we must be mindful of a few key things. First, a law which contains a severability clause, as is the case here, "express[es] the enacting legislature's preference for a narrow judicial remedy." *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. ___, ___ (2016) (slip op., at 37). At the same time, however, "a

severability clause is an aid merely; not an inexorable command." *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 884–885, n. 49 (1997) (internal quotation marks omitted). A severability clause is not grounds for a court to "devise a judicial remedy that . . . entail[s] quintessentially legislative work." *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329 (2006). Thus, when a valid provision and an invalid provision of a statute are so deeply intertwined that extricating the two would fundamentally alter the operation of the valid provision, the reviewing court must declare the two inseverable and strike down both. Additionally, no matter how capaciously-worded a severability clause may be, courts will not step inside a statutory provision and sever words and phrases from one another: that kind of nitty-gritty work is far too legislative for inclusion in a judicial remedy. Instead, the entire provision will be invalidated and Congress may later pass legislation resurrecting the portions of the provision not deemed unconstitutional in such a legislative scheme as they determine appropriate.

With these consideration in mind, we turn to what remains of S. 127. That includes §1 (the "Effective Date Provision"), §2 (the "Severability Clause"), §105 (the "Disclaimer Provision"), §106 (the "Transfer Provisions"), and §107 (the "Court Provisions"). We consider each separately.

The Effective Date Provision

Except as applied to those provisions declared unconstitutional and those deemed inseverable, the Effective Date Provision may remain in force. It is purely a stylistic matter meant to clarify that the law being passed will take effect and to provide when such will occur. It has no independent effect of its own and we see no reason not to

salvage this provision.

The Severability Clause

Much like the Effective Date Provision, this clause is mostly a "stylistic" addition, *ante*, at 4, with no real independent effect of its own. It merely expresses the desire of Congress for a narrow judicial remedy if the attached law is struck down. This clause may be salvaged to continue to apply to the provisions of the Act deemed severable.

The Disclaimer Provision

This provision primarily confirms that Congress is not asserting control over development. Given that this provision effects no change from the pre-S. 127 status quo, we see no reason not to salvage it. It changes nothing and can be easily extricated from the unconstitutional bulk of the Act.

The Transfer Provisions

This provisions obligates the President to transfer certain "low-functioning agencies" to the control of the provisional governor of the State of Columbia. Without the unconstitutional bulk of S. 127 operational, however, the provision has no meaningful use. The President cannot transfer an agency to a nonexistent provisional governor. Thus, we declare §106 inseverable and strike it down in full.

The Court Provisions

Putting aside for a moment the constitutional issues inherent in the Court Provisions, and focusing purely on severability, it is quite clear that the majority of §107 is inextricable from the portions of S. 127 declared unconstitutional. The provision asserts the creation of a court

for the State of Columbia. The appointment process involves the governor and the judges are tasked with enforcing non-existent state law. Finding this provision severable would require us to jettison its requirements on appointment and strip these officers of their very purpose. Doing so would involve effectively rewriting the law. As mentioned before, we decline to step inside this provision and, in effect, *make* it severable so that we may uphold it. We are left with no choice but to declare §107 inseverable and strike it down in full.

* * *

This Nation depends greatly on the rule of law. Government officials should not rely on a mistaken belief that this Court or other courts will not enforce the dictates of the Constitution as reason for skirting its requirements. "The oath that all officials take to adhere to the Constitution is not confined to those spheres in which the Judiciary [will] correct . . . what those officials say or do." *Trump* v. *Hawaii*, 585 U. S. ___, ___–___ (2018) (Kennedy, J., concurring) (slip op., at 1–2). Officials should not attempt, through "clever" distortion or in any other fashion, to expand their own power beyond constitutional limits. Nor should they go along with the schemes of those known to despise our Constitution.

This Court has, for an extended period of time, restrained its use of the power of Anytime Review. But when officials flout the "imperative for [them] to adhere to the Constitution and to its meaning and its promise," *id.*, at ___ (slip op., at 2), we will vigorously fulfill our own imperative: the defense of the Constitution.

The petitions for writs of review are granted and §§101–104, 106, and 107 of S. 127 are struck down.

It is so ordered.