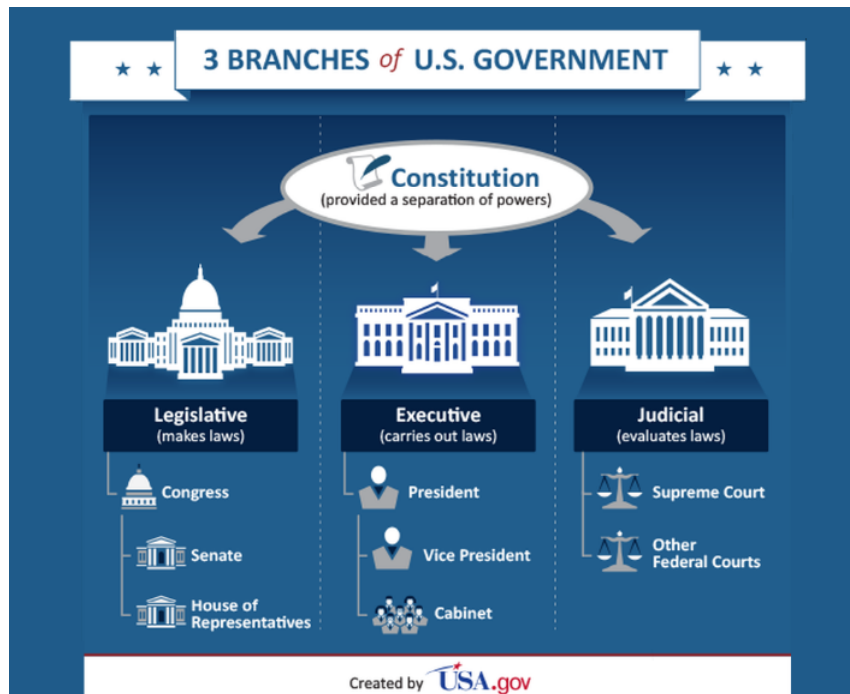


## 2.2: The Courts and Separation of Powers

### The Courts and the Constitution

The US Constitution conceived three branches of government and established a **separation of powers** between the branches, which is discussed in more detail in Chapter 6. [Article I](#) of the Constitution allocated the **legislative** power to Congress, which is composed of the House of Representatives and the Senate. Congress makes laws and represents the will of the people. [Article II](#) of the Constitution created the **executive** power in the president and makes the president responsible for enforcing the laws passed by Congress. [Article III](#) established the **judiciary**, which is in charge of applying and interpreting the meaning of the law. The US Supreme Court is the highest court in the federal judiciary and consists of nine Justices.



**Figure 2.2.1** *The 3 branches of the United States government.*

The Constitution is remarkably short in describing the judicial branch. Under the Constitution, there are only two requirements to becoming a federal judge: nomination by the president and confirmation by the Senate. Article III provides: “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” The Constitution also guarantees that how judges decide cases does not affect their jobs because they have lifetime tenure and a salary that cannot be reduced.

### *Marbury v. Madison*: The Power of Judicial Review

*Marbury v. Madison* (1803) is the most important case in the area of constitutional law (and, arguably, the most important judicial decision overall). First, *Marbury v. Madison* was the first time the Supreme Court declared an act of Congress to be unconstitutional. Second, and more significantly, it ruled that the Constitution granted the judiciary the power of **judicial review**, meaning that any federal court has the authority to pronounce whether an act of the president or Congress is constitutional. In doing so, the Supreme Court decided a case involving the very same controversial issue that is regularly part of today's political discourse: presidential appointments of Supreme Court Justices along political party and ideological lines. While it may seem like this issue is a more recent controversy, "court packing" has been a political point of contention since as early as 1800.



**Figure 2.2.2** *Marbury v. Madison (1803) | Judicial Review Is Established by State Bar of Georgia.*  
(Learn how to access the [transcript](#).)

In 1800, the presidential election between John Adams and Thomas Jefferson nearly tore the nation apart. John Adams was the President and his Vice-President, Thomas Jefferson, ran against him. They were both Founding Fathers but were members of different political parties that had opposing visions for the future of the new nation. The election was bitter, partisan, and divisive. Jefferson won but wasn't declared the winner until early in 1801. In the meantime, Adams and other Federalists in Congress attempted to leave their mark on government by creating a slate of new life-tenured judgeships and appointing Federalists to those positions. For the judgeships to become effective, official commissions had to be delivered in person to the new judges. At the time power transitioned from Adams to Jefferson, several commissions had not been delivered, and Jefferson ordered his acting secretary of state to stop delivering them. When Jefferson came to power, there was not a single federal judge from his Democratic-Republican Party, and he refused to expand the Federalist influence any further.

One Federalist judge, William Marbury, sued Secretary of State James Madison to deliver his commission. The case was filed in the Supreme Court, and Chief Justice John Marshall—a Federalist—authored the opinion. At this time, the Supreme Court was composed of six justices (as opposed to today's nine). Chief Justice Marshall was joined by Justices Paterson, Chase, and Washington. Justices Cushing and Moore did not participate. The Court ruled against Marbury, declaring that it was the Supreme Court's role to decide the meaning of the Constitution (i.e., the doctrine of **judicial review**).

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