

# Marbury v. Madison Moot Court

Created By: Caitlin Crosby and Ed Humphrey (2017)

Subject / Lesson: US History and Constitution and Government

Grade Level: 11th and 12th grades

Overview/Description: Students will conduct a mock reenactment of Marbury v. Madison. This will allow them to use an actual case to practice the procedures of the Supreme Court.

Duration: 5 - 90 minute class periods. \*Could be extended if necessary

Standards:

**USHC-1: The student will demonstrate an understanding of the conflicts between regional and national interest in the development of democracy in the United States.**

USHC-1.5 Explain how the fundamental principle of limited government is protected by the Constitution and the Bill of Rights, including democracy, republicanism, federalism, the separation of powers, the system of checks and balances, and individual rights.

USHC-1.6 Analyze the development of the two-party system during the presidency of George Washington, including controversies over domestic and foreign policies and the regional interests of the Democratic-Republicans and the Federalists.

USHC-1.7 Summarize the expansion of the power of the national government as a result of Supreme Court decisions under Chief Justice John Marshall, such as the establishment of judicial review in *Marbury v. Madison* and the impact of political party affiliation on the Court.

**USG-1: The student will demonstrate an understanding of foundational political theory, concepts, and application.**

USG-1.4 Analyze the institutional and organizational structure of government that allows it to carry out its purpose and function effectively, including the branches of government and legitimate bureaucratic institutions.

USG-1.5 Evaluate limited government and unlimited government with regard to governance, including rule of law, the role of constitutions, civil rights, political freedom, economic freedom, and the ability of citizens to impact or influence the governing process.

Objectives:

The benefits of the Moot Court activity extend beyond the basic teacher student learning environment. The impact of the program is measured by successfully attaining the following objectives.

**Students will demonstrate an understanding of:**

- the principle of equal justice for all
- the differences of original jurisdiction and appellate jurisdiction
- the structure of an appellate court
- the process of the each participant in the case - Supreme Court Justices, Respondent lawyers, and Appellate lawyers

**Students will be able to:**

- explain and summarize court procedures, the judicial system, Law, and the U.S. Constitution
- cooperate and communicate with others in a civil manner
- summarize, analyze, and discuss the varied aspects of the Case
- analyze the role of a participant in the case

Materials and Resources:

- Online Case Materials
- Room layout to create the courtroom environment
- Computer with internet access

Instruction/Demonstration/Procedures: This lesson will include whole-class instruction, small group collaboration and preparation and individual accountability through the fulfillment of each student's specific role.

Activities:

- <https://goo.gl/ayXFBs> - Political Cartoon analysis
- <https://goo.gl/F9WNtm> - Thomas Jefferson's reaction
- <https://goo.gl/UCGH0U> -The Power of the Judicial Branch, The Federalist Number 78 and the Anti-Federalist 78
- <https://goo.gl/BNuG4l> - Introductory Scenario: Who Should Decide?
- Case study
- Write summary of argument/decision
- Worksheets – Attached at the end

Background Information and Resources:

- <https://www.oyez.org/cases/1789-1850/5us137>
- [http://landmarkcases.org/en/landmark/cases/marbury\\_v\\_madison](http://landmarkcases.org/en/landmark/cases/marbury_v_madison)
- <http://caselaw.findlaw.com/us-supreme-court/5/137.html>
- <http://supreme.findlaw.com/legal-commentary/the-200th-anniversary-of-marbury-v-madison.html>

- [http://avalon.law.yale.edu/18th\\_century/art3.asp](http://avalon.law.yale.edu/18th_century/art3.asp)
- [http://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtID=3&psid=209](http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=209)
- <https://edsitement.neh.gov/lesson-plan/john-marshall-marbury-v-madison-and-judicial-review-how-court-became-supreme>

Assessments/Evaluation:

Final grading rubrics are at the end of the lesson plan.

Suggestion for Review or Closure:

Students will discuss the impact of this particular Supreme Court Decision.

# Case Study

**Students should complete the following steps in small groups.**

1. Review the facts.
  - a. What happened in the case?
  - b. Who are the parties?
  - c. What facts are important? Unimportant?
  - d. Is any significant information missing?
  - e. Why did the people involved act the way they did?
2. Frame the issue: The legal issue is the question of law on which the resolution of the case relies. It should be posed as a question.
3. Discuss the argument
  - a. What are the arguments in favor of and against each point of view?
  - b. Which arguments are most persuasive? Least persuasive? Why?
  - c. What might be the consequences of each course of action to the parties and to society as a whole?
  - d. Are there any alternatives?

All opinions are welcome and will receive a fair hearing and analysis no matter how controversial the issue. You should listen to, consider, and evaluate all points of view.

4. Discuss the decision: What is the answer to the issue or issues posed by the case? Evaluate the decision that was reached. Do you agree or disagree with it? What will the decision mean for the parties and for society as a whole?

# Marbury v. Madison Counsel Score Sheet

\_\_\_\_\_ **General Content (16 points total)**

- Persuasive introduction
- Clear organizational pattern (roadmap)
- Logical, thorough, and accurate use of law and facts
- Clear Conclusion

\_\_\_\_\_ **Responsiveness to Questions (7 points total)**

- Counsel actually answers questions; does not dodge
- Answers further client's argument
- Counsel segues back to argument after answering

\_\_\_\_\_ **Style (7 points total)**

- Appropriate speaking speed and volume
- Eye contact and body language
- Eloquence (use of clear, concise language)

\_\_\_\_\_ **Total Score (out of 30)**

**Overall Feedback:**

# Marbury v. Madison Justices Score Sheet

\_\_\_\_\_ **Content Knowledge (10 points total)**

- Evidence of thorough research into law and facts of the case
- Logical use of research in case

\_\_\_\_\_ **Questions (10 points total)**

- Asks relevant questions
- Questions lead to greater understanding of the case or argument
- Questions are well thought out and worded

\_\_\_\_\_ **Decision (10 points total)**

- Weighs both sides of the argument
- Takes a side and explains why that side is better than the other
- Uses evidence from research and moot court arguments to support the decision

\_\_\_\_\_ **Total Score (out of 30)**

**Overall Feedback:**

## Marbury v. Madison (1803)

### Vocabulary

**lame duck** Referring to officeholders who have not been re-elected and so serve the remainder of their term in office with little backing or authority.

**commission** Official document authorizing certain duties and powers.

**petition** In law, a formal, written request to a court asking for a specific action.

**writ of mandamus** A court order requiring a government official to carry out his or her official duty.

**dilemma** Difficult choice between two relatively equal options.

**original jurisdiction** The authority of a court to be the first to hear and decide a case.

**appellate jurisdiction** The right of a court to hear a case "on appeal" after the original court has acted.

### Reviewing the Case

With the election of 1800, for the first time political parties played an active role in American government. The Federalists supported President John Adams while the Republicans supported Vice President Thomas Jefferson. Each party had its own agenda, based on different governing philosophies and different viewpoints about the Constitution.

In the election, the Federalists lost the presidency and control of both houses of Congress. The only branch of government in which they could exercise any power was the judiciary. Understanding this, the Federalists worked out a strategy to strengthen their hold on the federal courts.

Presidential inaugurations were then in March, giving the "lame duck" Federalists several months. Before the inauguration and the start of the new Republican-dominated Congress, the Federalist Congress passed the Judiciary Act of 1801, which created 62 new judgeships. John Adams, the outgoing President, quickly filled the new jobs with avid Federalists, and the Senate approved his ap-

pointments. Late into the night of March 3, 1801, Adams was still signing the **commissions** of these last-minute nominations. They were sealed with the Seal of the United States by the outgoing Secretary of State and were then to be delivered to the new officials by a State Department clerk. Because of the last-minute rush, not all the commissions could be delivered before Jefferson took office as President on March 4, 1801.

When he learned about the commissions of the "midnight judges," as they were called, Jefferson angrily ordered the commissions withheld. One of the late commissions was for William Marbury, who had been named as a justice of the peace in the District of Columbia. Marbury refused to be denied his job. He convinced three others to accompany him to the State Department, but he was still refused his commission. Marbury then turned to the United States Supreme Court and **petitioned** it for a **writ of mandamus**, which would order the new Secretary of State, James Madison, to deliver the commission or show just cause for not doing so.

Marbury's petition resulted in one of the most significant decisions in the history of the Supreme Court. The issue before the Court: Should the Court issue a writ of mandamus ordering the Secretary of State to deliver commissions to Marbury and the others who had been denied?

The Supreme Court, by unanimous vote, turned down Marbury's request for the court order. Although the justices agreed that Marbury was legally entitled to the commission, the Court would not order the Secretary of State to give it to him. Why not?

Writing for the Court, Chief Justice John Marshall explained the position:

Mr. Marbury, then, since his commission was signed by the President, and sealed by the Secretary of State, was appointed. . . . To withhold his commission, therefore, is an act deemed by the court not warranted by law, but violative of a vested legal right.

The question was not Marbury's right to have the job, but the Court's own constitutional authority. The case had created a dilemma for the Court.

On the one hand, if the Court ruled in favor of Marbury and issued the writ, the new administration under Jefferson most likely would ignore it. That would make the Supreme Court look weak, emphasizing the fact that the Court had no way to enforce its decisions. For that, it had to rely on the executive branch—the people to whom the order applied.

On the other hand, deciding *not* to issue the writ also would make the Court look weak. It would appear as if the Court were avoiding its duty by giving in to the executive branch.

How could the Court disentangle itself from such a treacherous decision? Marshall turned to the Constitution itself to point out that it did not give the Court original jurisdiction in a case like this:

The Constitution vests the whole judicial power of the United States in one Supreme Court, and such inferior courts as Congress shall from time to time, ordain and establish. . . . In the distribution of this power it is declared that "the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction." . . . To enable the Court, then, to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction.

Since Marbury's case had not come from a lower court, the Supreme Court could not act, Marshall said. In addition, its power to issue such writs to public officers came from an Act of Congress, not the Constitution. In structuring the federal courts, Congress had passed the Judiciary Act of 1789, which gave the Supreme Court expanded original powers beyond the Constitution. In following this line of reasoning, Marshall then was faced

with the question of what to do about an act of Congress that violated the Constitution.

His explanation established an important principle:

. . . there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part . . . be true, then a legislative act contrary to the Constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of people, to limit a power in its nature ilimitable. . . .

It is emphatically the province and duty of the judicial department to say what the law is. . . . So if a law be in opposition to the Constitution: if both the law and the Constitution apply to a particular case . . . the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty. . . .

Thus the particular phraseology [wording] of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void. . . .

The long-term significance of this case was Marshall's use of the Constitution to give the Supreme Court the power of judicial review, even though that was not the original issue. While the justices agreed that Marbury was entitled to his court order, the act of Congress that would allow them to issue it went beyond the Constitution. It was the first time the Court openly declared an act of Congress unconstitutional and claimed the right to be the final authority on the meaning of the U.S. Constitution. Judicial review was not used again by the Court in regard to Congress for another 54 years, but in the twentieth century it became a powerful tool for influencing public policy.