

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

between Citizens of different States,—between Citizens of the same State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

### JUDICIAL POWER AND JURISDICTION—CASES AND CONTROVERSIES

The potential for abuse of judicial power was of concern to the Founding Fathers, leading them to establish limits on the circumstance in which the courts could consider cases. When, late in the Convention, a delegate proposed to extend the judicial power beyond the consideration of laws and treaties to include cases arising under the Constitution, Madison's notes captured these concerns. "Mr. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department." Consequently, "[t]he motion of Doctr. Johnson was agreed to *nem : con* : it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature—."<sup>341</sup>

This passage, and the language of Article III, § 2, makes clear that the Framers did not intend for federal judges to roam at large in construing the Constitution and laws of the United States, but rather preferred and provided for resolution of disputes arising in a "judicial" manner. This interpretation is reenforced by the refusal of the Convention to assign the judges the extra-judicial functions which some members of the Convention—Madison and Wilson notably—conceived for them. Thus, for instance, the Convention four times voted down proposals for judges, along with executive branch officials, to sit on a council of revision with the power to veto laws passed by Congress.<sup>342</sup> A similar fate befell suggestions that the Chief Justice be a member of a privy council to assist the President<sup>343</sup> and that the President or either House of Congress be able to request advisory opinions of the Supreme Court.<sup>344</sup> The intent of the Framers in rejecting the latter proposal was early effectuated when

<sup>341</sup> 2 M. Farrand, *supra* at 430.

<sup>342</sup> The proposal was contained in the Virginia Plan. 1 *id.* at 21. For the four rejections, *see id.* at 97–104, 108–10, 138–40, 2 *id.* at 73–80, 298.

<sup>343</sup> *Id.* at 328–29, 342–44. Although a truncated version of the proposal was reported by the Committee on Detail, *id.* at 367, the Convention never took it up.

<sup>344</sup> *Id.* at 340–41. The proposal was referred to the Committee on Detail and never heard of again.