

## What Makes a Court Supreme?

### **Time and Grade Level**

One 50 minute class period in a **3-5 grade** social studies classroom.

### **Purpose of the Lesson**

The purpose of this lesson is to help students understand the original purpose and powers of the Supreme Court according to the Constitution. Students will learn the Supreme Court's role in preserving the U.S. Constitution and the balance of power it creates. In this lesson, students will learn about the powers of the Supreme Court according to the Constitution through a guided hidden message activity and vocabulary lesson. An extension activity links this understanding of the Court to the development of judicial review in *Marbury v. Madison*.

### **Critical Engagement Questions & Lesson Objectives**

1. What does it mean to be the highest court in the land? What are the powers of the Supreme Court according to the Constitution?
  - **Objective:** Students will be able to explain the terms used in Article III of the Constitution that identify the Supreme court (i.e, original jurisdiction, supreme, equity, treason)
  - **Objective:** Students will be able to list at least two powers of the Judicial Branch according to the Constitution.

### **Standards**

#### **[Common Core Standards: English Language Arts Standards-Reading Informational Texts & Language, Grade 4](#)**

**CCSS.ELA-Literacy.L.4.5** Demonstrate understanding of figurative language, word relationships, and nuances in word meanings.

**CCSS.ELA-Literacy.L.4.4** Determine or clarify the meaning of unknown and multiple-meaning words and phrases based on grade 4 reading and content, choosing flexibly from a range of strategies.

**CCSS.ELA-Literacy.RI.4.2** Determine the main idea of a text and explain how it is supported by key details; summarize the text.

#### **[C3 Standards: Suggested K-12 Pathway for College, Career, and Civic Readiness Dimension 2, Participation and Deliberations, Civic and Political institutions](#)**

**D2.Civ.8.3-5.** Identify core civic virtues and democratic principles that guide government, society, and communities.

**D2.Civ.4.3-5.** Examine the origins and purposes of rules, laws, and key U.S. constitutional provisions.

## Overview of the Lesson

Day One
1. <b>Hidden message worksheet</b> Students will work independently or in groups.
2. <b>Dictionary discovery</b> of the words found for the hidden message worksheet.
3. <b>Discussion</b> of the Supreme Court and Article III.
4. <b>Homework:</b> Drawing a picture to symbolize the Supreme Court.

## Materials

1. Printed copies of the hidden message worksheet are found in [Appendix A](#). The key to this worksheet is found in [Appendix B](#).
2. Access to dictionaries.
3. Printed copies of the vocabulary worksheet found in [Appendix C](#).
4. Virtual or physical copies of the Constitution (accessible [here](#)).

## Teacher Warm-up for the Lesson

### RESOURCES FOR BACKGROUND ON THE TOPIC

#### *Primary Source Documents (ConSource)*

- The following documents provide discussion of Article III:
  - [The Federalist No. 78](#) (see [Appendix D](#) 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.
- ConSource's Collection of primary source documents related to the Judicial Branch may be found [here](#).

*Document (ConSource's, US 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. We have also included useful background information, which places each clause in historical context.

VOCABULARY TERMS (Includes those from the student activity and others)

**Aid and Comfort:** to render assistance or counsel (advice). Any act that deliberately strengthens or tends to strengthen enemies of the United States, or that weakens or tends to weaken the power of the United States to resist and attack such enemies is characterized as aid and comfort.

**Ambassador:** A diplomat sent by a country as its official representative to a foreign country.

**Appellate jurisdiction:** A court that hears a case that has already been heard by another court is said to have appellate jurisdiction. In other words, a court may exercise appellate jurisdiction when one of the parties is dissatisfied with a lower court's ruling and has asked, or appealed, for a higher court to review the decision.

**Confession:** A formal statement admitting that one is guilty of a crime.

**Congress:** the national legislative body established by the Constitution consisting of the House of Representatives and the Senate.

**Convict:** To determine someone to be guilty of a criminal offense, according to the verdict of a jury or a judge.

**Equity:** The "Law and Equity" portion of Article III, refers to the Founder's wish for the Supreme Court to deal not only in matters of common law, but to also have the power to make decisions that are counter common law precedents in interests of fairness and justice.

**Good Behavior:** As a legal term, this refers to the requirement that justices serving on a Federal court must exhibit respect and adherence to the law in their personal and public lives, or they may be impeached for bad conduct.

**Inferior court:** Either a district or circuit court whose decisions can be appealed to a higher court. The Supreme Court is the highest court in the land.

**Judicial Power:** The constitutional authority to hear and decide cases. Through judicial review, to interpret and enforce or void laws when disputes arise over their constitutionality.

**Jurisdiction:** Authority or legal power to hear and decide cases.

**Jury:** A body of people sworn to give a verdict in a legal case on the basis of evidence submitted to them in court.

**Levy:** to impose or to seize to satisfy a legal judgment. In the context of Article III, levy means to impose.

**Original jurisdiction:** The court in which a case first appears, or originates, is said to have original jurisdiction. The Supreme Court has original jurisdiction in cases involving ambassadors, certain public officials, and disputes between states. These cases rarely come to the Court.

**Ordain and Establish:** To create and declare, a way of indicating acceptance of a clause or provision.

**Party:** In legal application, a party refers to the person or person forming one side in an agreement or dispute.

**Supreme Court:** The highest federal court in the U.S., consisting of nine justices and taking judicial precedence over all other courts in the nation.

**Testimony:** A formal written or spoken statement that provides evidence that something did or did not happen, or that someone did or did not do something.

**Treason:** Betrayal of one's country. In American constitutional law, treason consists of making war on the United States or in giving aid and comfort to its enemies. Treason is carefully defined in the U.S. Constitution, and requirements for conviction are spelled out to ensure against government abuse of its powers.

**Treaty:** An agreement under international law between states or international organizations.

**Vest:** to place or give into the possession or discretion of some person or authority. In the context of the Constitution, this means that the Constitution gives the power to try certain cases and decide on the law in certain matters, to the Supreme Court.

## Activity

Activity	Description	Suggested Questions
<i>Hidden Message Worksheet</i>	Give students 20-25 minutes to work independently or in small groups in the hidden message worksheet found in <a href="#">Appendix A</a> .	
<i>Dictionary Discovery</i>	<p>Come back together as a class and ask students to write one of the words they had to find for the hidden message up on the blackboard.</p> <p>As a class, use the dictionary to look up the words and work with context clues in the Constitution to create a working definition of that terms. Do this for all terms.</p> <p>As you complete the exercise, give students time to copy the terms and their definitions down on the Vocabulary worksheet found in <a href="#">Appendix B</a>.</p>	<ol style="list-style-type: none"> <li>1. What do we think this word means?</li> <li>2. Does it sound similar to any words we already know?</li> <li>3. Where did you find this word in the Constitution? What is the sentence saying? Does that tell us anything about this word?</li> <li>4. What other words can we replace this word with that mean the same thing? What words mean the opposite of this word?</li> <li>5. Why do you think the Founder’s choose this word?</li> </ol>
<i>Discussion of the Powers of the Supreme Court</i>	After going through the vocabulary terms, have the class discuss the phrases they completed on their worksheet. Tell the class that these phrases represent many of the Judicial powers created in article II and explain what they mean.	<ol style="list-style-type: none"> <li>1. Does anybody know a Supreme Court case?</li> <li>2. Why would it be a good idea for the Constitution to create a Supreme Court that could try cases between states?</li> <li>3. Why would the Supreme Court have original jurisdiction?</li> <li>4. When would congress get to decide what state you are tried in? When would you be in the United States but not in any particular state?</li> </ol>
<i>Homework</i>	Ask students to a draw a picture that represents the Supreme Court.	<ol style="list-style-type: none"> <li>1. How would you draw the Supreme Court? Draw a picture that can be a definition, it helps us remember what the Supreme Court is and what it does.</li> </ol>

## Homework

**Day One:** For Homework, ask students to create a picture that represents the structure and powers of the U.S. Supreme Court.

## Extension Activity

- A. **Parent & Student Interview Activity-Introduction to Judicial Review:** Have students interview their parents about Supreme Court cases that stand out in their minds as important and consequential. Students should ask not only what the case was about, but also what their parents thought of the decision(s) and what was happening in America at the time. Students should write down the name(s) of the case(s) their parents tell them about and 2-3 things their parents remember about the case.
- A. In class, create a list of the cases the students discussed with their parents. Mark the cases that are express examples of the Supreme Court's powers in the Constitution and identify those that are not. Use these cases to explore more thoroughly the types of cases the Supreme Court gets to decide upon. This activity is intended to lead to the introduction of Judicial Review as function of the court that isn't expressly identified in the Constitution.
- B. Use the excerpts of Federalist No. 78 in [Appendix D](#). to explore the meanings of judicial review and begin to discuss the case of Marbury v. Madison (a grade appropriate discussion of the case can be found [here](#))

**Appendix A.**

**Hidden Message Worksheet**

# James and the Giant Court

It is the night before the last day of the Constitutional Convention and James Madison has been up all night trying to put the finishing touches on the new Constitution. But he cannot seem to remember that word the delegates wanted him to use to describe the most important court created by the new Constitution. He remembers that it was a BIG word, but nothing he tries seems to fit. He has tried huge, titanic, gigantic, large, and big, but all without luck. Then he remembered that Thomas Jefferson had hidden the word in the text of Article III for safekeeping. Can you help James Madison decode the word used to describe the court created by the Constitution? Search Article III of the Constitution for the missing words or phrases. Then, use the numbers below some of the letters to decode the message!

1. The judicial Power of the United States, shall be \_\_\_\_\_<sup>2</sup>\_\_\_\_\_ in one Court, and in such \_\_\_\_\_<sup>4</sup>\_\_\_\_\_ as the Congress may from time to time \_\_\_\_\_<sup>21</sup>\_\_\_\_\_ and \_\_\_\_\_<sup>5</sup>\_\_\_\_\_.
2. The \_\_\_\_\_<sup>12</sup>\_\_\_\_\_ \_\_\_\_\_<sup>3</sup>\_\_\_\_\_ shall extent to all Cases, in Law and \_\_\_\_\_<sup>4</sup>\_\_\_\_\_, arising under this Constitution, the laws of the United States, and \_\_\_\_\_<sup>24</sup>\_\_\_\_\_ made, or which shall be made, under their \_\_\_\_\_<sup>15</sup>\_\_\_\_\_.
3. To \_\_\_\_\_<sup>6</sup>\_\_\_\_\_ cases affecting \_\_\_\_\_<sup>7</sup>\_\_\_\_\_, or other public ministers and consuls.
4. To \_\_\_\_\_<sup>9</sup>\_\_\_\_\_ \_\_\_\_\_<sup>17</sup>\_\_\_\_\_ to which the United States shall be a \_\_\_\_\_<sup>20</sup>\_\_\_\_\_ and to between two or more states.
5. In all Cases affecting ambassadors, other public Ministers and consuls, and those in which a state shall be a Party, the Court shall have original \_\_\_\_\_<sup>27</sup>\_\_\_\_\_.
6. \_\_\_\_\_<sup>10</sup>\_\_\_\_\_ against the United States shall consist only in \_\_\_\_\_<sup>8</sup>\_\_\_\_\_ War against them or in adhering to their Enemies, giving them \_\_\_\_\_ and \_\_\_\_\_<sup>28</sup>\_\_\_\_\_.

7. No Person shall be   26   of treason unless on the   23   of two witnesses to the same overt Act, or on   22     1   to open Court.
8. The Judges, shall hold their Offices during   14     16  .
9. The trial of all Crimes, except in Cases of Impeachment, shall be by   19  ; and such Trial shall be held in the state where the said crimes shall have been   25     29  ; but when not committed within any state, the Trial shall be at such place or places as the   18   may by law have directed.

*What did the Founder's decide to call the highest court in the United States?*

  1     2        3     4     5     6        7     8        9    10   11   12   13   14      15   16   17   
 18   19   20   21   22   23   24      25   26   27   28   29    !



## James and the Giant Court

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1. The judicial Power of the United States, shall be V E S T E D in one Court, and in such I N F E R I O R C O U R T S as the Congress may from time to time O R D A I N and E S T A B L I S H.
2. The J U D I C I A L P O W E R shall extent to all Cases, in Law and E Q U I T Y, arising under this Constitution, the laws of the United States, and T R E A T I E S made, or which shall be made, under their A U T H O R I T Y.
3. To A L L cases affecting A M B A S S A D O R S, or other public ministers and consuls.
4. To C O N T R O V E R S I E S to which the United States shall be a P A R T Y and to between two or more states.
5. In all Cases affecting ambassadors, other public Ministers and consuls, and those in which a state shall be a Party, the Court shall have original J U R I S D I C T I O N.
6. T R E A S O N against the United States shall consist only in L E V Y I N G War against them or in adhering to their Enemies, giving them A I D and C O M F O R T.

7. No Person shall be C O<sup>26</sup> N V I C T E D of treason unless on the T E S T I M<sup>23</sup> O N Y of two witnesses to the same overt Act, or on C O N F E<sup>22</sup> S S I O N to open Court.
8. The Judges, shall hold their Offices during G O O D<sup>14</sup> B E H<sup>16</sup> A V I O R.
9. The trial of all Crimes, except in Cases of Impeachment, shall be by J U<sup>19</sup> R Y; and such Trial shall be held in the state where the said crimes shall have been C<sup>25</sup> O M M I T<sup>29</sup> E D; but when not committed within any state, the Trial shall be at such place or places as the C O N G R E S<sup>18</sup> S may by law have directed.

*What did the Founder's decide to call the highest court in the United States?*

1 2    3 4 5 6    7 8    9 10 11 12 13 14    15 16 17  
18 19 20 21 22 23 24    25 26 27 28 29 **!**

It will be called the SUPREME Court!

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

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

**The Supreme Court  
Vocabulary Terms**

1. Vest
  
  
  
  
  
  
  
  
  
  
2. Inferior Courts
  
  
  
  
  
  
  
  
  
  
3. Ordain and Establish
  
  
  
  
  
  
  
  
  
  
4. Judicial Power
  
  
  
  
  
  
  
  
  
  
5. Equity
  
  
  
  
  
  
  
  
  
  
6. Treaty
  
  
  
  
  
  
  
  
  
  
7. Ambassador
  
  
  
  
  
  
  
  
  
  
8. Party
  
  
  
  
  
  
  
  
  
  
9. Treason

10. **Levy**

11. **Jurisdiction**

12. **Aid and Comfort**

13. **Convict**

14. **Testimony**

15. **Confession**

16. **Good Behavior**

17. **Jury**

18. **Congress**

19. **Supreme Court**

## Appendix D.

## Federalist No. 78 Excerpts

*View the Full Document [here](#)*

### Why the Court wasn't well described, thought to be 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 incontestibly 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.”