

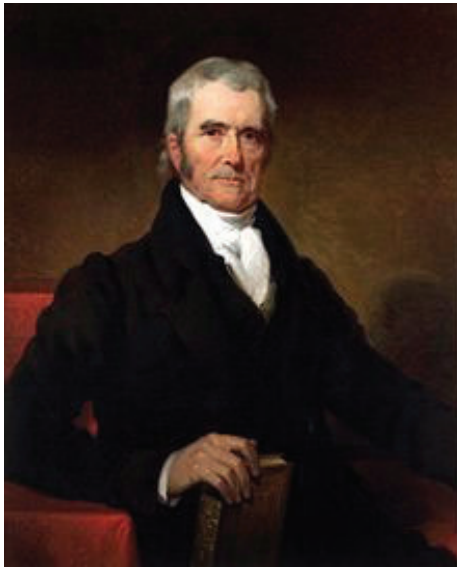
# The Dicta Plague

The University of Texas School of Law  
29th Annual Conference on State and Federal Appeals  
June 20-21, 2014 - Austin, TX

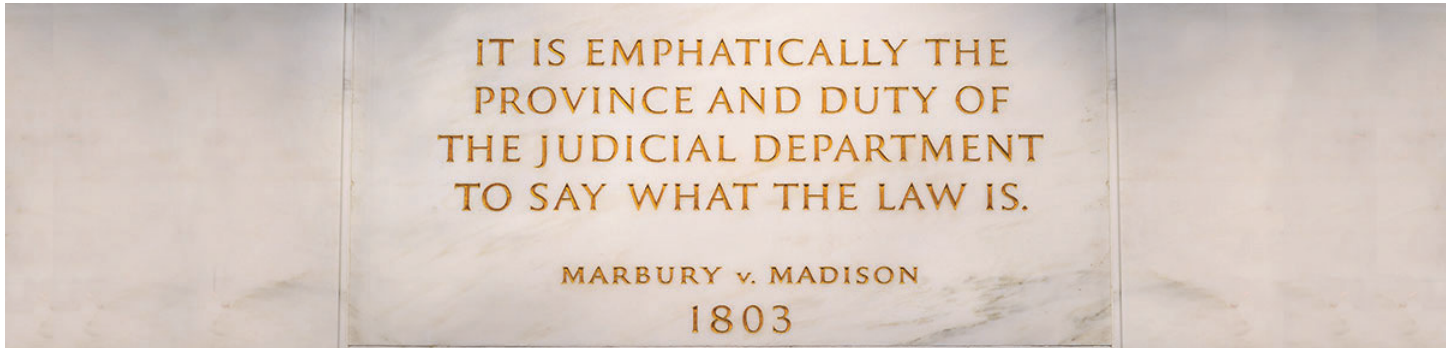
## David M. Gunn

Beck Redden LLP  
1221 McKinney, Suite 4500  
Houston, TX 77010  
(713) 951-3700  
[dgunn@beckredden.com](mailto:dgunn@beckredden.com)

## Chief Justice John Marshall



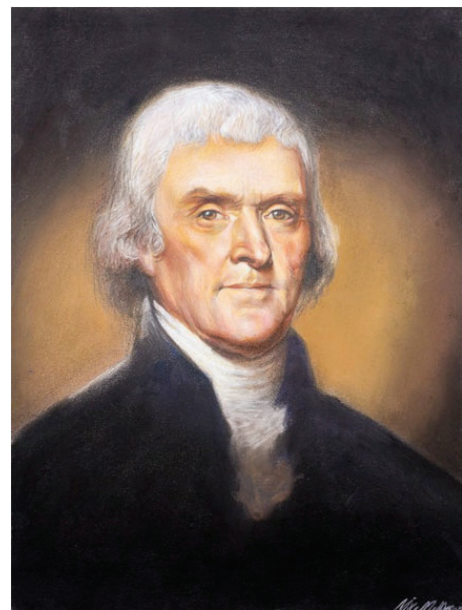
## *Marbury v. Madison*, 5 U.S. 137 (1803)



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## Jefferson objects to *Marbury's* “obiter dissertation”

Among the midnight appointments of Mr. Adams, were commissions to some federal justices of the peace for Alexandria. These were signed and sealed by him, but not delivered. I found them on the table of the department of State, on my entrance into office, and I forbade their delivery. Marbury, named in one of them, applied to the Supreme Court for a mandamus to the Secretary of State, (Mr. Madison) to deliver the commission intended for him. The court determined at once, that being an original process, they had no cognizance of it; and therefore the question before them was ended. But the Chief Justice went on to lay down what the law would be, had they jurisdiction of the case, to wit: that they should command the delivery.



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## *Cohens v. Virginia* (1821)

- Lottery ticket dispute
- Congress authorizes lottery, but state law forbids it (in Virginia): “Nor shall any person or persons buy or sell within this Commonwealth any lottery ticket ...”
- Cohen brothers convicted in state court
- They appeal to the U.S. Supreme Court
- Virginia moves to dismiss for want of jurisdiction, citing (dictum from) *Marbury v. Madison*



## *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821)

- The counsel for the defendant in error urge, in opposition to this rule of construction, some dicta of the Court in the case of *Marbury v. Madison*.
- It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

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