

## Marbury v. Madison / Background •••—Answer Key

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Thomas Jefferson, a member of the Democratic-Republican Party, won the presidential election of 1800. The outgoing president, John Adams, proceeded to rapidly appoint 58 members of his own party to fill government posts created by Congress.

It was the responsibility of President Adams' secretary of state, John Marshall, to "deliver the commissions," finish the paperwork, and give it to each of the newly appointed judges. Although Marshall signed and sealed all the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job, but 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 take office. Those people could not take office until they actually had their commissions in hand.

William Marbury, whom President Adams had appointed as justice of the peace of the District of Columbia, was one of the last-minute appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court of the United States to issue a writ of *mandamus*—a court order that requires an official to perform or refrain from performing a certain duty. In this case the writ would have ordered Madison to deliver the commission.

Marbury argued that he was entitled to his commission and that the Judiciary Act of 1789 gave the Supreme Court of the United States original jurisdiction to issue a writ of *mandamus*. Madison disagreed. When the case came before the Court, John Marshall—the person who had failed to deliver the commission in the first place—was the new chief justice. The Court had to decide whether Marbury was entitled to his job, and if so, whether the Judiciary Act of 1789 gave the Court the authority it needed to force the secretary of state to appoint Marbury to his position. If this situation were to arise today, Chief Justice Marshall would likely recuse himself because of a conflict of interest.

### Questions to Consider

1. Who was Chief Justice Marshall likely to side with, Marbury or Madison? Why?  
Chief Justice Marshall is likely to side with Marbury. They are from the same political party, and it was Marshall who signed and sealed the commissions but neglected to deliver the commission in the first place. By siding with Marbury, he could "finish the job" that he had left undone.
2. If the Court decided that Marbury was entitled to the commission, how could it be sure that the executive branch would deliver it? Does the Court have the power to force compliance?

If the Court decides that Marbury is entitled to his job, the Court has no way of ensuring that the executive branch delivers the commission. If the executive branch fails to deliver it, the Court has no real recourse.

3. What might happen if the Court issued the writ, but the executive branch refused to comply? If the Court issued the writ, but the executive branch refused to comply, the commission would go undelivered and the Court would appear weak.
4. According to Article III, Section 2 of the Constitution (see below), in what types of cases does the Supreme Court of the United States have original jurisdiction? Does Congress have the authority to alter the Court's jurisdiction?

#### **Article III, Section 2 of the U.S. Constitution**

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

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 trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Article 3, Section 2 of the Constitution says, that the Supreme Court has original jurisdiction "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party." In that same paragraph, the Constitution says, "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." Based on that clause Congress does have the authority to alter the Court's jurisdiction, at least to some extent.