

# Chief Justice Marshall's Court & Cases

## High School US/VA Government

**Objectives:** Students will be able to:

- ▶ analyze, interpret, and synthesize evidence from primary and secondary resources;
- ▶ analyze multiple connections across time and place; and
- ▶ access a variety of media, including online resources.

## Standards

**Virginia: GOVT.10b** Evaluating How the Marshall Court Established the Supreme Court as an Independent Branch of Government Through its Opinion in *Marbury v. Madison*;

**GOVT.10e** Investigating and Evaluating How the Judiciary Influences Public Policy by Delineating the Power of Government and Safeguarding the Rights of the Individual

**National: NSS-USH.5-12.4 Era 4** Expansion & Reform (1801-1861)

**NSS-C.5-8.3** Principles of Democracy

**Approx. Time:** One and one-half 90 minute blocks or three 45 minute blocks

**HOOK:** Show students the video clip (below) about the Supreme Court decision to uphold the Affordable Care Act. If students are not aware of it or the details give them some background before you show the clip. After viewing the clip (2.5 minutes), have students discuss whether or not they agree with the decision. Allow for as much time as you believe you need to get them all engaged in the discussion. After that, ask them one last question.

"Where does the Supreme Court get the power to declare a law, like the ACA, constitutional?"

Again, allow for discussion. You may get many answers like "The Constitution" or "I don't know," and you may just get a "*Marbury v. Madison*/judicial review."

If students cannot figure it out, tell them they will discover the answer today.

SCOTUS ACA Decision video clip (Approx. two to two and one half minutes):

**Link:** <https://goo.gl/gisPpu> \*

Today, you will learn that this power came from one of the most important decisions of the Supreme Court - *Marbury v. Madison*. You will also learn how Chief Justice John Marshall's decision defined the role of the judicial branch giving it the power to review all laws and actions of the federal government and declare them unconstitutional, if necessary.

# Chief Justice Marshall's Court & Cases

Name \_\_\_\_\_ Date \_\_\_\_\_

## Judicial Power: Clear As Mud!

Read the following passage from the Constitution, Article III, Section 1.

"The judicial power of the United States, shall be vested in one Supreme Court..."

1. Does the Constitution give a detailed description of what power the Supreme Court has? \_\_\_\_\_

2. What do you think is meant by "judicial power?"

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Under George Washington's presidency, the federal court system was created when Congress enacted the Judiciary Act of 1789, and he signed it into law on September 24, 1789. Because the Constitution was so vague about the powers of the Supreme Court and federal courts, the law also outlined very specific powers the courts had. Below is an example of this from Section 13 of the Judiciary Act:

"The Supreme Court shall...have power to issue...writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

1. Using a computer, device, or textbook define "writ of mandamus."

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2. So, if someone in the government was refusing to do their job, why might you ask for a writ of mandamus from the Supreme Court?

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# Chief Justice Marshall's Court & Cases

Name \_\_\_\_\_ Date \_\_\_\_\_

4. What did Jefferson tell James Madison to do about the "midnight judges?"

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5. What does Marbury ask the Supreme Court to issue to force Madison to give him his commission (job)?

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6. How does Chief Justice John Marshall rule in this case of *Marbury v. Madison*?

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7. With this decision, Marshall creates the idea of "judicial review." What IS judicial review?

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Name \_\_\_\_\_ Date \_\_\_\_\_

## Judicial Review In Action

Judicial review is not just the power of the Supreme Court to declare laws and actions of the FEDERAL GOVERNMENT unconstitutional, it is also the power to declare STATE laws and actions unconstitutional, making the Constitution SUPREME over ALL laws. One great example of this is the *Loving v. Virginia* case.

Watch the following video (approx. two and on half minutes) and answer the questions. <https://goo.gl/joUbqC> \*

### 1. Why were Mildred and Richard Loving arrested in Virginia?

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### 2. What was the punishment for their "crime?"

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### 3. What did the Supreme Court decide?

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### 4. How is this decision an example of judicial review?

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**Struggling Learners:** If students have trouble understanding the documents or drawing conclusions, you should have them work in pairs or small groups to discuss answers. Pairs or groups will share their answers with the class to guide the others.

## Post Assessment

**Struggling Learners:** Twitter Poll—create a question in Twitter with up to four choices and get instant feedback. You and the students must have a Twitter account to participate but it is EASY, fun, and interactive. Instructions can be found here: <https://goo.gl/6hgu5w>

**Advanced Learners:** Use the online article (below) about Supreme Court cases every teenager should know. Have students

- ▶ select a case,
- ▶ create a poster for that case, and
- ▶ explain how it is an example of judicial review. Have them share with the class and allow sufficient discussion about the cases. (This is great for class discussion!)

| **Link:** <https://goo.gl/ZAiPae> \*

# Chief Justice Marshall's Court & Cases

## Lame Ducks & Midnight Judges

From website 1801 Judiciary Act: Midnight Judges:

| <http://www.american-historama.org/1790-1800-new-nation/1801-judiciary-act-midnight-judges.htm> \*

### The 1801 Judiciary Act for kids: Midnight Judges - The 'Lame Duck' Congress

Thomas Jefferson was voted as the next President in November 1800, but would not assume office until March in the following year. This enabled President Adams to get things done before the new president and his political party took over. The two men were from opposing political parties. Adams was a Federalist and Jefferson a Democrat-Republican. During the time between the end of the old presidency and the start of the new, the 'Lame Duck' Congress took the opportunity to pass the Judiciary Act of 1801 to give Adams the power to appoint new judges. This ensured additional Federalists would be in powerful positions in the new government.

### Purpose of the 1801 Judiciary Act: Midnight Judges

The act significantly enlarged the national judiciary, and Adams seized the opportunity to appoint his Federalist friends and supporters to the new offices. These men could be depended upon to protect Federalist legislation from the rising Democratic-Republicans.

### Why Midnight Judges?

The judges who were appointed to these new courts were called "Midnight Judges" by the Republicans because they were last minute appointments. President John Adams was alleged to have stayed up until midnight on March 3, 1801 completing the paperwork before his term in office ended the following day on March 4, 1801.

### The 1801 Judiciary Act: William Marbury

President John Adams appointed 16 Federalist circuit judges and 42 Federalist justices. One of the "Midnight Judges" was William Marbury, who was named as Justice of the Peace for the District of Columbia.

1801 Judiciary Act: Midnight Judges - President Jefferson refuses to appoint the 'Midnight Judges

Thomas Jefferson and the Republicans were furious about the passing of the 1801 Judiciary Act. President Jefferson refused to allow the 'Midnight Judges' to take office (including William Marbury). Jefferson instructed his Secretary of State, James Madison, not to deliver the "commission," or notices, of appointment.

### 1801 Judiciary Act: Midnight Judges - William Marbury Sues (Writ of Mandamus)

William Marbury sues the government (on the behalf of several other judges) and demanded that the Court issue a 'Writ of Mandamus'. This writ is "writ of mandate" which orders a public agency or governmental body to perform an act required by law when it has refused to do so. This was a power given by the Judiciary Act of 1789. William Marbury believed that this action would force President Jefferson to accept these appointments.

### 1801 Judiciary Act for kids: Midnight Judges - Chief Justice Marshall

The matter was referred to Chief Justice John Marshall of the Supreme Court in *Marbury v. Madison*. Chief Justice Marshall ruled that the 1789 Judiciary Act was unconstitutional because it gave the Judicial Branch of government powers not granted to it by the Constitution. The Supreme Court could therefore not compel President Jefferson to accept the appointment of William Marbury. The Federalist William Marbury never became Justice of the Peace in the District of Columbia.

### Repeal of the 1801 Judiciary Act for kids: The 1802 Judiciary Act

President Jefferson repealed the 1801 Judiciary Act on March 8, 1802 by passing the 1802 Judiciary Act. The 1802 Judiciary Act effectively reversed the Federalist law of 1801 and turned the clock back to the law according to the Judiciary Act of 1789. The Jefferson administration also got rid of many other Federalist officials by repealing the Internal Revenue Act. "Jefferson got repealed all the direct federal taxes passed by the Federalists and boasted that ordinary Americans would never see a federal tax collector in their whole lives."

### 1801 Judiciary Act for kids: Midnight Judges - Judicial Review

The case of *Marbury v. Madison* set the precedent that the federal judiciary could review the acts of the other two branches of government. This principle became known as judicial review meaning that the Supreme Court can overrule both state and federal laws if they conflict with the Constitution. This meant that the Supreme Court always had the ultimate check on legislative and executive power - effectively putting the brake on the power of the government when enacting future laws.