

CASE 1638 • SHORT FICTION • SATIRE

Out of Place

The Case 1638 stories

LIANA MARIE SIVE

IN THE SUPREME COURT OF THE UNITED STATES

MARBURY v. MARBURY No. 25-1638

Opinion of the Court

THOMAS, C.J., delivered the opinion of the Court, in which THOMAS, J., THOMAS, Circuit Justice, THOMAS, Associate Justice, THOMAS, Senior Justice, THOMAS, Junior Justice, THOMAS, Justice Emeritus, THOMAS, Justice-at-Large, and THOMAS, Acting Justice, joined.

This case presents a simple question: whether this Court has the authority to determine whether this Court has the authority to determine whether this Court has authority. Petitioner argues we do not. Respondent argues we do not. The United States, as amicus curiae, argues we do not. We agree with all parties. We reverse. Or affirm. We are uncertain.

I. FACTS

The facts are straightforward and unhelpful. Petitioner William Marbury (no relation) jaywalked across First Street while reciting Article III of the Constitution, which mentions neither judicial review nor jaywalking. Ticketed No. 1638 in the amount of \$50, he challenged the citation on grounds that *Marbury v. Madison*, 5 U.S. 137 (1803), was “just something somebody dreamt up and others went along with.”¹

The charge was enhanced because Marbury, who is Black (or African-American; see *infra* n.4), crossed within a painted crosswalk historically reserved for whites under Virginia segregation statutes. Although those laws have long been repealed, the citation still bore the notation: “Jaywalking While Out of Place.”

That such laws no longer exist is due to a chain of Equal Protection precedents this Court has elsewhere narrowed or criticized, including the very jurisprudence that made interracial marriage possible. Respondent insists this irony is nonjusticiable.

The District Court agreed the racial annotation was both irrelevant and dispositive, holding it lacked jurisdiction to say which. The Circuit Court reversed, finding it had jurisdiction to declare it lacked jurisdiction to determine whether the annotation was itself jurisdictional. Certiorari was granted—perhaps mistakenly.

II. CONFERENCE

At the post-argument conference, each Thomas agreed that the Court both did and did not have jurisdiction. I summarized: “We lack authority to act, but our lack of authority cannot be recognized without exercising it.”

A silence followed, during which nine yellow pads filled with doodles of Möbius strips.

The first round of clerk memoranda attempted “narrow tailoring.” The second round added flow charts. By the third, one clerk submitted only a recursive footnote that cited itself indefinitely. That clerk has since joined a monastery.

One memo suggested outsourcing jurisdiction to the Congressional Budget Office. Another proposed convening a citizens’ assembly in the food court, but the assembly disbanded after voting that lunch itself lacked standing.

III. PRECEDENT, OR WHATEVER THAT MEANS

As I recently observed, precedent is not “gospel.”² This principle applies with special force to precedents about precedent, and with double-special force to precedents about whether precedents about precedent are themselves precedential.

The *Marbury* Court simply announced it could review the constitutionality of laws, citing no authority beyond the authority it was creating. This resembles boarding a train, discovering an orangutan at the throttle, and still validating the ride because the tracks appear official.³

As originalists, we must ask: Did the Founders intend for us to wield powers fabricated in 1803? The historical record is clear: in 1789, nobody thought courts had the power we now use to declare that we never had it. Cf. *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. ____ (2022) (invalidating modern restrictions because they were not widely accepted in 1791); *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. ____ (2022) (holding rights absent from 1868 society are absent forever—unless, of course, invented by us in 1803).

One clerk suggested citing *Roe v. Wade*, 410 U.S. 113 (1973), as proof that rights can be “dreamt up and others go along with them.” Another clerk replied that this was Petitioner’s exact critique of *Marbury*. Both clerks resigned.

IV. THE DRAFTING PROCESS

Clerk Draft 1 concluded: “We overrule *Marbury*.”

Clerk Draft 2 replied: “We cannot overrule *Marbury* without invoking *Marbury*.”

Clerk Draft 3 suggested: “We hold that Drafts 1 and 2 cancel each other.”

By Draft 4, the word “jurisdiction” had been replaced with “juris-illusion.”

Three clerks resigned. One began speaking only in palindromes. Another demanded to be cited as *amicus palindromus*. Seven more left when asked to Bluebook a citation to “authority itself.”

The final pre-circulation draft consisted of the phrase “It is so ordered?” repeated 137 times, in homage to *Marbury*’s U.S. Reports citation.

V. DOMESTIC AFTERMATH

In response to our decision (or non-decision), Congress immediately passed the Anti-Marbury Act of 2025, providing:

“No court of the United States shall have power to determine whether it has power, or to determine whether it has power to determine whether it has power. This shall be construed broadly.”

The President signed the Act at a ceremony attended by nine Thomases. Asked whether the statute itself was constitutional, the President replied: “That is not my department.”

Within twenty-four hours, William Marbury jaywalked again across First Street, this time humming the theme from *Law & Order*. Ticketed \$50, he filed a new petition, styled *Marbury v. Marbury* (Re-Reconsidered).

Meanwhile, DOGE (Department of Government Efficiency) issued a directive forbidding all new federal hiring until Marbury was resolved. This order applied retroactively, meaning Marbury’s employment at the State Department was void *ab initio*. Several chambers now consist entirely of empty chairs and one unpaid paralegal.

Efficiency reports concluded that unpaid paralegals represented the only sustainable model of federal employment.

VI. THE LEAK AS PRECEDENT

Multiple outlets published leaked circulation drafts. We decline to investigate the source. To do so would require authority to investigate our own authority, which we lack.

Some members of Congress argue that the leak itself proves *Marbury* was wrongly decided, since judicial review now operates primarily through Substack. Others insist the leak has precedential value equal to any published opinion. Still others argue the leak is more binding than the final decision, since the public actually read it. A fourth faction argues that only leaked drafts can be binding, since published opinions lack authenticity.

This Court holds that the leak both has and lacks precedential effect. The holding is binding until contradicted, at which point it remains binding.

VII. INTERNATIONAL RECURSION

Unable to resolve its own jurisdiction, the United States referred Marbury to the International Court of Justice (“ICJ”) in The Hague. The ICJ, in turn, certified the question back to this Court: whether the United States has authority to disclaim the authority it never possessed to begin with.

Marbury himself traveled to The Hague. Upon arrival, he discovered that his file had already been opened. The clerk addressed him only as “K.” and explained that his case had been pending for centuries. No charges had ever been formally read. The docket simply stated: “*Marbury v. Marbury*, again.”

Every chamber he entered contained a different tribunal, each of which explained that it lacked authority to decide until another tribunal first decided. The proceedings remain ongoing.

Frustrated, the U.N. General Assembly created the International Crosswalk Tribunal (ICT) in Geneva. Marbury was informed the Tribunal lacked quorum until he served as Acting Judge. He objected. The Tribunal ruled his objection binding precedent, disqualifying him. Proceedings adjourned indefinitely.

VIII. HOLDING

We therefore hold as follows:

1. This Court lacks authority to review the constitutionality of laws.
2. The law forbidding us from reviewing constitutionality is unconstitutional.
3. We lack authority to say (2).
4. Point (3) is void under point (1).
5. Points 1–4 are hereby stricken.
6. The striking of Points 1–5 is stricken.

The judgment is reversed. And affirmed. The case is remanded with instructions to do nothing and everything. We retain jurisdiction while simultaneously divesting ourselves of it.

It is so ordered. Or not.

CIRCULATION RECORD (LEAKED)

- Draft 8 (Mar. 9, 2025): Added “Aftermath” section. Declared unconstitutional by Congress before printing finished.
- Draft 9 (Mar. 10, 2025): Added ICJ certification section. Clerk fled to Canada.
- Draft 10 (Mar. 11, 2025): Inserted DOGE hiring freeze. Circulation halted when no clerks remained to deliver copies.
- Draft 11 (Mar. 12, 2025): Revised Facts to include “Jaywalking While Out of Place.” Declared both dispositive and irrelevant.
- Draft 12 (Mar. 13, 2025): Appended fake Bluebook citations. Declared binding precedent on Twitter.
- Final Draft (Mar. 14, 2025): Adopted by all Thomases. Leaked in advance by Marbury himself, who has standing everywhere and salary nowhere.

PER CURIAM NOTE

It has not escaped our attention that Petitioner’s enhanced citation — “Jaywalking While Out of Place” — would have been enforceable under Virginia law at the time of the Founding, the Reconstruction, and until this Court’s line of Equal Protection cases dismantled such racial classifications.

Those cases, beginning with *Brown v. Board of Education*, 347 U.S. 483 (1954), and extending through *Loving v. Virginia*, 388 U.S. 1 (1967), invalidated the very architecture that produced “white crosswalks” and “white marriages.”

We acknowledge that the doctrinal scaffolding for these holdings is the same precedent-based edifice some Members of this Court have elsewhere declined to treat as binding.

We decline to resolve this inconsistency today. Or any day.

ARCHIVAL CODA

Filed and preserved as Case 1638: Out of Place.

A docket number, a traffic ticket, a paradox.

It remains on the books, waiting patiently for final resolution that never arrives, again. The waiting continues in perpetuity, archived and systematically cross-referenced, generating new case numbers that reference themselves.

Case closed. Case pending. Case 1638: permanently, definitively unresolved.

¹ Thomas, Remarks at Catholic University (Sept. 25, 2025).

² *Id.* (precedent is not “the gospel”).

³ *Id.* (suggesting one might find “an orangutan driving the train”).

⁴ The Court divided sharply on whether to describe Petitioner as “Black” or “African-American.” Draft opinions circulated with both usages, as well as one draft employing “Negro,” withdrawn after three clerks resigned. The Clerk’s Style Guide recommends “Black” when capitalized, “African-American” when hyphenated, and “jurisdictionally uncertain” when indeterminate. We decline to resolve the issue today.

SATIRICAL COVER LETTER

Petition for Certiorari for Publication

A companion to Case 1638: Out of Place

LIANA MARIE SIVE

**Re: Case No. 25-1638 — Petition for Certiorari for Publication of
“MARBURY v. MARBURY”**

IN THE SUPREME COURT OF EDITORIAL DISCRETION

**Liana Marie Sive, Petitioner v. The Editors of *The Journal of Unsettled Law*,
Respondents**

No. 25-1638

PETITION FOR CERTIORARI FOR PUBLICATION

STATEMENT OF JURISDICTION

Pursuant to *Article III (probably)* and *Rule 4½ of The Journal of Unsettled Law’s Unwritten Rules of Humor*, Petitioner respectfully invokes the Court’s discretionary jurisdiction to consider publication of a satire entitled “**MARBURY v. MARBURY.**” Jurisdiction exists, if at all, by implication, tradition, and good taste.

QUESTIONS PRESENTED

1. Whether a judicial opinion consisting solely of nine Justices Thomas may constitutionally review the constitutionality of *Marbury v. Madison*.
2. Whether recursive reasoning, if carried far enough, becomes precedent or parody.
3. Whether *The Journal of Unsettled Law* possesses authority to print a work that denies its own printability.

STATEMENT OF THE CASE

Petitioner has composed a satirical opinion of precisely **1,638 words — the first of three inquiries into the nature of self-referential paradoxes, all filed under Case 1638 — thereby achieving numerical consonance with its docket number (No. 25-1638)**. The opinion reverses, affirms, and remands itself repeatedly, creating a jurisprudential Möbius strip suitable for light lunchtime reading. All footnotes are Bluebook-compliant, except those that cite themselves.

ARGUMENT

1. *The Journal of Unsettled Law* has long exercised plenary power over the nation’s sense of legal proportion. Publishing this piece would reaffirm that power while simultaneously calling it into question.
2. Publication would serve substantial public interest by demonstrating, through example, the hazards of reasoning with a perfectly consistent logic.

3. No adequate remedy exists in any other forum; the *Harvard Law Review* lacks jurisdiction over humor, and the *Yale Law Journal* denies standing to jokes.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Journal:

1. Grant certiorari for publication;
2. Issue an opinion, concurrence, or witty footnote acknowledging receipt;
3. Hold that even if *The Journal of Unsettled Law* lacks authority to publish, its lack of authority shall be construed as self-executing approval; and
4. Award such further relief as equity, irony, or pagination may require.

Respectfully submitted,

/s/ Liana Marie Sive Petitioner, Author, and Counsel of Record for Herself Executed electronically pursuant to the Electronic Signatures in Global and National Commerce Act of 2000 (E-SIGN), consistent with the federal preference for current delivery in capital matters.

ABOUT THE PETITIONER

Liana Marie Sive earned degrees from the University of California, San Diego, and the California Institute of Technology before entering Emory University's Ph.D. program in Economics and the School of Law, where she placed fourth in Constitutional Law, ninth in Property, and somewhat lower in Torts. She withdrew after illness and a \$1 million investment dispute that converted \$35,000 into an accelerated course in contracts and remedies. She lives in Maine and remains under perpetual review as Case 1638.