

Classifying Arguments Activity

Marbury v. Madison (1803)

After reading the **background, facts, issue, constitutional provisions, and federal law**, read each of the arguments below. If the argument supports the petitioner, Marbury, write **Marbury** on the line after the argument. If the argument supports the respondent, Madison, write **Madison** on the line after the argument. Work in groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

Arguments

1. Secretary of State Madison, as an official of the executive branch, was required to obey President Adams' official act. Therefore, the Court should exercise its authority under the Judiciary Act to issue a writ of *mandamus* against Madison.

2. Article III states that Congress can make exceptions to which cases have original jurisdiction in the Courts. The case falls under original jurisdiction of the Supreme Court.

3. The appointment of Marbury to his position was invalid because his commission was not delivered before the expiration of Adams' term as president.

4. The Judiciary Act of 1789 clearly gives the Supreme Court the power to order the commission be delivered.

5. The case falls under the appellate, not original, jurisdiction of the Supreme Court. It should be tried in the lower courts first.

6. The appointment of commissions raised a political issue, not a judicial one. Therefore, the Supreme Court should not be deciding this case.

7. Marbury's commission was valid, whether it was physically delivered or not before the end of President Adams' term, because the president had ordered it.

Marbury v. Madison (1803)

Argued: February 11, 1803

Decided: February 24, 1803

Background

Article III of the U.S. Constitution, which provides the framework for the judicial branch of government, is relatively brief and broad. It gives the Supreme Court the authority to hear two types of cases: original cases and appeals. “Original jurisdiction” cases start at the Supreme Court—it is the first court to hear the case. “Appellate jurisdiction” cases are first argued and decided by lower courts and then appealed to the Supreme Court, which can review the decision and affirm or reverse it.

In order to build the court system and clarify the role of the courts, Congress passed the Judiciary Act of 1789. This law authorized the Supreme Court to “issue writs of *mandamus* ... to persons holding office under the authority of the United States.” A writ of *mandamus* is a command by a superior court to a public official or lower court to perform a special duty. These are common in court systems.

In 1801, at the end of President John Adams’ time in office, he appointed many judges from his own political party before the opposing party took office. It was the responsibility of the secretary of state, John Marshall, to finish the paperwork and give it to each of the newly appointed judges—this was called “delivering the commissions.” Although Marshall signed and sealed all of the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job. However, when Thomas Jefferson became president, he told his new secretary of state, James Madison, not to deliver some of the commissions because he did not want members of the opposing political party to assume these judicial positions. Those individuals could not take office until they actually had their commissions in hand.

Facts

William Marbury, who had been appointed a justice of the peace of the District of Columbia, was one of the appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court to issue a writ of *mandamus* requiring Madison to deliver the commission.

The politics involved in this dispute were complicated. The new chief justice of the United States who was being asked to decide this case was John Marshall, the Federalist secretary of state who had failed to deliver the commission. President Jefferson and Secretary of State Madison were Democratic-Republicans who were attempting to prevent the Federalist appointees from taking office. If Chief Justice Marshall and the Supreme Court ordered Madison to deliver the commission, it was likely that he and Jefferson would refuse to do so, which would make the Court look weak. However, if they did not require the commission delivered, it could look like they were backing

down out of fear. Chief Justice Marshall instead framed the case as a question about whether the Supreme Court even had the power to order the writ of *mandamus*.

Issues

Does Marbury have a right to his commission, and can he sue the federal government for it? Does the Supreme Court have the authority to order the delivery of the commission?

Constitutional Provisions and Federal Law

– **Article III, Section 2, Clause 2 of the U.S. 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, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.”

– **The Judiciary Act of 1789**

This Act authorized the Supreme Court to “issue writs of *mandamus* ... to persons holding office under the authority of the United States.”