

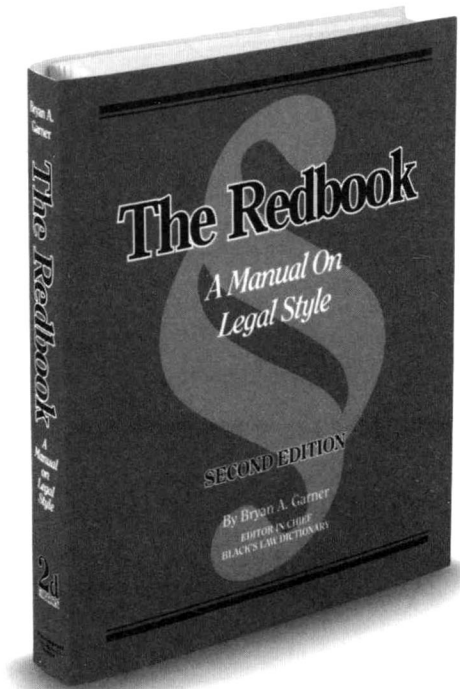
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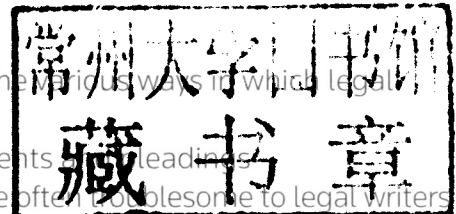
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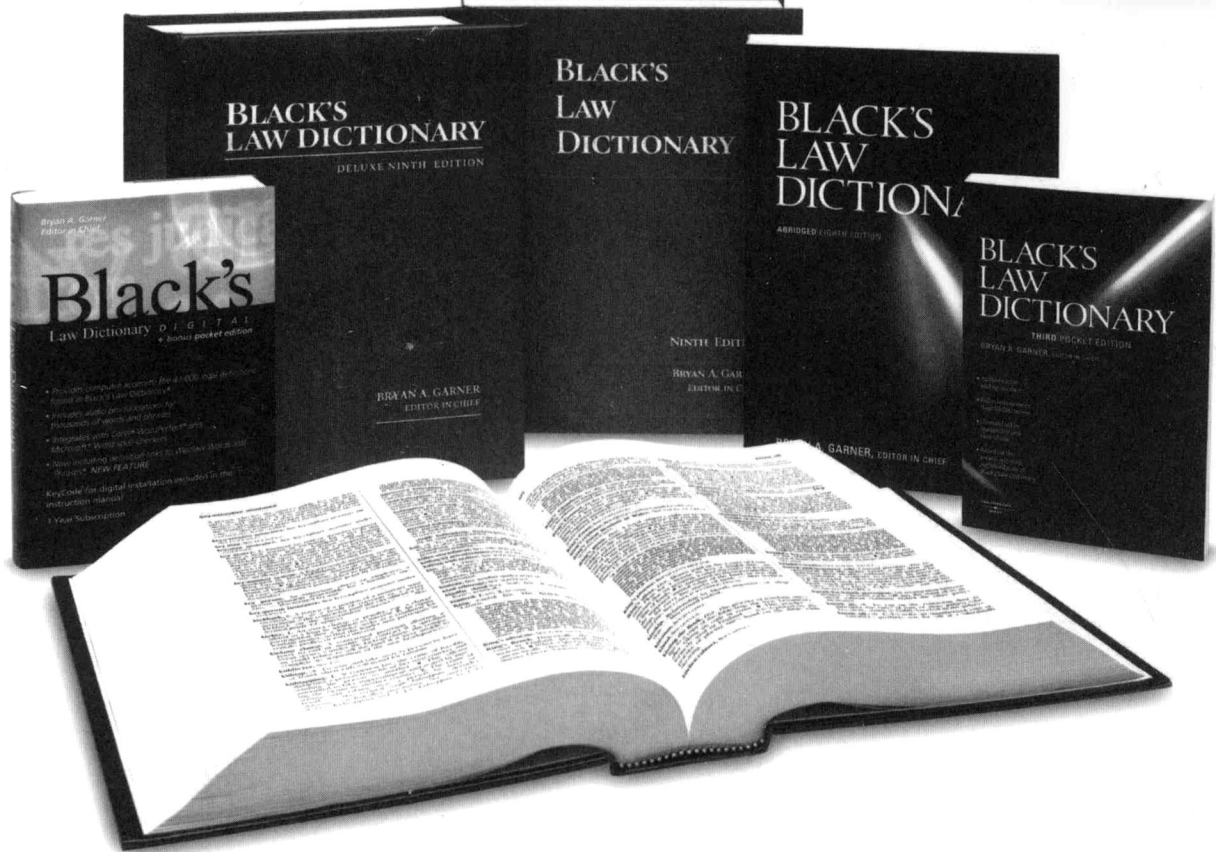
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- Virginia, United States v., 518 U.S. 515, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996), 209
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- Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), 179
- Washington v. Glucksberg, 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997), 167
- Whitney v. California, 274 U.S. 357, 47 S.Ct. 641, 71 L.Ed. 1095 (1927), 285
- Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955), 139
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- Zelman v. Simmons-Harris, 536 U.S. 639, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002), 417
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## CHAPTER ONE

### The Supreme Court's Authority and Role

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#### ***Marbury v. Madison***

**Instant Facts:** Marbury (P) was a last-minute judicial appointee of outgoing President Adams, whose commission was not delivered to him before Adams left office; Jefferson, the incoming President, declined to deliver the commission.

**Black Letter Rule:** Where the Constitution of the United States, as interpreted by the Supreme Court, conflicts with laws enacted by Congress, the Supreme Court may declare such laws unconstitutional and invalid.

#### ***Martin v. Hunter's Lessee***

**Instant Facts:** Not provided.

**Black Letter Rule:** The United States Supreme Court is the singular revising authority to control discordant state court judgments and harmonize them into uniformity, or the laws, treaties, and Constitution of the United States could be applied differently in the different states.

#### ***Cooper v. Aaron***

**Instant Facts:** Arkansas state officials challenged the application of a federal integration decision to their legislative schemes.

**Black Letter Rule:** The constitutional right of children not to be discriminated against in school admission on the basis of race, as established by the Supreme Court in *Brown v. Board of Education*, cannot be nullified by the states.

#### ***Lujan v. Defenders of Wildlife***

**Instant Facts:** Defenders of Wildlife (P) seek to have the Endangered Species Act interpreted to cover government agency activities in foreign countries.

**Black Letter Rule:** Congress may not convert the public's interest in an Executive officer's compliance with a law into an individual right to sue.

#### ***Massachusetts v. Environmental Protection Agency***

**Instant Facts:** Calling "global warming" the most pressing environmental challenge of our time, a group of state and local governments, as well as certain private organizations, brought suit against the EPA contending that it had abdicated its responsibility under the Clean Air Act to regulate the emissions of four greenhouse gases, including carbon dioxide.

**Black Letter Rule:** Congress has accorded litigants the right to challenge agency action (or inaction) to protect their interests.

#### ***Baker v. Carr***

**Instant Facts:** Tennessee voters seek a reapportionment of state assembly districts; the districts have not been reapportioned since 1901.

**Black Letter Rule:** The Guaranty Clause may not be used as a source of a constitutional standard for invalidating state action, but an equal protection claim may be so used where it does not implicate a political question.



# Marbury v. Madison

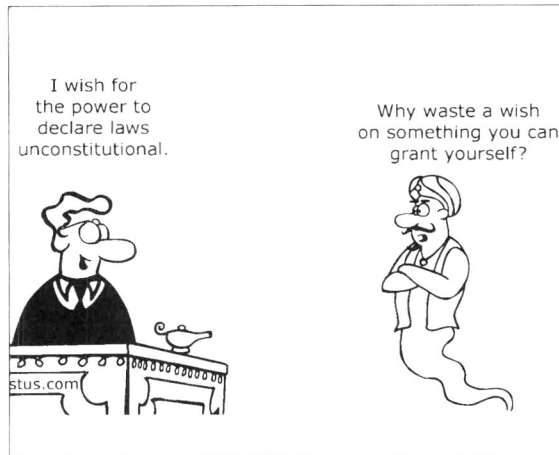
(Judicial Appointee) v. (Secretary of State)

5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803)

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## THE SUPREME COURT HAS THE POWER TO DECLARE LAWS TO BE UNCONSTITUTIONAL

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■ **INSTANT FACTS** Marbury (P) was a last-minute judicial appointee of outgoing President Adams, whose commission was not delivered to him before Adams left office; Jefferson, the incoming President, declined to deliver the commission.

■ **BLACK LETTER RULE** Where the Constitution of the United States, as interpreted by the Supreme Court, conflicts with laws enacted by Congress, the Supreme Court may declare such laws unconstitutional and invalid.

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### ■ PROCEDURAL BASIS

Direct claim to the Supreme Court asking for mandamus commanding delivery of a judicial commission.

### ■ FACTS

William Marbury (P) was appointed as a justice of the peace at the very end of John Adams' presidency. Thomas Jefferson, the incoming president, chose to disregard the appointments because formal commissions had not been delivered before the end of Adams' term. Marbury (P) and others took their case to the Supreme Court, seeking a writ of mandamus [order directing that an official perform an act] that would order Madison (D), Jefferson's Secretary of State, to deliver the commissions. John Marshall was Secretary of State under Adams, but had since been appointed Chief Justice of the Supreme Court by the time the Court heard the case [conflict of interest, maybe?]. The Court decided three separate issues.

### ■ ISSUE

(1) Does Marbury (P) have a right to the commission? (2) If so, and if that right has been violated, does Marbury (P) have a legal remedy? (3) Is the legal remedy a writ of mandamus issuing from the Supreme Court?

### ■ DECISION AND RATIONALE

(Marshall) (1) Yes. As soon as the President signs the commission and the Secretary of State affixes the seal of the United States, the appointee has a vested legal right in the commission. To withhold the commission violates this legal right. (2) Yes. The government of the United States is one of laws and not of men, and the law must afford a remedy for violation of a vested legal right. There are cases in which the President, in accomplishing a legal political act, commits an injury to an individual. In these cases, the individual has no remedy. However, not every act of the President, or any of the great departments of government, constitutes such a case. The legality of an act of the head of a department [e.g., the Secretary of State] depends on the nature of the act. Where the heads of the departments merely execute the will of the President, or act in cases in which the President possesses a constitutional or legal right, the acts are only politically examinable, and cannot be examined by this Court. But where a duty is assigned to the head of the department by the Legislature, and individual rights depend on

performance of that duty, an individual who is injured has a right to a remedy. (3) No. The answer to this question depends on (a) the nature of the writ applied for [mandamus], and (b) the power of the Supreme Court. (a) A mandamus is a proper remedy in this case. The Secretary of State was directed by law to do an act affecting the rights of individuals, and mandamus is the only appropriate remedy for violation of these rights. (b) By the Judiciary Act of 1789, the Supreme Court has the power to issue writs of mandamus to any persons holding office in the United States. However, this statute conflicts with Article III of the Constitution, which does not grant original jurisdiction to the Supreme Court over cases involving executive officers. This in turn creates a conflict between Congress and the Constitution. Either the Constitution is supreme, or it is on a level with ordinary legislative acts, and is alterable whenever Congress pleases. The idea of a written constitution is that it forms the fundamental and paramount law of the nation, and an act in conflict with the constitution must be void. It is emphatically the province and duty of the judiciary to say what the law is. If two laws conflict, the court must decide the case conformably with the Constitution. Also, the Constitution itself gives the judiciary jurisdiction over “all cases arising under the Constitution,” supporting the Court’s power to invalidate laws in conflict with the Constitution. The judge swears to discharge his duties in conformity with the Constitution, and according to the laws of the United States. In the Supremacy Clause of Article IV, the Constitution itself is first mentioned, and the laws of the land that are granted recognition are those made pursuant to the Constitution. Writ of mandamus denied.

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**Analysis:**

The doctrine of judicial review is now indisputably established. Most scholars generally concur that Marshall’s opinion in *Marbury* was shrewd and courageous. Chief Justice Marshall’s opinion has been criticized, however, on two broad grounds. First, critics opine that Marshall’s assertions were statements of authority rather than arguments for authority. For example, one scholar pointed out that the statement that it is the assigned duty of the Supreme Court to interpret the Constitution raises the question of why judiciary’s interpretation should trump the congressional interpretation. Just as the Court took an oath to uphold the Constitution, every government official takes a similar oath. Although the Constitution is the supreme law of the land, having power over general laws, this does not necessarily imply that the judiciary has the power to invalidate laws. Second, under modern Court doctrine, the Supreme Court avoids constitutional questions when it can decide a case on a narrower ground. The Court will not adjudicate constitutional issues unless there is a “strict necessity.” However, the Court does make exceptions to this rule when a case presents a constitutional issue that impacts basic rights and values. *Marbury* clearly meets this criterion.

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**■ CASE VOCABULARY**

VESTED RIGHT: A right that is unconditional, that cannot be taken away from a party.

WRIT OF MANDAMUS: A writ requiring a lower court or government official to perform some duty or act.