

## 3 The Supreme Court

### Section Preview

#### OBJECTIVES

1. **Define** the concept of judicial review.
2. **Outline** the scope of the Supreme Court's jurisdiction.
3. **Examine** how cases reach the Supreme Court.
4. **Summarize** the way the Court operates.

#### WHY IT MATTERS

The Supreme Court, the only court created by the Constitution, is the final authority on questions of federal law. It enjoys broad jurisdiction but usually limits its caseload to appeals involving constitutional questions and interpretations of federal law.

#### POLITICAL DICTIONARY

- ★ writ of certiorari
- ★ certificate
- ★ majority opinion
- ★ precedent
- ★ concurring opinion
- ★ dissenting opinion

The eagle, the flag, Uncle Sam—you almost certainly recognize these symbols. They are used widely to represent the United States. You probably also know the symbol for justice: the blindfolded woman holding a balanced scale. She represents what is perhaps this nation's loftiest goal: equal justice for all. Indeed, those words are chiseled in marble above the entrance to the Supreme Court building in Washington, D.C.

The Supreme Court of the United States is the only court specifically created by the Constitution, in Article III, Section 1. The Court is made up of the Chief Justice of the United States, whose office is also established by the Constitution,<sup>9</sup> and eight associate justices.<sup>10</sup> The Framers quite purposely placed the Court on an equal plane with the President and Congress. As the highest court in the land, the Supreme Court stands as the court of last resort in all questions of federal law. That is, it is the final authority in any case involving any question arising under the Constitution, an act of Congress, or a treaty of the United States.

### Judicial Review

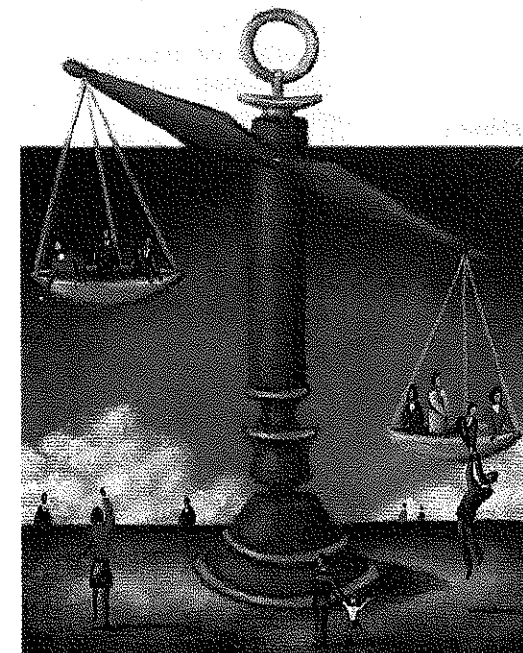
Remember, most courts in this country, both federal and State, may exercise the critically important power of judicial review. They have the extraordinary power to decide the constitutionality of an act of government, whether executive, legislative, or judicial. The ultimate exercise of that power rests with the Supreme

Court of the United States. That single fact makes the Supreme Court the final authority on the meaning of the Constitution.

The Constitution does not in so many words provide for the power of judicial review. Still, there is little doubt that the Framers intended

<sup>9</sup>Article I, Section 3, Clause 6.

<sup>10</sup>Congress sets the number of associate justices and thus the size of the Supreme Court. The Judiciary Act of 1789 created a Court of six justices, including the Chief Justice. Its size was reduced to five members in 1801 but increased to seven in 1807, to nine in 1837, and to 10 in 1863. It was reduced to seven in 1866 and raised to its present size of nine in 1869.



▲ A scale is often used to represent justice.

that the federal courts—and, in particular, the Supreme Court—should have this power.<sup>11</sup>

### Marbury v. Madison

The Court first asserted its power of judicial review in the classic case of *Marbury v. Madison* in 1803.<sup>12</sup> The case arose in the aftermath of the stormy elections of 1800. Thomas Jefferson and his Democratic-Republicans had won the presidency and control of both houses of Congress. The outgoing Federalists, stung by their defeat, then tried to pack the judiciary with loyal party members. Congress created several new federal judgeships in the early weeks of 1801; President John Adams quickly filled those posts with Federalists.

William Marbury had been appointed a justice of the peace for the District of Columbia. The

<sup>11</sup>See Article III, Section 2, setting out the Court's jurisdiction, and Article VI, Section 2, the Supremacy Clause.

<sup>12</sup>It is often mistakenly said that the Court first exercised the power in this case, but in fact the Court did so at least as early as *Hylton v. United States* in 1796. In that case it upheld the constitutionality of a tax Congress had laid on carriages.

Senate had confirmed his appointment and, late on the night of March 3, 1801, President Adams signed the commissions of office for Marbury and for a number of other new judges. The next day Jefferson became the President, and discovered that Marbury's commission and several others had not yet been delivered.

Angered by the Federalists' attempted court-packing, Jefferson at once told James Madison, the new secretary of state, not to deliver those commissions to the "midnight justices." William Marbury then went to the Supreme Court, seeking a writ of mandamus<sup>13</sup> to force delivery.

Marbury based his suit on a provision of the Judiciary Act of 1789, in which Congress had created the federal court system. That law gave the Supreme Court the right to hear such suits in its original jurisdiction (not on appeal from a lower court).

<sup>13</sup>A writ of mandamus is a court order compelling a government officer to perform an act which that officer has a clear legal duty to perform.

In a unanimous opinion written by Chief Justice John Marshall, the Court refused Marbury's request.<sup>14</sup> It did so because it found the section of the judiciary act on which Marbury had based his case to be in conflict with the Constitution and, therefore, void. Specifically, it found the statute in conflict with the section of the Constitution that reads:

**FROM THE CONSTITUTION** "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction. . . ."

—Article III, Section 2, Clause 2

Marshall's powerful opinion was based on three propositions. First, the Constitution is, by its own terms, the supreme law of the land. Second, all legislative acts and other actions of government are subordinate (inferior) to the supreme law and cannot be allowed to conflict with it. Third, judges are sworn to enforce the provisions of the Constitution, and therefore must refuse to enforce any government action they find to be in conflict with it.

### The Effects of Marbury

The impact of the Court's decision goes far beyond the fate of an obscure individual named William Marbury. In this decision, Chief Justice Marshall claimed for the Supreme Court the right to declare acts of Congress unconstitutional, and so laid the foundation for the judicial branch's key role in the development of the American system of government.

The Court has used its power of judicial review in thousands of cases since 1803. Usually it has upheld the constitutionality of federal and State actions.

The dramatic and often far-reaching effects of the Supreme Court's exercise of the power of

<sup>14</sup>Marshall was appointed Chief Justice by President John Adams, and he took office on January 31, 1801. He served in the post for 34 years, until his death on July 6, 1835. He also served as Adams's secretary of state from May 13, 1800, to March 4, 1801. Thus, he served simultaneously as secretary of state and Chief Justice for more than a month at the end of the Adams administration. What is more, he was the secretary of state who had failed to deliver Marbury's commission in a timely fashion.

## Voices on Government

David Souter was named a Supreme Court justice by President George Bush in 1990. From his experience as New Hampshire attorney general and a State court judge, Souter knew that judges' decisions are more than abstract legal ideas. Here are his thoughtful insights on justice:



"Whether we are on a trial court or an appellate court, at the end of our task some human being is going to be affected. . . . If indeed we are going to be trial judges, whose rulings will affect the lives of other people and who are going to change their lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."

### Evaluating the Quotation

Think of an issue that reflects the "human" effects of court decisions that Souter refers to. In what ways did a court decision affect the daily lives of Americans?

judicial review tends to overshadow much of its other work. Each year it hears dozens of cases in which questions of constitutionality are not raised, but in which federal law is interpreted and applied. Thus, many of the more important statutes that Congress has passed have been brought to the Supreme Court time and again for decision. So, too, have many of the lesser ones. In interpreting those laws and applying them to specific situations, the Court has had a real impact on both their meaning and their effect.

### Supreme Court Jurisdiction

The Supreme Court has both original and appellate jurisdiction. Most of its cases, however, come on appeal—from the lower federal courts and from the highest State courts.

Article III, Section 2 of the Constitution spells out two classes of cases that may be heard by the High Court in its original jurisdiction: (1) those to which a State is a party and (2) those affecting ambassadors, other public ministers, and consuls.

Congress cannot enlarge on this constitutional grant of original jurisdiction. Recall, that

## An Early Supreme Court Drama: Marbury v. Madison

### The Players

**John Adams**, outgoing Federalist President of the United States

**Thomas Jefferson**, incoming Democratic-Republican President of the United States

**James Madison**, incoming secretary of state

**William Marbury**, appointed a justice of the peace for the District of Columbia

**John Marshall**, Chief Justice of the United States Supreme Court

### The Case

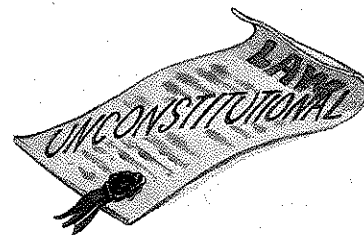
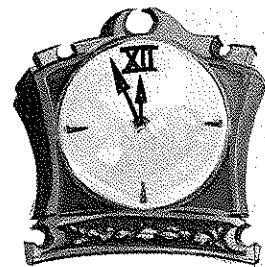
1. The night before leaving office, Adams signs several judicial commissions.
2. Angered by Adams' actions, Jefferson orders Madison to withhold any commissions not yet delivered.
3. Hoping to force Jefferson to give him the judgeship, Marbury files suit in the Supreme Court. He argues that the Judiciary Act of 1789 allows him to take his case directly to the high court.

### The Decision

Marshall, writing for a unanimous court, declares that the Judiciary Act violates Article III, Section 2 and is therefore unconstitutional. Marbury loses, having based his case on an unconstitutional law.

### The Impact

The case established the Supreme Court's power of judicial review—its power to determine the constitutionality of a governmental action. The power extends to the actions of all governments in the United States—national, State and local. The Court's decision in *Marbury* assured the place of the judicial branch in the system of separation of powers.



**Interpreting Charts** In the landmark case *Marbury v. Madison*, the Supreme Court ruled against William Marbury because he had based his case on a part of the Judiciary Act of 1789, which was found to be in conflict with the Constitution. **How did the Court's decision affect the role of the judicial branch in our system of government?**