

Marbury v. Madison / Is the Judiciary Act of 1789 Constitutional?

Directions:

1. Read the **Background** section, which includes excerpts from the Constitution and the Judiciary Act of 1789.
 2. Answer the **Questions to Consider** (page 2).
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Background

Congress passed the Judiciary Act in 1789 on the day before it sent the proposed amendments that would later become known as the Bill of Rights to the states for ratification. The Judiciary Act of 1789 authorized the Supreme Court to issue writs of *mandamus*, which are commands by a superior court to a public official or lower court to perform a special duty.

But did the Judiciary Act of 1789 violate the Constitution by granting the Supreme Court this power through legislation or would granting this power require an amendment to the Constitution? You will review original documents to discover the answer to this question.

Article III, Sections 2 and 3 of the U.S. Constitution

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a 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.

Article V of the United States Constitution

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the

several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Judiciary Act of 1789 (excerpt)

The Supreme Court...shall have power to issue...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.

Questions to Consider

1. What are the powers of the Supreme Court of the United States, as outlined in Article III above?
2. What steps are required in Article V to amend the Constitution?
3. Amending the Constitution is extraordinarily difficult and rare. What makes it so difficult to complete the steps needed to amend the Constitution?
4. Why did the Framers of the Constitution make it so difficult to amend the Constitution?

5. Draw a graphic organizer that shows two ways an Amendment to the Constitution can be proposed and two ways an Amendment to the Constitution can be ratified.

6. The Judiciary Act of 1789 was a law passed by Congress that gave the Supreme Court the power to issue writs of *mandamus*, which is an order forcing a government official to act. Is such a power described in Article III?

7. Based on the information above, why might the Supreme Court declare the Judiciary Act of 1789 unconstitutional?