Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BENDA *v.* UNITED STATES

CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 05–75. Decided October 21, 2018

After Congress passed a statute—section 401(g) of the Consolidated Appropriations Act of August 2018—mandating that every complaint by a federal employee of unlawful employment action be submitted to, and heard by, the National Labor Authority (now known as the Office of the Federal Inspector General) before the employee may take the matter to court, Benda587 filed this lawsuit in the United States District Court for the District of Columbia seeking to invalidate the requirement. He alleged the statute violated Article III. The District Court certified the question to this Court.

Held: Section 401(g) is unconstitutional on its face and is accordingly invalid. Pp. 6–15.

(a) The Court's precedents applying Article III distinguish between "public rights" and "private rights." Congress has more latitude in assigning adjudication of "public rights" to non-Article III tribunals. Pp. 6–7.

(b) Section 401(g) involves, for the most part, matters of "public rights." Pp. 7–8.

(c) The Court's Article III precedents, however, also emphasize the importance of giving "practical attention to substance rather than doctrinaire reliance on formal categories." *Thomas* v. *Union Carbide Agricultural Products, Co.*, 473 U. S. 568, 587 (1985). The public rights/private rights distinction, therefore, cannot be the end of the matter. The Court must also consider the origins and importance of the rights at issue, the extent of the non-Article III tribunal's jurisdiction and powers, the presence or absent of consent from litigants, and the concerns which motivated Congress' decision to choose a non-Article III tribunal. Pp. 8–12.

Syllabus

(1) The bulk of the rights at issue originate from Acts of Congress but are nevertheless of immense importance for a number of practical reasons including electoral freedom as well as accountability and transparency. Pp. 8–10.

(2) Section 401(g) confers extraordinarily broad jurisdiction and makes the non-Article III tribunal's decisions effectively unreviewable. It thus raises special concerns under Article III. Pp. 10–11.

(3) Section 401(g) does not consider or require the consent of litigants. Instead, it forces litigants to use the non-Article III tribunal. Pp. 11–12.

(4) Congress' decision to choose a non-Article III tribunal was not the product of any serious consideration; there were no *concerns* per se that drove Congress' decision. P. 12.

(d) There are two additional independent reasons the Court deems section 401(g) is unconstitutional. Pp. 12–15.

(1) An Act of Congress respecting judicial procedure which is inconsistent with basic principles of justice is unconstitutional. Similarly, an Act of Congress respecting judicial procedure which is utterly unjustifiable in any rational way is unconstitutional. Pp. 12–13.

(2) Section 401(g) is inconsistent with basic principles of justice. Pp. 13–14.

(3) Section 401(g) cannot be rationally justified under the circumstances. Pp. 14–15.

3:18–1658, answered affirmative in part; dismissed in part.

HOLMES, C. J., delivered the opinion of the Court, in which MARSHALL, BORK, and O'CONNOR, JJ., joined. GORSUCH and STEWART, JJ., dissented from the judgment. KAVANAUGH, KENNEDY, and JACKSON, JJ., took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 05–75

BENDA587 *v.* UNITED STATES

ON CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[October 21, 2018]

CHIEF JUSTICE HOLMES delivered the opinion of the Court.

In this case, we consider the constitutionality of § 401(g) of the Consolidated Appropriations and Authorizations Act of August 2018 (CAAA), which provides that "[n]o controversy, complaint, or any other thing under the jurisdiction of the [National Labor Authority] shall be heard by a court . . . without first being heard by the Authority."*

I

This case comes before the Court as a certified question. On August 5, 2018, shortly following the enactment of the controversial CAAA, see, *e.g.*, *Ultiman* v. *United States*, 6 U. S. ___, ___ (2018) (slip op., at 1), plaintiff filed a case in the District Court alleging that § 401(g) violates Article III of the Constitution by requiring litigants to bring certain cases before an "executive agency" before submitting them to a court. See *Benda* v. *United States*, 3:18–1658 (DCDC 2018). In response to that case, the District Court, seeking

* Congress has since renamed the National Labor Authority the Office of the Federal Inspector General. We use the original name in this opinion.

"authoritative . . . guidance," *Federal Election Comm'n* v. *AcidRaps*, 6 U. S. ___, ___ (2018) (slip op., at 5), certified to us a question of law: "Does the [CAAA] violate Article III of the Constitution?"

Before approaching that question, we must consider three "antecedent" ones, *id.*, at ___ (slip op., at 7). First, we must determine whether plaintiff has standing to bring this case; second, whether plaintiff purportedly "quitting" ROBLOX requires this case to end; and third, whether it is appropriate in this case to consider the constitutionality of the *entire* CAAA as the certified question asks us to despite plaintiff only alleging constitutional issues with §401(g). We address each question in turn.

A

Standing doctrine limits the "judicial power" to "'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 774 (2000) (quoting *Steel Co.* v. *Citizens for a Better Environment*, 523 U. S. 83, 102 (1998)). To fully appreciate the essence of this limitation, some Justices have suggested "refer[ring] directly to the traditional, fundamental limitations upon the powers of common-law courts." *Honig* v. *Doe*, 484 U. S. 305, 340 (1988) (Scalia, J., dissenting); *Spokeo, Inc.* v. *Robins*, 578 U. S. ___, ___ (2016) (Thomas, J., concurring) (slip op., at 2). In some cases, application of that approach may mean that certain parts of the usual three-part standing framework would "not apply as rigorously" as they would elsewhere, *id.*, at ___ (slip op., at 5), or with a greater degree of flexibility, but we see no need to address that possibility today. In this case, straightforward application of the three-part framework set forth in *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 (1992), suffices to establish plaintiff's standing. We apply that test now.

To establish standing under *Lujan*, a plaintiff must have suffered (1) an "injury in fact"; (2) there must be a sufficient "causal connection between the injury and the conduct complained of"; and (3) there must be a "likel[ihood]" that the injury will be "redressed by a favorable decision." *Id.*, at 560–561. See also *Ultiman*, 6 U. S., at ___ (slip op., at 2).

Plaintiff's injury in fact in this case is straightforward. He is currently an employee of the Executive Branch and one, for that matter, who has been previously subject to personnel actions by supervisors. Under the CAAA, virtually all personnel decisions, from the unusual to the mundane ("appointment[s]," "promotion[s]," "disciplinary [and] corrective action[s]," "transfer[s]" and "reassignment[s]," "reinstatement[s]," "performance evaluation[s]," "training," etc.) are within the jurisdiction of the National Labor Authority (NLA). §§403(a)(2)(A)(i)–(v), (viii)–(ix); §403(d). Accordingly, if he wishes to challenge the legality of any of them under applicable statutes, the CAAA mandates that he first file his action for adjudication by the NLA. §401(g). This injury is both "concrete and particularized," as well as "actual or imminent." *Lujan*, *supra*, at 560. It would be inappropriate to characterize his injury as either "'conjectural' or 'hypothetical.'" *Ibid.* The CAAA sweeps so broadly that it undoubtedly brings within its grasp personnel actions which plaintiff, as an employee of the federal Executive Branch, is subjected to regularly.

Consider for a moment how unexceptional some of the personnel actions the CAAA places within the NLA's jurisdiction are. Decisions concerning things as common as "*training*," §403(a)(2)(A)(ix) (emphasis added), are within the NLA's ambit. Trainings, one would expect, are daily (or nearly daily) occurrences. Trainings, also, may "reasonably be expected to lead to . . . promotion[s]." *Ibid.* Other personnel actions within the jurisdiction of the NLA, such as "performance evaluation[s]," §403(a)(2)(A)(viii), could fairly be construed to include common decisions like decisions to

hold mass patrols, of which inspections are a relevant part. Because the CAAA sweeps so broadly, it necessarily has a more pronounced impact than a law which sweeps narrowly. It is thus unsurprising that a large number of people, including plaintiff, face "actual or imminent" injury.

Plaintiff's injury in fact is fairly traceable to §401(g) of the CAAA because, simply put, that is where the injury originates. If the law merely afforded *supplemental* jurisdiction to the NLA, then there would be no potential Article III issues to complain of because plaintiff would be free to choose an ordinary Article III forum to litigate his claims. Due to §401(g), plaintiff must bring any employment action within the broad coverage of the CAAA before the NLA before he may take it to court. If we invalidated §401(g), then the particular harms complained of by plaintiff would be remedied. We thus conclude plaintiff has standing to bring this case.

B

It has been suggested that because plaintiff has purportedly quit ROBLOX, this case must be dismissed. We consider that suggestion perplexing for a few reasons.

First, even assuming that plaintiff has truly "quit" ROBLOX, that does not immediately mean that he lacks a continuing interest in this case's outcome. As we just explained, he has *already* sustained sufficient injury to establish Article III standing. See *supra*, at 2–4. If indeed he has quit, that fact could not possibly alone erase his past injury. Indeed, it is surely incontestable that a person could *choose* to continue a case to remedy a past injury even if they otherwise quit. (We assume, as is the case here, that they would remain in the United States.) The law does not mandate that everyone quit in the same way—it is a matter of personal choice. The question cannot simply be whether plaintiff has quit; the question must be and therefore is whether he still wishes to pursue his case.

On this point, there is hardly any room for debate. August 11, 2018, just six days after he filed his case in the District Court and the same day this Court docketed the certified question, was the day plaintiff announced he would no longer be an "active ROBLOXian." See Benda, Benda Says Goodbye (2018), available at https://devforum.roblox.com/t/benda587-says-goodbye/165056. Even after that, plaintiff continued to be involved in the case, on several occasions taking affirmative steps to facilitate its progress. For instance, he joined the Supreme Court discord server (August 12th), he communicated in the case scheduling channel (August 14th), he designated an attorney (August 17th). Each of these actions came after the date plaintiff is suggested to have quit (August 11th).

What each of these actions demonstrate is plaintiff's continued interest in the decision of his case and the remedying of his injuries. These actions also cast doubt on the notion that he has actually "quit." As noted earlier, his public statement merely said he would no longer be an "*active* ROBLOXian," which is a far cry from no longer being one at all. On top of this, he continues to be a citizen of the United States and an employee of various federal institutions, including the White House Office. We therefore conclude that plaintiff's case may proceed despite his decision to no longer be an "active ROBLOXian."

C

Finally, we must determine whether it is appropriate for us to consider the constitutionality of other provisions of the CAAA in this case in light of the broad certified question despite the fact plaintiff only challenged §401(g) in his District Court filing.

The certified question process is based in this Court's Rule 19. Under that Rule, a District Court may "certify to this Court a question or proposition of law on which it seeks instruction *for the proper decision of a case*." The final part

of the quoted portion makes clear that the "legitimacy of [the] process in a given case hinges on the fact that the question certified is part and parcel to [the] resolution of a controversy *before the District Court*." *Kirkman* v. *Nevada Highway Patrol*, 5 U. S. 62 (2018) (emphasis added). The case before the District Court in these proceedings, however, challenged only §401(g) of the CAAA, not the entire Act. The scope of the challenge makes particular sense in light of the fact that plaintiff's injury, as explained earlier, is "fairly traceable to §401(g)." *Supra*, at 4. It is uncertain whether, under the *Lujan* framework, plaintiff would have standing to challenge other provisions of the CAAA in this case. And although *Lujan* may not necessarily prescribe a mechanical formula, see *supra*, at 2, it is an important guidepost nonetheless. In any event, plaintiff has not attempted to challenge any provision other than §401(g) and we consider it prudent to limit the focus of our inquiry to that provision alone.

We therefore hold that it would be inappropriate under the circumstances to consider the validity of any provision other than §401(g) in this case and dismiss the certified question except as to §401(g) accordingly. We address that provision's constitutionality next.

II

Article III vests the judicial power of the United States "in one supreme Court, and in such inferior Courts as the Congress may from time to time establish." §1. Congress accordingly cannot "confer the Government's 'judicial Power' on entities outside Article III." *Stern* v. *Marshall*, 564 U. S. 462, 484 (2011). When "determining whether a proceeding involves an exercise of Article III judicial power, this Court's precedents have distinguished between 'public rights' and 'private rights.'" *Oil States Energy Services, LLC* v. *Greene's Energy Group, LLC*, 584 U. S. ___, ___ (2018) (slip op., at 6) (quoting *Executive Benefits Ins. Agency*

v. *Arkison*, 573 U. S. ___, ___ (2014) (slip op., at 6)). Those precedents have given Congress "significant [though not unlimited] latitude to assign adjudication of public rights to entities other than Article III courts." *Ibid.* (citing *Stern*, *supra*, at 488–492).

The Government argues that "[federal public] labor complaints," such as those involving personnel actions described in the CAAA, "fall under [the public rights] doctrine." Brief for United States 3. Accordingly, the Government says, Congress may permissibly task an administrative agency with "handl[ing those types of] disputes" in the first instance, subject to judicial review. *Ibid.*

A

The public rights doctrine, subject to certain exceptions not relevant here, includes "'only . . . matters arising between' individuals and the Government 'in connection with the performance of the constitutional functions of the executive or legislative departments . . . that historically could have been determined exclusively by those branches.'" *Stern*, *supra*, at 485 (quoting *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 67–68 (1982)).

As we have noted in the past, the political branches have considerable leeway in determining the conditions of employment for federal employees. *Garcetti* v. *Ceballos*, 547 U. S. 410, 418–419 (2006). Indeed, historically, it has been almost exclusively the role of the Executive Branch and Legislative Branch to determine what rights to afford employees. Subject only to restrictions imposed by the Constitution and Acts of Congress, see, *e.g.*, *Connick* v. *Myers*, 461 U. S. 138, 142 (1983), employment in the Executive Branch is at-will. See also *Board of Regents of State Colleges* v. *Roth*, 408 U. S. 564 (1972); *Perry* v. *Sindermann*, 408 U. S. 593 (1972).

Thus, in general, labor complaints of the kind specified in

the CAAA present issues of public rights.

B

This is not the end of the matter. While the public/private rights distinction is instructive, it is not dispositive. As we have emphasized before, "practical attention to substance rather than doctrinaire reliance on formal categories should inform application of Article III." *Thomas* v. *Union Carbide Agricultural Products, Co.*, 473 U. S. 568, 587 (1985). Likewise, in *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833 (1986), we expressly "declined to adopt formalistic and unbending rules" for Article III. *Id.*, at 851. Instead, we "weighed a number of factors, none of which has been deemed determinative, with an eye to the practical effect that the congressional action will have." *Ibid.* While the "origins . . . of the right to be adjudicated" are one factor, *id.*, at 849, so is the "importance" of that right, *ibid.*, as well as the "extent" of the non-Article III tribunal's powers, the presence or "absence of consent to an initial adjudication before a non-Article III tribunal," and the "concerns that drove Congress to depart from" adjudication in an Article III court. *Id.*, at 849, 851.

Additionally, as the Court in *Schor* noted, while "the danger of encroaching on the judicial power" is greater where "private rights" are involved, non-Article III adjudication of "public rights" cases may still be problematic. *Id.*, at 853–854. We must look "beyond form to the substance of what [the law] accomplishes." *Thomas*, *supra*, at 589. With these principles in mind, we consider the constitutionality of §401(g).

1

We consider first the origins and importance of the rights whose adjudication the CAAA assigns to the NLA.

a

As we know, the majority of the rights at issue in this case

are created by statute. Some do, however, originate from the Constitution. The calculus, naturally, is different for the two; Congress obviously has far greater leeway in assigning first adjudication of a right arising under one of its statutes to an agency than it does with a right arising under the Constitution. However, to simplify our analysis, and because it does not change our outcome, we will proceed under the assumption that all the rights which are implicated by §401(g) originate from an Act of Congress.

b

We next must consider the *importance* of these rights. In doing so, we must remember to pay "practical attention to substance," with an eye to the "practical effect[s]" of the congressional action. *Id.*, at 587; *Schor*, *supra*, at 851.

Undoubtedly, protections for federal employees are of great import in our society. In our Nation, virtually every working citizen is employed by the Federal Government, which stands as the number one employer. This unusual fact gives special significance to laws protecting public employees from arbitrary employer action. Without protections allowing public employees to speak freely without fear of retaliatory personnel action, the Nation as a whole would be deprived of open political discourse because almost the entirety of the voting population would be muzzled. This would give disproportionate power to the Executive Branch to influence the outcomes of elections; this includes both elections for President and for Congress. Protections which prevent such an outcome are clearly of the utmost importance in preserving our legitimate system of Government.

Other major interests are similarly advanced by laws protecting public employees. For instance, protections like whistle-blower protections actuate principles of Government accountability and transparency. If employees were

left unprotected in the course of disclosing unethical conduct by superiors, then those top officials would be able to abuse their powers with impunity. Additionally, the oversight responsibilities of Congress would be frustrated. These employee protections, thus, are closely tied to the principles of open and honest government. As a result, we must conclude that the rights involved here are of immense importance.

2

We must also consider the extent of the NLA's powers. Specifically, we are concerned with the "extent to which the [NLA] exercises the range of jurisdiction and powers normally vested only in Article III courts." *Ibid.* This analysis is driven by "due regard" for the "unique aspects of the congressional plan at issue and its practical consequences in light of the larger concerns that underlie Article III." *Id.*, at 856–857.

The NLA has jurisdiction over a wide range of employer actions, as recounted above. *Ante*, at 3–4. These actions, described in the CAAA, touch on decisions by agency leaders as routine as decisions to call trainings, host mass patrols, *inter alia*; we emphasized the frequency of these decisions earlier in this opinion, noting that they were "daily . . . occurrences." *Ante*, at 3. The breadth of the jurisdiction given to the NLA is demonstrative of several things, but primarily: The NLA has extensive authority to resolve disputes between public employers and employees.

In addition to its expansive jurisdiction, the NLA also has significant power and considerable finality to its determinations. For instance, the NLA's factual findings, under the CAAA, are final. §401(h) ("Orders and decisions made by the [NLA] appealed to Courts of the United States shall be judged solely on law"). Final authority to adjudicate facts is significant because in many cases facts are dispositive. In most employment cases, the law will be clear-cut. The

salient issue, then, will be whether the conduct of the employer fits the bill for what the law proscribes. In that process, the authority to make factual findings carries significant weight. If the NLA were determined to obstruct enforcement of employee protections—and because the NLA is not secured from external influences through life tenure like judges are, this is a real possibility—it could by making errant factual findings which paint an inaccurate picture of what happened which reviewing courts would be bound to accept.

The NLA's legal conclusions, also, are only to be set aside, according to the CAAA, if the NLA's error is "egregious." §401(h). In other words, the NLA's rulings are effectively final in most cases. But as we emphasized in *Thomas*, Article III may require "eventual review in an Art. III court" "even" with respect to "the resolution of public rights disputes." *Thomas*, *supra*, at 599. Moreover, it is principally the role of the Judiciary to "say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Thus, by leaving such broad authority for the NLA to make final interpretations of the law, the CAAA impinges on one of the "larger concerns that underlie Article III." *Schor*, *supra*, at 857.

3

Next is the issue of consent. This is evidently a problematic area for §401(g) since its entire effect is to mandate that all public employee litigants alleging violations of personnel law first bring their case to the NLA. No employee is given the option to first go to court. And as noted above, the decision of the NLA is, for all practical purposes, final. This further exacerbates the lack of consent. The effect of §401(g) is to force litigants to bring their cases to an administrative body for effectively final resolution. There is no clearer example of a case of the Government attempting to shut the courthouse door to a class of litigants.

Given the sheer absence of consent characteristic of laws

like §401(g) which are designed, with no clear justification, to force litigants to present their cases to bureaucrats subject to the whims of political officers, these laws are greatly problematic.

4

Lastly, we consider the concerns which drove Congress to opt to use a non-Article III tribunal. *Id.*, at 851. There does not appear, however, to have been any *concerns* which actually drove Congress to settle on a non-Article III tribunal. That Congress considered it a good idea is plainly insufficient, in particular when the record suggests that the plan was adopted without any serious consideration.

C

Section 401(g) implicates immensely important rights; places exclusive jurisdiction over cases involving those rights, with respect to public employment decisions, in an administrative agency with expansive jurisdiction and whose decisions are effectively unreviewable; does so without regard for consent of litigants; and for apparently no real reason. This combination of facts leaves us no choice but to declare §401(g) of the CAAA unconstitutional.

III

We also conclude that §401(g) is unconstitutional for two additional independent reasons. First, we deem §401(g) inconsistent with basic principles of justice, and second, we find that §401(g) is plainly irrational under the circumstances.

A

It is a fundamental principle of law that courts have an inherent duty "to see that justice is done." Joy, A Judge's Duty To Do Justice, 46 Hof. L. Rev. 139, 140 (2017). This basic responsibility is reflected in the judicial oath of office, through which federal judges affirm their commitment to

"administer[ing] justice." 28 U. S. C. §453. A judge's duty to do justice is a creature of constitutional law, as basic principles of Article III illustrate. Indeed, the very vesting of the "*judicial* power" in the courts implies a responsibility to "promote the ends of justice." Gitelson, The Affirmative Duty to Be an Instrumentality of Justice, 7 Santa Clara L. Rev. 7, 9 (1966). Since the duty to do justice is a constitutional imperative, it follows that mere Acts of Congress cannot enjoin a judge to disregard his fundamental commitment as an Article III officer. Thus, laws affecting the Judiciary must be consistent with basic principles of justice. And since justice and reason are intertwined in profound and admittedly inextricable ways, a law affecting the Judiciary must be rationally justifiable under the circumstances.

After all, Congress may neither intentionally require the Judiciary to be complicit in perpetrating an injustice of procedure, nor may it do so through carelessness or by giving insufficient thought to the consequences of its decision. When Congress passes a law pertaining to judicial procedure with the purpose or effect of causing an injustice of sufficiently serious magnitude, it becomes the responsibility of the courts to invalidate it. Similarly, when Congress passes a law affecting judicial procedure which is utterly unjustifiable in any rational way, the courts have a duty to invalidate it.

B

As emphasized earlier, protections for public employees are uniquely important to our Nation because of the significance of public employment to our people. *Ante*, at 9–10. Congress, of course, is under no obligation to pass protections like these (setting aside constitutional protections for a moment). But having done so, Congress is severely limited in its ability to frustrate attempts by public employees to vindicate those rights through the judicial process. This

is not an unusual state of affairs.

In numerous other contexts, our cases have recognized that when the government elects to grant a privilege to citizens, it may assume special limitations and responsibilities. See *DeShaney* v. *Winnebago County Dept. of Social Servs.*, 489 U. S. 189, 194 (1989); *Martinez* v. *California*, 444 U. S. 277, 285 (1980); *Bush* v. *Gore*, 531 U. S. 98, 104–105 (2000); *Reynolds* v. *Sims*, 377 U. S. 533, 555 (1964); *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 665 (1996).

Our identification of the basic principles of justice which guide our analysis cannot be "reduced to any formula." *Poe* v. *Ullman*, 367 U. S. 497, 542 (1961) (Harlan, J., dissenting). Rather, we must exercise our own reasoned judgment in discerning whether the strictures of the particular Act before us and its procedural demands on the Judiciary are consistent with principles of justice. We need not repeat our earlier analysis; for many of the reasons provided earlier, it is rather easy to say in this case that the demands of justice have not been met. *Ante*, at 8–12. For this reason, §401(g) is unconstitutional.

C

It is equally clear that §401(g) cannot be rationally justified under the circumstances. The obscurity of the system created by Congress in place of judicial adjudication of public employee labor complaints makes it such that public employees are widely unaware of how they must vindicate their rights. Rather than simply file a case through the usual channels, they must seek out a bureaucratic and detached element of the Executive Branch to which they must first make their appeal. They must do so despite no structured processes or procedures. If they are unaware of these requirements and file their case with a court initially, their case may be transferred without any notice to them. §401(h). They may then lose track of their complaint or be

unaware of how to proceed then on.

As we made clear earlier in this opinion, Congress' judgment is usually entitled to great respect; however, that is not the case when, as here, Congress' judgment was reached "without any serious consideration." *Ante*, at 12. Under these circumstances, it is appropriate for us to proceed without any presumption favoring retention of the law. Rather, we must objectively weigh the costs and benefits of the law and the interaction between—and the real effect of—its provisions in the first instance. Having conducted that analysis in this case, we deem §401(g) irrational under the circumstances and thus an unconstitutional procedural mandate for the Judiciary.

* * *

Judging the constitutionality of an Act of Congress is this Court's "gravest and most delicate duty." *Blodgett* v. *Holden*, 275 U. S. 142, 147–148 (1927) (Holmes, J., dissenting). The gravity of that duty underscores the need for both discipline and restraint in its performance. But we must also be vigilant in not allowing "illegitimate and unconstitutional practices" to gain "their … footing." *Boyd* v. *United States*, 116 U. S. 616, 635 (1886). It is for that reason that we must now hold and declare §401(g) unconstitutional and invalid on its face. As a result, the certified question is answered in the affirmative in part and dismissed in part.

It is so ordered.

JUSTICE GORSUCH and JUSTICE STEWART dissent from the judgment. JUSTICE KAVANAUGH, JUSTICE KENNEDY, and JUSTICE JACKSON took no part in the consideration or decision of this case.