

Document 2: Excerpts of Supreme Court Chief Justice John Marshall's 1803 decision in *Marbury v. Madison*.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the Constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply...

From these, and many other selections which might be made, it is apparent that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does [the Constitution] direct the judges to take an oath to support it? ...

It is also not entirely unworthy of observation that, in declaring what shall be the *supreme* law of the land, the *Constitution* itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in *pursuance* of the Constitution, have that rank.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that *courts*, as well as other departments, are bound by that instrument.

The rule must be

Discharged.

1. The 1803 Supreme Court case of *Marbury v. Madison* established the Supreme Court's power of **judicial review** (the power to declare acts of Congress unconstitutional). What did Marshall mean by the phrase "It is emphatically the province and duty of the judicial department to say what the law is"? (tip – write in kid language)

- 2a. What does Marshall say is the duty of the court "when a law is repugnant to the Constitution"?

- 2b. What is important about the court "voiding" a law?
