Thomas Jefferson, a member of the Republican Party, won the 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 the 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 of the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job.

When 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 individuals couldn’t take office until they actually had their commissions in hand. William Marbury, whom Adams had appointed as justice of the peace of the District of Columbia, was one of these 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. If this situation were to arise today, Marshall would likely disqualify himself because of a conflict of interest. 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.

Supreme Court of the United States

Marbury v. Madison (1803)

The Supreme Court of the United States declared that:

* Marbury is entitled to the commission, but:
* The Court cannot issue the writ because the Judiciary Act of 1789, which granted the Supreme Court original jurisdiction to issue writs of mandamus, is unconstitutional.
* The Constitution clearly limits the cases that can go directly before the Supreme Court, w/o being heard first in a lower court. Marbury’s case did not fit within these limits.

By declaring part of the Judiciary Act of 1789 unconstitutional, the Supreme Court of the United States asserted that it had the power to review acts of other branches and determine their constitutionality. This power is called judicial review. Justice Marshall argued that the people of this nation had adopted the Constitution as the supreme law of the land and consented to be governed by its rules. These rules include important limitations upon the powers of Congress. When Congress violates those limitations, it has violated the will of the people.

Marshall argued that if the Supreme Court could not strike down such acts, there would be no effective way to enforce the constitutional limits on the powers of Congress.

United States Constitution Article III; Section II

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.

Judiciary Act 1789

SEC. 13. And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a state is a party, except between a state and its citizens; and except also between a state and citizens of other states, or aliens, in which latter case it shall have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for; and shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and 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.

Discussion Questions:

1. Summarize the facts of the case.
2. On what grounds did Marbury take his case before the Supreme Court?
3. What was Marbury seeking from the Supreme Court?
4. Who was Marshall likely to side with, Marbury or Madison? Why?
5. If the Court decided that Marbury was entitled to the commission, how could it be sure that the executive branch would deliver it?
6. According to Article 3, Section 2 of the Constitution, in what types of cases does the Supreme Court of the United States have original jurisdiction? Does the Congress have the authority to alter the Court’s jurisdiction?
7. What principle did the Supreme Court establish in ruling on the Marbury case?
8. What is the purpose of that principle
9. According to John Marshall, why is that principle necessary?