

Commemorating the
200th Anniversary of

MARBURY



MADISON

THE SUPREME COURT'S FIRST GREAT CASE

FEBRUARY 1803

MARBURY V. MADISON is perhaps the most important opinion in Supreme Court history. It secured the Court's power of judicial review—its ability to uphold or deny the constitutionality of congressional or executive actions—and established the judiciary as an independent, co-equal branch of the federal government.

Political Turmoil

Marbury v. Madison was decided amidst political turmoil that directly threatened the judiciary. President John Adams and his Federalist party had been defeated by Thomas Jefferson and his Republicans in the

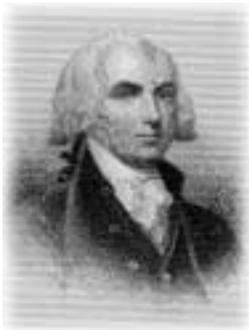


John Adams As second President of the United States, Adams appointed a number of “midnight judges” in the final days of his administration following his defeat by Thomas Jefferson in the 1800 elections. Political rivals, Adams and Jefferson died on the same day, July 4, 1826.

1800 elections. Between this defeat and Jefferson's March 4, 1801 inauguration, Adams and the Federalist-dominated Congress passed the controversial Judiciary Act of 1801 and additional legislation concerning the District of Columbia's judicial system. A key provision of the Judiciary Act created 16 new federal circuit judgeships, while the District of Columbia legislation authorized the President to appoint such number of justices of the peace as he deemed necessary for the District.

The Jeffersonian Republicans were infuriated when Adams, before he left office, nominated all 16 federal circuit court judges (labeled the “Midnight Judges”) authorized by the new judiciary act. These nominees were promptly confirmed by the lame-duck, Federalist-controlled Senate. William Marbury was part of another wave of “midnight appointments”—one of 42 justices of the peace nominated and confirmed for service in the District of Columbia in the final days of Adams' term. Marbury's commission (the document authorizing him to take his office) was among a handful that were sealed but not delivered before Adams' term expired.

When Jefferson took office, he refused to acknowledge Adams' commissions for the District of Columbia justices of the peace. Then, in December 1801, James Madison, Jefferson's secretary of state, was directed



James Madison Later the fourth President of the United States, Madison served as Jefferson's secretary of state and was responsible for delivering judicial commissions. William Marbury asked the Supreme Court to compel Madison to deliver his commission, signed by President Adams.

by the Supreme Court to show cause why a writ of *mandamus* should not issue from the Court ordering Madison to deliver the commission to William Marbury. The “show cause” order signaled that the Supreme Court was preparing to intervene in the controversy surrounding Adams' various “midnight appointments.” Many commenta-

tors have identified this order as the event that propelled the Republicans to revoke the 1801 Judiciary Act and eliminate the 16 federal judgeships it had created.

The Republican Congress then passed the Judiciary Act of 1802, which among other provisions established one annual Supreme Court term beginning on the first Monday in February. The practical effect of this provision was that both Supreme Court terms scheduled for 1802, one in June and one in December, were cancelled, putting the Supreme Court out of action for the year and delaying arguments on Marbury's case. As arguments on the Marbury case approached in 1803, the House of Representatives began impeachment proceedings against a federal judge in New Hampshire, demonstrating its willingness to pursue impeachment of federal judges.

Thomas Jefferson Adams' successor as President, Thomas Jefferson refused to acknowledge several of Adams' “midnight” judicial appointments. Jefferson and John Marshall were cousins but were in separate political camps.

The Supreme Court thus faced an administration that had declared Adams' appointment of the District of Columbia justices of the peace invalid, and that would likely refuse to recognize a Court order to deliver Marbury's commission. It also faced a Congress demonstrably hostile to a Federalist-dominated judiciary. The Supreme Court was in an apparent bind. If it ruled in Marbury's favor, it could demonstrate its weakness by issuing an order that the executive branch would ignore. If it denied Marbury's claim, it would risk the appearance of submission to Congress's threatened power.



William Marbury One of the “midnight judges” appointed in the last days of the Adams administration, William Marbury was among a handful of appointees whose commissions were signed and sealed but not delivered before Adams left office.

Power Surrendered, Power Gained

Chief Justice John Marshall authored the *Marbury v. Madison* opinion. As the opinion first affirms Marbury’s legal right to the office and then asserts that refusal to deliver his commission clearly violated that right, Marshall seems to be leading the Court toward a direct confrontation with the Jefferson administration. It is only in the final pages of the opinion, where Marshall declares that Congress violated the Constitution in granting the Supreme Court power to issue the writ sought by Marbury, that this confrontation is avoided. The genius of the opinion is that it manages to recognize the legitimacy of Marbury’s claim, chastise Jefferson’s administration for refusing to deliver it, and claim the right to define constitutional limits on Congress’s power, while denying the Supreme Court’s power to give Marbury the remedy he seeks.

Looking at the decision through the lens of the volatile political climate of the time, Marshall managed to confound his opponents by limiting the Court’s power in the Marbury matter while asserting a much more important and far-reaching power—judicial review. *Marbury v. Madison* struck down the section of the 1789 Judiciary Act that had given the Supreme Court power to issue writs of *mandamus*, court orders compelling performance of specific actions (delivery of Marbury’s commission, for example). The Court held that this legislative grant of power violated the Constitution’s limited grant of original jurisdiction to the Court in Article III, Section 2. As a result, the Supreme Court lacked jurisdiction to provide Marbury the remedy he sought for what the Court acknowledged as his violated right to his judicial commission.

Although *Marbury v. Madison* limited the Court’s power in one narrow respect, it claimed for the Court the much broader power of judicial review. The Constitution, Marshall declared, was the product of the people’s exercise of their original right to establish the principles for their government. This exercise represented a “very great exertion,” one that could not and should not be frequently repeated, and established fundamental principles of supreme authority. The judiciary’s duty is to say what the law is; thus courts are to decide which is the governing law if two laws conflict. And because the Constitution is superior to any ordinary legislative act, “the Constitution, and not such ordinary act, must govern the case to which they both apply.”

Marshall was careful to acknowledge the legislature’s and executive’s rights to interpret the Constitution within their own spheres of power.

His assertion that “it is emphatically the province . . . of the judicial department to say what the law is” is one of the most frequently quoted lines from the *Marbury* opinion. But Marshall also notes that “the province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion.” With respect to Congress, the *Marbury* opinion has less to say, but subsequent decisions by the Marshall Court demonstrated its willingness to give broad deference to Congress’s ability to interpret and apply the Constitution within its sphere of power.

For the remainder of Chief Justice Marshall’s tenure of more than thirty years, the Court struck down no other acts of Congress. The power of judicial review did not, however, lay dormant. In a series of decisions, the Court asserted its power to review the decisions of state supreme courts and the actions of state legislatures when they touched upon issues involving the Constitution or federal law. The supremacy of the federal government over the states, in other words, became the Marshall Court’s focus.

John Marshall The “Great Chief Justice,” John Marshall wrote the opinion in *Marbury v. Madison*. As John Adams’ secretary of state, Marshall had also been responsible for sealing and delivering William Marbury’s judicial commission.

Marbury’s Legacy

The power of judicial review established by *Marbury* has enabled the Court to effect revolutionary change in our understanding of constitutional provisions. This power has, not unexpectedly, drawn both criticism and praise over the Court’s history. But it has never been a power completely beyond the control of the other branches of government. From the President’s power to nominate and the Senate’s power to confirm Supreme Court justices to the occasional “great exertions” of constitutional amendment, the Court remains firmly embedded within our Constitution’s system of checks and balances.

At the same time, judicial review has ensured that the Supreme Court’s justices, once confirmed, have sufficient power to exert their independence from the political branches and enforce constitutional limits on their powers. The Court’s supremacy in constitutional interpretation rests in part on popular respect and esteem for the Court’s opinions. That such supremacy is widely acknowledged today is indicative of the care with which the Court has generally wielded its power of judicial review, a tradition begun by the “Great Chief Justice,” John Marshall.



BEYOND *MARBURY*: A HISTORY OF JUDICIAL REVIEW

Dred Scott v. Sandford

When the Supreme Court next used its power of judicial review to strike down an act of Congress, it needed all the good will the Marshall Court had accumulated. The case was *Scott v. Sandford*, commonly known as the *Dred Scott* decision, perhaps the most reviled opinion in Supreme Court history.



Dred Scott, a slave living in Missouri, sued for his freedom in a Missouri state court based on a four-year period he had spent living with his master in the free state of Illinois and territory in present-day Minnesota that had been declared free by Congress in the 1820 Missouri Compromise. The trial court granted his freedom, but the Missouri Supreme Court overturned its decision. In 1857, when the case reached the U.S. Supreme Court, a 7-2 majority ruled that it had no jurisdiction over the case because blacks were not citizens of the United States, as defined by the Constitution, with a right to sue in the federal courts. The Court then went on to conclude

that “the right of property in a slave is distinctly and expressly affirmed in the Constitution” and that nothing in the Constitution gave Congress greater power over slave property than other types of property. Accordingly, the opinion declared, “the act of Congress which prohibited a citizen from holding and owning [slave] property . . . in the territory of the United States . . . is not warranted by the Constitution, and is therefore void.” The constitutionality of the Missouri Compromise was denied along with Dred Scott’s freedom.

The Court’s decision placed significant constraints upon Congress’s ability to work a compromise between the free and slave states, and it is frequently cited as a turning point in American history, setting the nation firmly on course toward the Civil War. It was ultimately rendered moot by the Thirteenth and Fourteenth Amendments to the Constitution, which abolished slavery in the United States and made all persons born or naturalized in the United States citizens of the United States and of the state in which they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The Fourteenth Amendment (1868)

The *Lochner* Era

The Fourteenth Amendment’s language provided the grounds from which the Supreme Court launched the *Lochner* era, the first period in its history defined largely by the Court’s exercise of judicial review.

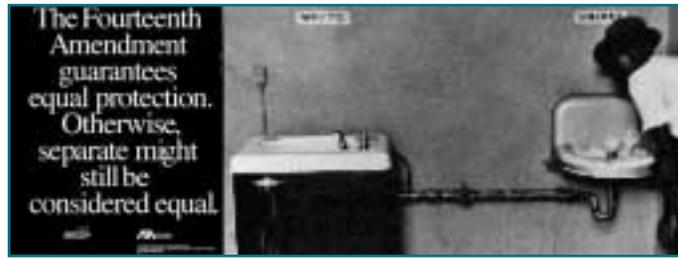
The amendment was initially interpreted solely in terms of the protections it guaranteed to former slaves. But in the 1870s, a group of lawsuits known as the *Slaughterhouse Cases* argued for a more expansive interpretation. The suits challenged that a state-granted monopoly to a centralized slaughterhouse company, justified by the need to oversee potentially unsanitary practices, infringed upon a right to labor possessed by independent butchers and included within the privileges of citizenship protected by the Fourteenth Amendment. A five-member majority of the Court disagreed, but the seeds for the more expansive reading were sown in Justice Field’s dissent, which argued that the butchers’ right to labor was part of the “privileges and immunities” enjoyed by United States citizens.

The *Slaughterhouse Cases* also identified the battleground upon which *Lochner*-era conflicts between the Court and legislators would be fought. On the one hand was the legislative prerogative to enact regulations protecting citizens’ health, safety, and morals, known at the state level as the “police powers.” On the other hand were “privileges and immunities” of United States citizens, as well as the “life, liberty, or property” that the Fourteenth Amendment protected against state abridgement “without due process of law.” After the *Slaughterhouse Cases*, the “due process” clause emerged as the source for “fundamental

liberties”—including the liberties to labor and to contract—that the Court found underlying the language of the Constitution and the Fourteenth Amendment.

In *Lochner v. New York*, decided in 1905, a majority of the Court used the new theory of “substantive due process” to strike down a New York state law regulating the weekly maximum number of hours bakers could work as an improper interference with liberty of contract. Many critics charged that the *Lochner* decision usurped the legislature’s authority, striking down legislation that did not clearly violate the Constitution—an early example of “judicial activism.”

The *Lochner* era ended in 1937. Conflicts between the Court and the Roosevelt administration over the constitutionality of “New Deal” legislation provoked a showdown when Roosevelt proposed a “court-packing” scheme. Unwilling to pursue the lengthy and uncertain process of constitutional amendments to overrule the Court, Roosevelt sought Congress’s support in expanding the Court’s size, thus ensuring a favorable majority of justices. The scheme ultimately failed—one of Roosevelt’s few political disappointments—amid public outcry over the scheme’s interference with the Court’s independence. A crucial swing vote nonetheless provided a majority of justices favorable to New Deal reforms (the “switch in time that saved nine”). And within a few years, the retirement or death of several justices gave Roosevelt the opportunity he had sought to appoint new justices in a far less controversial manner.



Brown v. Board of Education and the Civil Rights Era

The end of the *Lochner* era marked a shift in the Court's use of judicial review, which followed two new paths in the post-World War II years. The first was the protection of minority rights, based upon a broad reinterpretation of the Fourteenth Amendment's guarantee of equal protection under the law. Since its 1896 decision in *Plessy v. Ferguson*, the Supreme Court had upheld the doctrine of "separate but equal," which enabled states to establish racially segregated public facilities and schools through a body of laws known as "Jim Crow."

In 1954, the Court's decision in *Brown v. Board of Education* effectively overturned *Plessy v. Ferguson* by holding that, in the field of public education, "separate but equal" had no place. Regardless of the supposed "equality" of physical facilities and other tangible factors between segregated schools, the *Brown* court unanimously affirmed that "intangible" factors, including the feelings of inferiority segregated schools inevitably bred, made "separate educational facilities . . . inherently unequal." State "Jim Crow" laws mandating segregated schools were thus declared unconstitutional.

The Court's second post-war path has proved more controversial. This path has identified a constitutional "right to privacy" and led to the Court's 1973 *Roe v. Wade* decision that struck down state legislation prohibiting abortion. The *Roe* decision held that the Fourteenth Amendment's due process clause protects an implicit right to privacy that must be balanced with a state's legitimate interest in protecting potential human life. The *Roe* decision struck that balance at the point of the fetus's "viability"—its capacity to have meaningful life outside of the mother's womb. Not until viability, the Court held, does the state's interest in the potentiality of life become sufficiently compelling to override the right to privacy. Some commentators see in the right to privacy a modern-day equivalent of the "substantive due process" rights defined by the *Lochner*-era Court, similarly lacking an explicit foundation in the Constitution's text. Yet few today would argue that, absent a constitutional amendment, either the Congress or the executive branch has the power to ignore the Court's holdings within its own sphere of power.



Collection, The Supreme Court Historical Society. Photographed by Robin R. Reid. R. Reid Photography

Federalism and the Rehnquist Court

A majority of the current Supreme Court justices have opened a new path of judicial review in the areas of federalism and states' rights. Congress has for many years tied much of its legislation to a broad interpretation of its constitutional right to regulate interstate commerce. In 1995, Chief Justice William Rehnquist authored a majority opinion in *United States v. Lopez* that announced the Supreme Court's intention to define an outer limit on Congress's legislative authority under the Commerce Clause.

Lopez struck down the Gun-Free School Zones Act of 1990 on the grounds that the act did not regulate a commercial activity and did not

require that possession of a firearm be connected to interstate commerce. Five years later, in *United States v. Morrison*, the Court affirmed a lower court's decision striking down the federal Violence Against Women Act.

In both *Lopez* and *Morrison*, the Court rejected what it saw as a weak causal chain between essentially noneconomic violent conduct and the effect of that conduct on interstate commerce. Such reasoning, the *Morrison* majority said, would essentially dissolve the boundaries between the national and the local, eroding the police powers that the Constitution vests in the states.

Grades 4-6 Strategy • Introducing Students to Early American Courts

Title: Here Comes the Judge!

Time: 1 class period

Objectives

Students will be

- Introduced to the concept of circuit court judges.
- Made aware of the of the term *circuit court rider*.

Preparation

- Provide the teacher with an advance copy of the activity. Because the activity involves a Q&A format, the teacher's support is important.
- The teacher's assistance is essential in assigning students to teams to ensure successful team relationships.
- There are no additional materials needed for this presentation.

Introduction

Establish a focus by asking the students if they have ever heard the term *circuit rider* or *circuit judge rider*? It is doubtful students will know the term, but allow them to guess at a few options.

Explain that today the term *circuit judge* or *circuit court* refers to a legal geographical district or area. Remind the students that in the early days of our country, transportation between cities was not always easy. Therefore, judges would get on their horses and "ride the circuit" (a regular route), hearing cases in one town and then moving to the next town.

Activity

Explain that today you hope to have a fun question-and-answer time that will teach about the role of the circuit judge rider in our country. With the assistance of the teacher, have the students move their desks together to allow two students to work as a team. Remind the students to raise their hands if they know the answer. You may want to have a longer discussion on any of the questions.

1. What does the term *circuit* mean?
A defined geographical area; a definite path or route to follow
2. What does the term *judge* mean?
A public official whose responsibility it is to hear legal arguments and pass judgment
3. What does the term *rider* mean?
A person who travels by horseback or vehicle
4. Let's put the terms together. What does the term *circuit judge rider* mean?
A judge who traveled on a regular schedule and regular route, first by horseback and then later by vehicle, from town to town setting up court, hearing cases, and passing judgment
5. When the judges would ride the circuit, did they go in any direction they pleased?
No, there was very specific route the judges would follow.

6. Why did the judges need to "ride the circuit"?
 - *The number of judges in the United States was not sufficient to cover the entire country.*
 - *A district or town usually could not afford to pay for a full-time judge.*
 - *The distance between towns and communities was often great. People could not afford to take off from their work or jobs to travel to a town where a judge would be.*
 - *Many people felt it was essential to take the government and its interpretation of the law to the people, "linking" the people with the government.*
7. When the judges held court in the various towns, where would they hold court?
Many towns did not have an official courthouse. Therefore, they would hold court in community meeting houses, schools, etc.
8. Do you think this job was a good job? Why and why not? (Have one team answer the why and another the why-not segments.)
Good Job: enjoyed traveling, meeting people, making the connection between the law and the people
Bad Job: away from families for long periods of times, sometimes dangerous traveling conditions, lonely traveling alone
9. When do you think the practice or custom or "riding the circuit" disappeared?
Not until the 1890s
10. Would you like to be a circuit judge rider? (Answers will vary.)

Closure

Remind the students of the following facts.

- All citizens enjoy freedoms because the United States has laws to protect their rights.
- In the early days of our country, when it was difficult for people to get to the courts to have their rights protected, the law was taken to the people.

Briefly link the lesson to the principle of the rule of law, the case of *Marbury v. Madison*, and judicial review.

- These lone judges, far from home, represented the rule of law as they rode the circuit.
- What does *rule of law* mean? It means that people will obey the decisions of the court, even when the "court" is one judge holding court in a schoolroom. The court does not need an army to enforce its orders. When a court decides a case, its order will be obeyed by the people in the case even if they don't like the decision.
- That is true even if, as in the great early case of *Marbury v. Madison*, decided 200 years ago, the decision overturns a law passed by Congress, because it conflicts with a higher law, the Constitution.
- Why did judges have that authority then? Why do judges have it now? Because they represent the rule of law, the basis of our democracy.

Grades 7-12 Strategy • The Facts Behind the Case

Title Does Anyone Know Where Marbury and Madison Are? (The Story behind *Marbury v. Madison*)
Time 1 class period

Overview

This activity can be the basis for a lively class discussion. It could be led by a lawyer or judge. The format allows students to understand the events leading to *Marbury v. Madison* and the establishment of the concept of judicial review.

Preparation

- Provide the teacher with an advance copy of the activity.
- Review the background pages on *Marbury v. Madison* earlier in this publication.
- Practice the story below so you can “tell” the content in an informal fashion.
- Make sure there is a flip chart or something similar for your use with the presentation.

Introduction

Set the stage for the activity by asking the students if they feel that laws should be overturned and under what conditions.

Use the flip chart to list the following names: John Adams, Thomas Jefferson, James Madison, William Marbury, and John Marshall.

Encourage the students to listen carefully as you tell them an amazing story about a political squabble that became one of the most important American legal cases of all time. Caution them to listen for an interesting turn of events at the end of the story. As you tell the story, be sure to point to the list and refer to the individuals by name to maintain continuity in the story line. Be sure to build interest and excitement as you proceed.

After completing the story, use the following questions to generate a discussion.

1. Do you agree that Marbury should have received his commission? Why or why not?
2. What is meant by the term *judicial review*? Why is it important? Do you agree with it? If not, what would you do about a law that violates the Constitution?
3. How does the doctrine of judicial review add to the system of checks and balances set up in the Constitution?

Closure

Close the activity by asking the students if they see evidence of *Marbury v. Madison* existing today. Their response should reflect the concepts of judicial review, checks and balances, and power of the Supreme Court.

This Is the Way It Happened (The story behind *Marbury v. Madison*)

- The time was 1800.
- **John Adams** (a Federalist) lost his presidential re-election bid to Thomas Jefferson (a Republican).
- **Jefferson** was to be inaugurated on March 4, 1801.
- **Adams** was not happy over his defeat.
- Before leaving office, **Adams** worked with his political supporters in Congress to keep control of the federal courts and as many other offices as possible.
- How do you think he did this?
- At the “eleventh hour,” **Adams** appointed and the Senate confirmed all 16 federal circuit court judges provided for in the Judiciary Act of 1801. Their objective was to fill all judicial positions with Federalist friends and maintain control over the judiciary.
- On his last night in office, **Adams** was busily signing off on judicial appointments.
- **William Marbury** was one of the 42 justices of the peace appointed to the District of Columbia.
- However, **Marbury’s** appointment was among a few that were signed and sealed but not delivered before **Adams’** term came to an end.
- **Jefferson** took office; he did not recognize **Adams’** appointment of **Marbury** because it was never delivered.
- **Marbury** waited two years and still did not receive his appointment.
- So, **Marbury** appealed to the Supreme Court for a court order demanding his appointment be delivered to him.
- The basis for **Marbury’s** appeal was that the Judiciary Act of 1789 gave the Supreme Court the power to order Secretary of State **Madison** to give **Marbury** the promised appointment.
- The case went to the Supreme Court in February 1803.
- **John Marshall** was chief justice.
- Chief Justice **Marshall** declared that **Marbury** had a right to his appointment as a justice of the peace.
- But **Marshall** began to study the Federal Judiciary Act of 1789 and reported that there is nothing the Supreme Court can do about enforcing **Marbury’s** appointment.
- **Marshall** found that the Judiciary Act of 1789 was in conflict with the Constitution. He found that the Judiciary Act gave the Supreme Court powers not granted by the Constitution. **Marshall** declared that the section of the Judiciary Act of 1789 that gave the Supreme Court the right to issue orders (such as in **Marbury’s** case) was unconstitutional.
- With this action, **Marbury** no longer had a basis for his appeal.
- **Marshall** concluded there was no way for **Marbury** to get his appointment from **Madison**.
- As a result of this action, the Supreme Court has had the final say on laws of Congress. Its power to overrule acts of Congress because they are unconstitutional became known as judicial review.

A Community Forum

Law Day and especially the celebration of *Marbury v. Madison* is an excellent time to bring together citizens in a community to discuss (and perhaps debate) probably the most significant legal case in our country's history. Look for opportunities to hold events in places such as community centers, senior centers, and other public gathering spots. Print and distribute some thought provoking flyers to encourage people to attend. Consider using phrases such as

Do You Believe Courts Should Have the Right to Overturn Existing Laws?
You don't want to miss this lively discussion.

Session Format Note

- The purpose of this community forum is to encourage a lively interactive discussion. If you sense the audience would not be intimidated, have the individuals get up and go to a designated section of the room to physically illustrate their answers ("those who agree with that point, please go to the left side of the room; those who don't, please go the right side"). This would allow you to interact with the members of the various groups to solicit deeper feelings on the issues. Remind the participants that at any time during the discussion, if they change their answer or position, they are free to walk to the other group.
- To avoid confusion on how judges are selected in various states, keep this discussion at the federal level.

After the welcome, if you're doing this activity on Law Day, provide a brief background on its purpose. Be sure to make note that we are also celebrating the 200th anniversary of *Marbury v. Madison* (1803).

At the beginning of the session, tell the participants you want them to take a self-test, keeping their answers to themselves. Ask the following questions?

- Do you believe the Constitution is the "supreme law of the land"?
- Do you believe the Supreme Court has the responsibility to protect and defend the Constitution?

Use the background information on *Marbury v. Madison* to provide a brief overview of the legal case and to introduce the concept of judicial review. You may want to consider using the story included in the grades 7–12 activity as the review. Generate informal discussion by using the following questions.

- Do you agree courts should have the power of judicial review? Why or why not? (Somewhere in the discussion, the concept of checks and balances should be a focal point.)
- You elected public officials to represent you in Congress. It is their responsibility to make the laws to ensure a strong democracy. So, do you believe judges (who are sometimes appointed to their position) should have the power to overturn the efforts of your elected officials?

Distribute the following excerpt from Alexander Hamilton's *Federalist Paper* No. 78, in which Hamilton discussed his vision for the judiciary.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution.... The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment....

Ask the participants if they support Hamilton's vision. Ask if they truly believe the judiciary merely exercises judgment. Why or why not?

Brainstorm the characteristics of an ideal judge. Asking the group to keep in mind the power of judicial review, have the group brainstorm the types of issues and questions that should (or should not) be covered in federal judicial confirmation hearings and explain why such questions would be important to ask.

Marbury v. Madison GOES WIRED

The following websites are recommended for activities involving *Marbury v. Madison*.

www.landmarkcases.org/marbury/home.html

"*Marbury v. Madison* (1803)." Landmark Supreme Court Cases, a project of Street Law and the Supreme Court Historical Society. Contains a wealth of resources and activities designed to help educators teach the case.

www.jmu.edu/madison/marbury/

"*Marbury v. Madison* (1803)." The James Madison Center at James Madison University. Includes general information and commentary about the case and its major players.

usinfo.state.gov/usa/infousa/facts/democrac/demo.htm

"Basic Readings in U.S. Democracy." U.S. Department of State International Information Programs. See "Part II: Creating a Government" for an article on *Marbury v. Madison* and the full text of the Court's decision.

caselaw.lp.findlaw.com/data/constitution/article03/13.html

"Judicial Review." FindLaw. Provides a multifaceted look at judicial review, citing relevant Supreme Court cases and scholarly debates.

air.fjc.gov/history/legislation_frm.html

"Landmark Judicial Legislation." The Federal Judicial Center. Provides full text of the Judiciary Acts of 1789 (which established the federal court system), of 1801 (which reorganized the federal judiciary and established circuit judgeships), and of 1802 (which abolished the circuit judgeships and reorganized the federal courts).

supreme.lp.findlaw.com/supreme_court/landmark/marbury.html

Marbury v. Madison, 5 U.S. 137 (1803) Through this landmark case, the Supreme Court asserted its power of judicial review.