**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**Marbury v. Madison**

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| **Judicial Restraint:****Judicial Activism:****Judicial Legislation:** |

**1. Marbury vs. Madison**

**Summary and background**

Thomas Jefferson, a member of the Republican Party, won the election of 1800. The outgoing President, John Adams, rapidly appointed 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, but 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.

**Opinion of Justice Marshall:** 1. Yes. Marbury has a right to the commission.

The order granting the commission takes effect when the Executive’s constitutional power of appointment has been exercised, and the power has been exercised when the last act required from the person possessing the power has been performed. The grant of the commission to Marbury became effective when signed by President Adams.

2. Yes. The law grants Marbury a remedy. The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection.

Where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, the individual who considers himself injured has a right to resort to the law for a remedy. The President, by signing the commission, appointed Marbury a justice of the peace in the District of Columbia. The seal of the United States, affixed thereto by the Secretary of State, is conclusive testimony of the verity of the signature, and of the completion of the appointment. Having this legal right to the office, he has a consequent right to the commission, a refusal to deliver which is a plain violation of that right for which the laws of the country afford him a remedy.

3. Yes. The Supreme Court has the authority to review acts of Congress and determine whether they are unconstitutional and therefore void.

It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.

4. No. Congress cannot expand the scope of the Supreme Court’s original jurisdiction beyond what is specified in Article III of the Constitution.

The Constitution states that “the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction.” If it had been intended to leave it in the discretion of the Legislature to apportion the judicial power between the Supreme and inferior courts according to the will of that body, this section is mere surplusage and is entirely without meaning. If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution, is form without substance.

5. No. The Supreme Court does not have original jurisdiction to issue writs of mandamus.

To enable this court then to issue a mandamus, it must be shown to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction.

It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that case. Although, therefore, a mandamus may be directed to courts, yet to issue such a writ to an officer for the delivery of a paper is, in effect, the same as to sustain an original action for that paper, and is therefore a matter of original jurisdiction.

**Final ruling:** Application for writ of mandamus denied. Marbury doesn’t get the commission.

**Questions**

1. What year did this case go before the Supreme Court? Why did John Adams appoint so many people at one time?

2. Determine the predominant issues from this court case.

3.Of the two men who was Marshall most likely to side with, Marbury or Madison? Why?

4. 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? What would happen if the Court issued the writ, but the executive branch refused to comply?

5.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?

6. What is a writ of mandamus? Why was it denied? Do you agree with the ruling? Why or why not?