Who Checks Power?

How the Supreme Court reviews laws and executive actions

9-12.GOV.41 "Describe the Supreme Court's role, established by Marbury vs. Madison, in determining the constitutionality of laws and acts of the legislative and executive branches."

NAME _____ DATE _____

1 READ AND MARK

Read it twice

YOUR JOB Underline the law and the constitutional limit that the Court compared in Marbury, then number the two government actions in the phone-search example: 1 for Congress and 2 for the president.

A Commission and a Constitutional Question

1. In 1801, William Marbury expected a commission naming him a justice of the peace. The signed document was not delivered before President John Adams left office. When Thomas Jefferson became president, his secretary of state, James Madison, did not deliver it. Marbury asked the Supreme Court to order Madison to hand it over. The dispute was about a job, but it raised a larger question: What should a court do when a law passed by Congress seems to give the Court power the Constitution does not give it? The justices had to compare a federal law with the Constitution before deciding whether they could issue that order.

2. In Marbury v. Madison (1803), the Supreme Court said Marbury had a right to his commission but could not get the order he requested from that Court. A section of the Judiciary Act of 1789 appeared to let the Supreme Court issue such an order as an original case, one that begins there. The Constitution listed the kinds of cases that could begin in the Supreme Court, and Marbury's request was not among them. The Court held that Congress could not expand that list by ordinary law. It treated the conflicting part of the act as unconstitutional, an exercise of judicial review.

3. Judicial review reaches beyond laws passed by Congress. In a case, the Supreme Court may also examine an action taken by the president or another executive official. Imagine Congress passes a law allowing federal officials to search every student's phone at federally operated schools without any reason to suspect wrongdoing. Then imagine a president directs those officials to begin the searches. A student challenges both the law and the directive under the Fourth Amendment, which protects against unreasonable searches. The Court would consider the constitutional claim against each branch's action. It could rule that either action cannot stand if it conflicts with the Constitution.

2 ANSWER WITH EVIDENCE

Use the passage

1. Why could the Court not grant Marbury's requested order, even though it said he had a right to the commission?

2. In the phone-search example, how would the Court use judicial review to examine Congress's law?

3. How could the Court review the president's directive separately from Congress's law?

4. A student says judicial review means the Court writes a replacement phone-search rule. Based on the passage, what does the Court do instead?

3 YOUR TURN

Your own words

Invent a new situation involving a law passed by Congress and a separate action by the president or an executive official. In four sentences, name a constitutional protection or limit, explain how the Supreme Court could review each action in a case, and state what could happen if either action conflicts with the Constitution.

ANSWER KEY

Who Checks Power?

HIGH SCHOOL · 9-12.GOV.41

PART 1 · READ AND MARK

Underline the law and the constitutional limit that the Court compared in Marbury, then number the two government actions in the phone-search example: 1 for Congress and 2 for the president. Accept any marking that follows this job and points at the right text.

PART 2 · ANSWERS

#	QUESTION	ANSWER
1	Why could the Court not grant Marbury's requested order, even though it said he had a right to the commission?	**The Court held that Congress could not use the Judiciary Act to expand the Supreme Court's original jurisdiction beyond the cases listed in the Constitution.**
2	In the phone-search example, how would the Court use judicial review to examine Congress's law?	**It would consider whether the law allowing searches conflicts with the Fourth Amendment's protection against unreasonable searches. If it does, the Court could rule that the law cannot stand.**
3	How could the Court review the president's directive separately from Congress's law?	**It could consider whether directing officials to search the phones conflicts with the Fourth Amendment. If the directive does, the Court could rule that it cannot stand.**
4	A student says judicial review means the Court writes a replacement phone-search rule. Based on the passage, what does the Court do instead?	**The Court considers whether each challenged government action conflicts with the Constitution and can rule that a conflicting action cannot stand.**

PART 3 · YOUR TURN (SAMPLE ANSWER)

Congress passes a law banning peaceful signs on public sidewalks outside federal buildings. The president directs federal officers to confiscate those signs, even when people are not blocking entrances. In a case challenging both actions, the Supreme Court could compare the law and the directive separately with the First Amendment's protection of speech. If either violates the Constitution, the Court could rule that the conflicting action cannot stand.

Accept other accurate descriptions of the constitutional conflict in Marbury and the Court's review of legislative and executive actions. For Your Turn, the invented actions must be distinct, and the response must explain review of both in four sentences.