



## Marbury v. Madison (1803)



**Learning Objectives:** The students will...

1. Review the election of 1800 and the appointment of the Midnight Judges.
2. Understand the events and figures involved in the landmark Supreme Court case, *Marbury v. Madison*.
3. Be able to explain the concept of judicial review and its importance to the power of the judicial branch of the U.S. government.

**TEKS:**

1. Identify the origin of judicial review and analyze examples of congressional and presidential responses. [8.18A]
2. Summarize the issues, decisions, and significance of landmark Supreme Court cases, including *Marbury v. Madison*. [8.18B]

**Materials:** Computer and projector with speakers, copies of student note sheet, copy of teacher notes, scratch paper, 5-6 small white boards, and dry erase markers (or sheets of scratch paper and markers).

**Vocabulary:** judicial, commission (n), jurisdiction, landmark case, precedent, writ of mandamus

**Teaching Strategy:**

Intro Activity: (15 Minutes)

1. Put the students in groups of three or four. Give each group a white board (scratch paper) and dry erase marker (markers) and have them choose a scribe.
2. Project the six vocabulary words in the *Marbury v. Madison* vocabulary PowerPoint which can be found on the **texasre.org website under Resources**, or use the list below to teach the necessary vocabulary. Have students copy down each of the six definitions into their glossary or notes.
  - Judicial – Relating to courts of law, judges or the administration of justice.
  - Commission – A document granting certain powers or the authority to carry out a particular task or duty.
  - Jurisdiction - The extent or range of authority or control.
  - Landmark case - Court decisions that establish new precedents or change the interpretation of existing law.
  - Precedent - A judicial decision that may be used as a guide in future similar cases.
  - Writ of Mandamus - A legal document issued by a court commanding an official to perform a specific duty.
3. After every student has written the six definitions, project each sentence in the *Marbury v. Madison* vocabulary PowerPoint (**found on texasre.org under Resources**) or read the scenarios from the list below. As each sentence is projected or read, have the groups decide which word best fits in the blank and have the scribe write the word on the

white board (scratch paper). Have each group hold up their white boards (scratch paper) to make sure there is consensus. Discuss words as needed.

- The architecture firm received a government \_\_\_\_\_ to complete a new building in Washington D.C. (**Commission**)
- I was pulled over by a Dallas police officer on I-10 in Houston, but he couldn't give me a ticket because he did not have \_\_\_\_\_. (**Jurisdiction**)
- The court issued a \_\_\_\_\_, commanding that the Secretary of State deliver a commission. (**Writ of Mandamus**)
- The Supreme Court case *Brown v. the Board of Education* is considered a \_\_\_\_\_ because it fundamentally changed the law regarding segregation in schools. (**Landmark Case**)
- The Supreme Court case, *Tinker v. Des Moines*, set the important \_\_\_\_\_ that students do have a right to freedom of speech in school, with certain limitations. (**Precedent**)
- The branch of government responsible for interpreting the law is the \_\_\_\_\_ branch. (**Judicial**)

Video: (30 Minutes)

1. Give each student a copy of the *Marbury v. Madison* note sheet.
2. Have them work with their groups to fill in Part 1 based on what they have already learned.
3. Watch the video through 4:05. Pause and have them check their answers and fill in any blanks that they didn't have. Answer any questions.
4. Watch the next section (4:06-6:08) and have them work in their groups to fill in the blanks in Part 2. Answer any questions and discuss.
5. Watch the final section (6:09-End) and fill in the final blanks in Part 3 with their groups.

Wrap-Up: (5 Minutes)

As a class, discuss the importance of judicial review. Show the students examples of how the power of judicial review has affected history (ex. *Scott v. Sandford*) as well as current issues before the Supreme Court.

Discussion Questions: (Could be discussed in class or given as homework.)

1. Do you think judicial review gives too much or the right amount of power to the judicial branch? Explain your answer.
2. Can the judicial branch truly check the other branches without the power of judicial review? Explain your answer.
3. What might have happened if the Court had ordered Marbury's commission to be delivered and President Jefferson and Secretary of State Madison had refused?



## Viewing Guide: *Marbury v. Madison* (1803)

### Part 1: (00:00-4:05)

#### The Election of 1800

The election of 1800 pitted Federalist \_\_\_\_\_, who was the incumbent president, against the Democratic-Republican challenger \_\_\_\_\_. One major difference between the two parties was that the Federalists believed in a strong \_\_\_\_\_, while the Democratic-Republicans believed in a loose confederation of \_\_\_\_\_. \_\_\_\_\_ won this election for President while \_\_\_\_\_ lost. This election set the very important precedent of \_\_\_\_\_.

#### Midnight Judges

The Federalist-controlled Congress created the Judiciary Act of 1801, which created more \_\_\_\_\_, which Adams filled with \_\_\_\_\_. Federal judges are appointed for \_\_\_\_\_. Jefferson and the Democrat-Republicans were furious about this because \_\_\_\_\_.

### Part 2: Lead up to *Marbury v. Madison* (4:06-6:08)

Adams' Secretary of State, \_\_\_\_\_, was supposed to deliver letters (commissions) to each of these new judges officially granting them their new judicial position. He left a few of the letters to be delivered by the new Secretary of State, \_\_\_\_\_. The new President, \_\_\_\_\_, told \_\_\_\_\_ to hold the letters and not deliver them. \_\_\_\_\_ was one of those who did not receive his commission and he sued \_\_\_\_\_, trying to force the delivery of the commission.

### Part 3: (6:09-End)

#### Three Big Questions

1. Does Marbury have a right to his \_\_\_\_\_?
2. If he has a right, does he have a remedy? Re-write this question in your own words: \_\_\_\_\_?
3. If he has a remedy, is that remedy a writ of mandamus by this Court granting him his commission?

#### The Ruling

The new Chief Justice of the Supreme Court, \_\_\_\_\_, delivered the ruling. This was the same Marshall who did not deliver Marbury's letter in the first place.

The Court ruled that \_\_\_\_\_ should be given his commission, but the Court could do nothing about it because the Supreme Court did not have \_\_\_\_\_. In other words, Marbury did not have the right to come straight to the Supreme Court. He should have gone through the lower courts first.

Marbury brought his case directly to the Supreme Court under a section of the \_\_\_\_\_. The Court ruled that section violated Article \_\_\_\_\_ of the Constitution. So,

what do we do when a law is in conflict with the Constitution? The Court ruled that if that happens, the \_\_\_\_\_ wins. It was the first time this had ever happened.

This ruling created the precedent known as \_\_\_\_\_.

Judicial Review is the power of the courts to rule that a law is \_\_\_\_\_. Many say that it was this ruling that made the judicial branch a \_\_\_\_\_ branch of government. Others have said that it has allowed the Supreme Court to become \_\_\_\_\_.

"It is emphatically the province and duty of the judicial department to say what the law is."  
—Chief Justice John Marshall

Explain Marshall's words in your own words:

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**Discussion Questions:**

1. Do you think judicial review gives too much or the right amount of power to the judicial branch? Explain your answer.
  
  
  
  
  
  
  
  
  
  
2. Can the judicial branch truly check the other branches without the power of judicial review? Explain your answer.
  
  
  
  
  
  
  
  
  
  
3. What might have happened if the Court had ordered Marbury's commission to be delivered and President Jefferson and Secretary of State Madison had refused?



## Teacher Notes: *Marbury v. Madison* (1803)

### Part 1: (00:00-4:05)

#### The Election of 1800

The election of 1800 pitted Federalist **John Adams**, who was the incumbent president, against the Democratic-Republican challenger **Thomas Jefferson**. One major difference between the two parties was that the Federalists believed in a strong **central government**, while the Democratic-Republicans believed in a loose confederation of **states**. **Thomas Jefferson** won the election for President while **John Adams** lost. This election set the very important precedent of **the peaceful transition of power from one political party to another**.

#### Midnight Judges

The Federalist-controlled Congress passed the Judiciary Act of 1801, which created more **federal judge positions**, which Adams filled with **Federalist** judges. Federal judges are appointed for **life**. Jefferson and the Democratic-Republicans were furious about this because **they felt the Federalists were unfairly giving themselves too much power in the judiciary**.

### Part 2: Lead up to *Marbury v. Madison* (4:06-6:08)

Adams' Secretary of State, **John Marshall**, was supposed to deliver letters (commissions) to each of these new judges officially granting them their new judicial position. He left a few of the letters to be delivered by the new Secretary of State, **James Madison**. The new President, **Thomas Jefferson**, told **Madison** to hold the letters and not deliver them. **William Marbury** was one of those who did not receive his commission and he sued **James Madison**, trying to force the delivery of the commission.

### Part 3: (6:09-End)

#### Three Big Questions

1. Does Marbury have a right to his **commission**?
2. If he has a right, does he have a remedy? Re-write this question in your own words:  
**Example: If Marbury is supposed to get his commission, can the Supreme Court fix his problem?**
3. If he has a remedy, is that remedy a writ of mandamus by this Court granting him his commission?

#### The Ruling

The new Chief Justice of the Supreme Court, **John Marshall**, delivered the ruling. This was the same Marshall who did not deliver Marbury's letter in the first place.

The Court ruled that **Marbury** should be given his commission, but the Court could do nothing about it because the Supreme Court did not have **original jurisdiction**. In other words, Marbury did not have the right to come straight to the Supreme Court. He should have gone through the lower courts first.

Marbury brought his case directly to the Supreme Court under a section of the **Judiciary Act of 1789**. The Court ruled that this section violated Article **III** of the Constitution. So, what do we do when a law is in conflict with the Constitution? The Court ruled that if that happens, the **Constitution** wins. It was the first time this had ever happened.

This ruling created the precedent known as **judicial review**.

Judicial Review is the power of the courts to rule that a law is **unconstitutional**. Many say that it was this ruling that made the judicial branch a **co-equal** branch of government. Others have said that it has allowed the Supreme Court to become **too powerful**.

"It is emphatically the province and duty of the judicial department to say what the law is."

—Chief Justice John Marshall

Explain Marshall's words in your own words:

*Example: The job of the judicial branch is to define what laws really mean.*

**Discussion Questions:**

1. Do you think judicial review gives too much or the right amount of power to the judicial branch? Explain your answer.
2. Can the judicial branch truly check the other branches without the power of judicial review? Explain your answer.
3. What might have happened if the Court had ordered Marbury's commission to be delivered and President Jefferson and Secretary of State Madison had refused?