

## *THE JUDICIARY ACT OF 1789*

Enacted on September 24, 1789, the Judiciary Act of 1789 (the “Act”) is one of the most important pieces of legislation Congress ever passed. The Act performed three functions. First, it clarified Article III of the United States Constitution by creating a hierarchical federal court system. Second, it declared the Supreme Court the final court to decide issues of federal law. Finally, it triggered *Marbury v. Madison*, 5 U.S. 137 (1803), an immensely important case that declared the Court’s authority to review congressional acts.

### *Constitutional Clarification*

The Act added depth to Article III of the Constitution. However impressive the Constitution was as an overall governing scheme at the time, sections of it intentionally lacked clarity. For example, Article III simply declared that federal judicial power would be vested in a Supreme Court and “in such inferior Courts as Congress may from time to time ordain and establish.” The Framers wrote Article III broadly so Congress could create and, from time to time, alter the makeup of the judiciary. Fulfilling its obligations, the First Congress clarified Article III and gave voice to Constitutional silence by creating a hierarchical federal court system comprised of thirteen district courts, three circuit courts, and, of course, the United States Supreme Court.

Every state plus Kentucky and Maine, which were then parts of Virginia and Massachusetts, received a *federal district court* and district court judge. These district courts were not powerful trial courts like today’s district courts. The district courts could hear only certain minor cases, like admiralty and maritime cases. While some opponents of the Act feared the creation of federal district courts, their fears were allayed somewhat

since the federal district courts' boundaries were the same as the states' political borders, their jurisdiction was limited, and each district judge had to reside in the district for which he was appointed.

The Act also created three *federal circuit courts* that would act as the primary federal trial courts. Composed of the eastern, middle, and southern circuits, these three circuit courts had original jurisdiction over the vast majority of federal legal issues, as well as some appellate powers to review district court decisions. Each circuit court tribunal consisted of two U.S. Supreme Court Justices and the district judge of the district in which they sat. When a district judge's case was on appeal, however, he could not sit on the circuit court and review his own decision.

The Supreme Court Justices "rode circuit" twice a year when they traveled to and presided over these circuit court cases. Most Justices despised riding circuit since the full Supreme Court could overturn individual Justices' circuit riding decisions and because it forced them to travel long distances on horseback over primitive roads and often through bad weather. Notwithstanding a very brief time during the first Jefferson administration, Congress did not abolish circuit riding until 1891.

The Act also granted these new federal circuit courts "diversity jurisdiction." Diversity jurisdiction allowed federal courts to hear disputes between citizens of different states or between a state (or its citizens) and a foreigner that turned on *state law*. The amount in controversy, however, had to exceed five hundred dollars. Additionally, one of the parties in the controversy had to live in the state over which the district court presided. The circuit courts received diversity jurisdiction because Congress believed

that state courts might apply state law in a manner that would discriminate against out-of-state litigants.

Note, however, that the Act did not grant federal courts “federal question” jurisdiction. Federal question jurisdiction, unlike diversity jurisdiction, is a kind of original jurisdiction that provides federal trial courts with the authority to hear disputes turning on *federal law*. Congress did not grant “federal question” jurisdiction until 1875. Up until 1875, unless a federal court heard a case under its diversity jurisdiction that involved issues of both state and federal law, or an appeal made it to the U.S. Supreme Court, *state courts* interpreted and applied federal law, when applicable, to disputes.

The Act, as it addressed the United States Supreme Court, called for six Justices. This number was significant because it established two Justices to ride on each of the three circuits. Of the six Justices, one served as Chief Justice and the other five as Associate Justices. The Act further declared that the Court should hold two sessions annually (in August and February) at the seat of government. Parties could appeal cases to the Supreme Court from the circuit court only if the amount in controversy exceeded \$2,000.00. Finally, as described below, the Act empowered the Court to review certain state court decisions.

#### *The Final Court To Decide Issues of Federal Law*

Section twenty-five of the Act allowed litigants to appeal to the U.S. Supreme Court those state supreme court decisions that: (1) involved issues of the validity of a federal law or treaty; (2) upheld a state law that a party challenged as violating federal law, federal treaties, or the U.S. Constitution; or (3) interpreted any clause of the U.S. Constitution, a federal treaty, or a federal statute. Section twenty-five—which contained

no amount-in-controversy minimum—supplemented the Constitution’s Supremacy Clause, which held the Constitution and all federal laws made thereunder were the supreme law of the land, notwithstanding any contrary state laws. Section twenty-five fostered the Supreme Court’s preeminence over all courts because it made the Court the final and sovereign judicial forum over matters concerning federal law. The Court used section twenty-five as a tool in numerous cases to review state court decisions and pronounce Supreme Court dominance. *See, e.g. Martin v. Hunter’s Lessee*, 1 Wheat. 304 (1816); *Cohens v. Virginia*, 6 Wheat. 264 (1821).

#### *Marbury v. Madison and Judicial Review*

Finally, it must be noted that section thirteen of the Act, which granted the Court power to issue writs of mandamus in certain circumstances, gave rise to *Marbury v. Madison*. *Marbury* is an important case because it established the Court’s power to review congressional acts. Pursuant to section thirteen, William Marbury asked the Court to issue a writ of mandamus ordering President Jefferson to deliver Marbury’s commission as justice of the peace. The Court, however, held that section thirteen, the basis for Marbury’s cause of action, unconstitutionally expanded the Court’s original jurisdiction. Congress, it said, only could legislate the Court’s appellate jurisdiction, not its original jurisdiction. Thus, the Court ruled that section thirteen was unconstitutional and established its authority to review congressional acts.

#### *Conclusion*

The Judiciary Act of 1789 performed three functions. It clarified Article III of the Constitution by creating a hierarchical judicial system, made the United States Supreme

Court the final appellate court on matters concerning federal law, and gave rise to *Marbury v. Madison*. For these reasons, the Act is landmark legislation.

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For more information: Bourguignon, Henry J. 1995. The Federal Key to the Judiciary Act of 1789. *South Carolina Law Review* 46: 647-702; Marcus, Maeva. 1992. *Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789*. New York: Oxford University Press; Currie, David P. 1997. *The Constitution in Congress: The Federalist Period: 1789-1801*. Chicago: University of Chicago Press.