



## Article III: The Supreme Court

### Time and Grade Level

Two 50 minute class periods in a 6-8 grade social studies classroom.

### Purpose of the Lesson

The purpose of this lesson is to assist student understanding of the U.S. Supreme Court created under the Constitution. Through a document exploration and story-telling activity, students will understand the role of the Supreme Court in our constitutional system of government. Students will also explore how the Court's role has evolved over time by looking to a number of key Supreme Court decisions.

### Critical Engagement Questions & Lesson Objectives

1. What is the role of the Supreme Court in our constitutional system of government? Why was a federal judiciary created by the Constitution?
  - Objective: Student will be able to explain the role of the Court by referencing the text of Article III of the U.S. Constitution.
  - Objective: Students will be able to describe at least two reasons why the Constitution created a judiciary by referring to the Constitution and other relevant primary source documents.
2. How has the power of the Supreme Court evolved since the Court's creation in the Federal Constitution?
  - Objective: Students will be able to list at least two powers of the Supreme Court and explain their significance.
  - Objective: Students will be able to identify key Supreme Court decisions that contributed to the Court's evolving role in American government.

### Standards

[C3 Standards: Suggested K-12 Pathway for College, Career, and Civic Readiness Dimension 2, Civic and Political Institutions, Perspectives, & Causation and Argumentation](#)

D2. Civ.4.6-8. Explain the powers and limits of the three branches of government, public officials and bureaucracies at different levels in the United States and in other countries.

D2 Civ. 5.6-8. Explain the origins, functions, and structure of government with reference to the U.S. Constitution, state constitutions, and selected other systems of government.

D2.Civ.8.6-8. Analyze ideas and principles contained in the founding documents of the United States, and explain how they influence the social and political system.

D2.His.3.6-8. Use questions generated about individuals and groups to analyze why they, and the developments they shaped, are seen as historically significant.

[Common Core Standards: English Language Arts Standards-Reading Information Text Grade 4](#)

CCSS.ELA-Literacy.RH.6-8.4 Determine the meaning of words and phrases as they are used in a text, including vocabulary specific to domains related to history/social studies.

CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

CCSS.ELA-Literacy.RH.6-8.10 By the end of grade 8, read and comprehend history/social studies texts in the grades 6–8 text complexity band independently and proficiently.

## Overview of the Lesson

Day One
<ol style="list-style-type: none"> <li>1. Homework: Article I and II review.</li> <li>2. Class Reading of Article III as a class (from ConSource’s US Constitution for Kids), Federalist No. 78, and other sources selected from documents provided to instructor.</li> <li>3. Round Robin Writing Activity: To review and analyze class reading.</li> <li>4. Question about the court: What can the Supreme Court really do?</li> <li>5. Introduction of the Court Cases to be used in story-telling assignment</li> <li>6. Assignment of Story-telling Assignment</li> </ol>

Day Two
<ol style="list-style-type: none"> <li>1. In-Class work on Story-telling books</li> <li>2. Assignment of Extension Activity</li> </ol>

## Materials

1. Printed Copies of the Executive and Legislative Branch quiz (with key), found in [Appendix A](#).
2. Online access to, or printed copies of Articles I, II, and III of the U.S. Constitution for Kids (found [here](#) (in full) and in individual documents as accompaniments to this lesson plan [here](#)).
3. Online access to the [full document](#), or printed copies of the excerpts from Federalist No. 78, (found in [Appendix C](#))
4. Access to Article III of the U.S. Constitution through the [ConSource library](#) (locate Article III at annotation 144).
5. Printed copies of the Supreme Court Story-Telling Assignment, found in [Appendix B](#).
6. Student access to the Internet on Day Two for research.

## Student Warm-Up for the Lesson

For homework before the first day of this lesson, assign students a review of Article I and Article II of the U.S. Constitution. You may want to use either the full ConSource U.S. Constitution for Kids, found [here](#), or the independent documents for Article I and Article II, found [here](#).

### RESOURCES FOR THE STORY-TELLING ASSIGNMENT

#### The Supreme Court

- [PBS.org “The First Hundred Years”](#)
- [PBS.org “John Marshall”](#)
- [USHistory.org](#): The Judicial Branch
- [ConSource Document Collection](#)

#### Marbury v. Madison (1803)

- [StreetLaw and The Supreme Court Historical Society Website](#): Marbury v. Madison
- [The 200th Anniversary of Marbury v. Madison: The Reasons We Should Still Care About the Decision, and The Lingering Questions It Left Behind](#)
- [PBS.org](#): Marbury v. Madison
- [PBS.org](#): Marbury v. Madison Decision, primary source
- [OurDocuments.Gov](#): Marbury v. Madison, primary source
- [History.com](#): “Marbury v. Madison establishes judicial review”
- [Kid Law.com](#): Marbury v. Madison CasePage

#### McCulloch v. Maryland (1819)

- [StreetLaw and The Supreme Court Historical Society Website](#): McCulloch v. Maryland
- [PBS.org](#)-McCulloch v. Maryland
- [Kid Law.com](#): McCulloch v. Maryland CasePage

- [Oyez Project](#): CasePage for McCulloch v. Maryland

Gibbons v. Ogden (1824)

- [StreetLaw and The Supreme Court Historical Society Website](#): Gibbons v. Ogden
- [PBS.org](#): Gibbons v. Ogden
- [Oyez Project](#): CasePage for Gibbons v. Ogden
- [OurDocuments.gov](#): Gibbons v. Ogden primary source

## Teacher Warm-Up for the Lesson

### RESOURCES FOR BACKGROUND ON THE TOPIC

Primary Source Documents (ConSource)

Use the following list of documents to choose a third or fourth in-class reading for students about the Supreme Court.

The following documents provide discussion of Article III:

[The Federalist No. 78](#) (see [Appendix C](#) for excerpts from the document)

[James Madison's Notes of the Constitutional Convention \(June 15th, 1787\)](#): Use the sidebar on the right side of the page to toggle to annotations 9-12 for discussion of the Judiciary.

[James Madison's Notes of the Constitutional Convention \(June 13th, 1787\)](#): Use the sidebar on the right side of the page to toggle to annotations 2-3 for a discussion of the Judiciary.

[James Madison's Notes of the Constitutional Convention \(June 13th, 1787\)](#): Use the sidebar on the right side of the page to toggle to annotations 1-4 for a discussion of the Judiciary.

- Federalist No. [81](#) and [82](#) provide discussion of the Supreme Court.
- [Roger Sherman- \(December 8, 1787\)](#): Sherman's letter outlined many aspects of the new Constitution as the Drafters envisioned them, but he paid special attention the specific duties and the jurisdictional powers of the new Judicial Branch.

ConSource's Collection of primary source documents related to the Judicial Branch may be found [here](#).

Document (ConSource's U.S. Constitution for Kids)

The [U.S. Constitution for Kids](#) offers educators and students the opportunity to read the original text of the Constitution alongside unbiased translations that are easy for students to understand. The document also includes useful background information and primary source links, which help to place each clause in historical context.

Website (The National Constitution Center)

View the National Constitution Center’s interactive Constitution [here](#), which includes the Annenberg classroom’s interpretation of Article III.

#### Overview of Cases for Story-Telling Assignment<sup>1</sup>

Marbury v. Madison (establishes Judicial Review) On the last night of his Presidency, John Adams appointed a number of Federalists to office, just before Thomas Jefferson and the Democratic-Republicans assumed power. Among these, Adams appointed William Marbury of Maryland to be a justice of the peace in the District of Columbia. When James Madison took over as the new secretary of state, he declined to deliver Marbury’s commission to him. Marbury sued directly to the Supreme Court, as was permitted under existing law. Chief Justice John Marshall was a Federalist who had also been one of Adams’s late appointees. Although Marshall sympathized with Marbury, he knew that the Court had no power to enforce its decision against Jefferson’s will and would look weak. Instead, Marshall wrote an opinion that the law under which Marbury brought suit had been unconstitutional. Rather than weakening the court, the ruling strengthened it, as this marked the first time that it had expressed the right of judicial review.

McCulloch v. Maryland (Federal Supremacy) A Maryland law required the federally chartered Bank of the United States to pay a state tax. Joseph McCulloch, the cashier in the bank’s Maryland branch, refused to pay the tax or any penalty. The bank sued in Maryland court and eventually the case went to the U.S. Supreme Court, where Daniel Webster defended the bank. Chief Justice John Marshall wrote the Court’s opinion in favor of the bank based on the supremacy clause. The Court found that allowing a state to tax an institution of the federal government violated the concept of federal supremacy. Later, Joseph McCulloch was caught embezzling money from his bank, and this news emboldened the state of Ohio to enact its own taxes against the bank. In the case of *Osborn v. Bank of the United States* (1824), the Supreme Court upheld its earlier reasoning, once again asserting the national government’s primacy over the states.

Gibbons v. Ogden (Regulating Interstate Commerce) A New Jersey steamboat operator, Aaron Ogden, purchased monopoly rights on the Hudson River, the state of New York. His former partner, Thomas Gibbons, who had a federal license, challenged the state monopoly. Ogden then sued Gibbons. The case made its way to the Supreme Court, where Daniel Webster, who defended Gibbons, argued that the Constitution gave Congress the power to regulate interstate commerce regardless of laws enacted by individual states. Chief Justice John Marshall, writing for the Court, agreed that federal law was superior to state law. The ruling furthered future interstate transportation and commerce.

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<sup>1</sup> Ritchie, Donald. “Appendix 2: Supreme Court Decisions that Shaped the Constitution,” *Our Constitution*. Annenberg foundation Trust at Sunnyslans. Oxford Press 2006.

## Activity

### DAY ONE

Activity	Description	Suggested Questions
Homework	<p>Review the homework reading of the U.S. Constitution for Kids, the Executive and Legislative branches.</p> <p>Assign students a short comprehension quiz at the beginning of class, found in <a href="#">Appendix A</a>.</p>	
Class Reading of Articles III of the Constitution	<p>As a class, read Article III, Federalist No 78 (in full or using the excerpts provided in <a href="#">Appendix C</a>), and 1-2 other primary sources listed as <a href="#">Teacher Resources</a>. Seek to narrow in on the sections which discuss the creation of the Supreme Court.</p>	<ol style="list-style-type: none"> <li>1. What is the purpose of the Supreme Court and how does that role fit with the roles of the other branches?</li> <li>2. Is the Supreme Court the only court created by the Constitution? If not, what other courts are created?</li> <li>3. What type of cases can the Supreme Court try?</li> <li>4. What does Article III say about the justices of the Supreme Court?</li> <li>5. Why do you think that treason is specifically defined in the Constitution?</li> </ol>

Activity	Description	Suggested Questions
Round Robin Comprehension Activity	<p>To test and expand student comprehension of the in-class readings, have students complete a round robin writing activity. Using the question: “what is the role of the Supreme Court in our constitutional system of government and what are the powers of this court?” ask students to use a piece of paper to begin writing their answer.</p> <p>Each student will answer this question as much as they can in 30 seconds before passing to another student who has to add to what the other student has said. Students should be passing their papers 5-10 times. This will help drive home the concept of the court for students and perhaps bring up new questions about the courts power.</p>	<ol style="list-style-type: none"> <li>1. Why do you think the Founder’s choose to include a judicial branch? Why not just leave judicial powers to the states?</li> <li>2. Why is Article III so short?</li> <li>3. What is the benefit of having multiple justices on the court?</li> <li>4. What are the benefits of an independent judiciary/why is it so important for the judiciary to be independent?</li> <li>5. What does Federalist 78 tell us about the fears people had about a judiciary?</li> <li>6. Why is it important for there to be a highest court in the United States?</li> <li>7. What does it mean to have original jurisdiction?</li> <li>8. What does it mean to act as an appellate court?</li> </ol>
What is Judicial Review?	<p>Before moving into the story-telling assignment, discuss with students what is missing, namely why the court seems so active today, even though the Constitution doesn’t tell us much about the court. Have a 5-10 minute discussion about the ambiguity of the Supreme Court, ending in discussion of the case of Marbury v. Madison, which established judicial review.</p>	
Introduction of Court Cases	<p>To help the class in their story-telling assignment, introduce the cases to be studied to the class as a whole. Use StreetLaw’s resources for <a href="#">Marbury v. Madison</a>, <a href="#">McCulloch v. Maryland</a>, and <a href="#">Gibbons v. Ogden</a> to explore the basics of these cases.</p>	
Assignment of Story-Telling Activity	<p>Use the assignment sheet in <a href="#">Appendix B</a> to introduce the story-telling assignment. Students will divide into pairs or small groups and pick/be assigned one of the key cases that helped establish the Supreme Court’s power of judicial review. Additionally, students could also choose to research the court itself in greater detail.</p> <p>The premise of the story-telling assignment is to have students learn about their case in detail and create a children’s book (with an original story and illustrations) to tell the story of that case and why it is important.</p>	

DAY TWO

Activity	Description	Suggested Questions
In-Class Work: Story-telling Assignment	Give students class-time to work on their story-telling assignment. Have the final book due 2-3 days later.	
Extension Activities	Assign an extension activity to further student understanding and provide an opportunity for community engagement or accountability.	

## Homework

Day One: In preparation for the first day of class, assign students a review of Article I and II of the U.S. Constitution, using [ConSource's U.S. Constitution for Kids](#).

Day Two: Ask students to continue work on their Children's books.

## Extension Activity

- A. Elementary School Visit: Have the class visit a local elementary school class to read their children's books to the class or have the children read the books to them in small groups. This is a great way to empower students to take ownership of their project and challenge them to explain the cases they have studied to young children.
- B. iCivics: Use one of the [Supreme Court games offered by iCivics](#) to have students explore a topic of interest to them more thoroughly.



## Appendix A. Articles I & II Review Quiz

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

Date: \_\_\_\_\_

### THE U.S. CONSTITUTION: ARTICLE I & II REVIEW QUIZ

Directions: Using the Constitution, answer the following questions.

1. The Second Article of the Constitution established Congress.
  - a. True
  - b. False
  
2. Article I states that when vacancies occur in the representation of any state:
  - a. A majority of Congress will select a replacement representative.
  - b. The speaker of the house will select a replacement.
  - c. The seat will remain vacant until an election may be held to replace the representative.
  - d. The president will select a replacement.
  
3. According to his or her expressed powers, the president must introduce taxation bills to the House of Representatives.
  - a. True
  - b. False
  
4. According to Article I, Section 4, who makes decisions on the administration of congressional elections?
  - a. State Legislatures
  - b. The Senate with the approval of 2/3 state legislatures
  - c. The House Committee on Elections.
  - d. State Legislatures, although Congress reserves the right to create regulations
  
5. The President is allowed to establish federal courts below the Supreme Court.
  - a. True
  - b. False
  
6. Which of the following is an expressed power (or limit) of Congress? (check all that apply)
  - a. Congress may establish the United States Air Force.
  - b. Congress may set and collect taxes.
  - c. Congress may establish post offices.

- d. Congress may declare war.
  - e. Congress may establish a federal minimum wage.
  - f. Congress may not pass ex post facto laws or bills of attainder.
  - g. Congress may not regulate or eliminate slavery until 1808.
  - h. Congress may establish nation parks.
  - i. Congress may regulate commerce between the state, with foreign nations, and with Indian Tribes.
  - j. Congress may pass laws to ensure the fair and equal treatment of its citizens.
  - k. Congress may use treasury funds to support a public school system.
7. Describe the clause of Article I supports the existence of implied powers of Congress and explain why it is important.
8. According to the Constitution, is the president directly elected by the people?
- a. Yes
  - b. No
9. Can anybody be president? Identify two qualifications for being president.
10. In his role of Commander in Chief, the President is allowed to declare war.
- a. True
  - b. False
11. When the president of the United States is tried for impeachment, who presides over the trial?
- a. The Vice President
  - b. The Chief Justice of the Supreme Court
  - c. The President Pro-Tempore of the Senator
  - d. The Speaker of the House
12. What measure decides how many Representatives a state may have?
- a. Population
  - b. Size of the State
  - c. None, each state has equal representation in the House of Representatives.
  - d. Taxation

13. The President, Vice President, and all civil officers of the United States, may be removed from office (through impeachment and conviction) for:
  - a. Treason.
  - b. Bribery
  - c. High Crimes and Misdemeanors
  - d. All of the Above
  - e. None of the Above
  
14. The President has the power to grant pardons.
  - a. True
  - b. False
  
15. A single term of the President consists of:
  - a. 2 years
  - b. 3 years
  - c. 4 years
  - d. Unlimited

THE U.S. CONSTITUTION: ARTICLE I & II REVIEW QUIZ

KEY

1. B (false)
2. D
3. B (false)
4. D
5. B (false)
6. B,C,D,F,G,I
7. Necessary and proper/elastic clause. Explanations will vary.
8. B
9. Correct answers include: natural born citizen, or citizen at time of adoption of constitution, at least thirty-five years old, a resident of the U.S. for at least four years.
10. B (false)
11. B
12. A
13. D
14. A (true)
15. C

## Appendix B. Story Telling Assignment Sheet

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

Date: \_\_\_\_\_

### TELLING STORIES OF THE SUPREME COURT

When the U.S. Constitution was signed in 1787, it included a very limited description of the Judicial branch in comparison to Articles I and II, which detailed the role of the Legislature and Executive rather extensively. Why? The answer is up for debate, but it would seem, at least according to Federalist 78, that the Founders believed the Judiciary to be the weakest branch of government, thus requiring less elaboration on its powers to prevent their abuse.

However, in the years following the adoption of the Constitution, several cases passed through the Court (led by Chief Justice John Marshall) that expanded the powers of the Supreme Court such that it developed into the Court we know today.

#### Assignment

Choose one of the famous cases heard by the Marshall Court (The Supreme Court's nickname while John Marshall was Chief Justice) and research the case. Be on the lookout for facts or phrases that explain why the court has authority to make these decisions and links between Article III and other portions of the Constitution.

Once you have completed your research, create a children's book that tells the story of your court case and why it is important to the development of the Supreme Court. Your book should be composed of both an original story and original illustrations. Try to go beyond just simplifying the case. Look outside the box to write a unique story that explains your case without being too literal.

#### Cases

- Marbury v. Madison (1803)
- McCulloch v. Maryland (1819)
- Gibbons v. Ogden (1824)

#### Questions to Keep in Mind

1. What happened? In other words, who was asking for the court's decision and why? What was the issue being decided by the court and what did the court decide?
2. What part of the Constitution is being discussed/debated in this case?
3. Why is this decision relevant. Explain why this case helped to expand or limits the Supreme Court's power.

4. What does the court's decision mean to us today? How does the court's decision impact choices or actions the government might take today?

### Requirements

- Your book should be at least five pages long.
- Each page of your story should include an original illustration.
- Your story should answer all the questions listed above.
- You should include a bibliography when you turn in your story.

Due Date:

## Appendix C. Federalist No. 78 Excerpts

View the Full Document [here](#)

Why the Court wasn't well described, the "least dangerous branch":

"The executive not only dispenses the honors, but holds the sword of the community. The legislative not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary 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; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter: I mean, so long as the judiciary remains truly distinct from both the legislative and executive. For I agree that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such an union must ensue from a dependence of the former on the latter, notwithstanding nominal and apparent separation; that as from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence, as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution; and in a great measure as the citadel of the public justice and the public security."

Ruminations on Judicial Review of the Courts

"Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the grounds on which it rests cannot be unacceptable. There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his

principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the constitution. It is not otherwise to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts.”

### Judicial Review and Supremacy of Constitution

“A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought of course to be preferred; or in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.”

### Need for an Independent Supreme Court

“This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humours which the arts of designing men, or the influence of particular conjunctures sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the mean time to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed constitution will never concur with its enemies in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing constitution, would on that account be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they had proceeded wholly from the cabals of the representative body.”