

## JURISDICTION OF SUPREME COURT AND INFERIOR FEDERAL COURTS

### Cases Arising Under the Constitution, Laws, and Treaties of the United States

Cases arising under the Constitution are cases that require an interpretation of the Constitution for their correct decision.<sup>756</sup> They arise when a litigant claims an actual or threatened invasion of his constitutional rights by the enforcement of some act of public authority, usually an act of Congress or of a state legislature, and asks for judicial relief. The clause furnishes the principal textual basis for the implied power of judicial review of the constitutionality of legislation and other official acts.

***Development of Federal Question Jurisdiction.***—Almost from the beginning, the Convention demonstrated an intent to create “federal question” jurisdiction in the federal courts with regard to federal laws;<sup>757</sup> such cases involving the Constitution and treaties were added fairly late in the Convention as floor amendments.<sup>758</sup> But when Congress enacted the Judiciary Act of 1789, it did not confer general federal question jurisdiction on the inferior federal courts, but left litigants to remedies in state courts with appeals to the United States Supreme Court if judgment went against federal constitutional claims.<sup>759</sup> Although there were a few jurisdictional provisions enacted in the early years,<sup>760</sup> it was not until the period following the Civil War that Congress, in order to protect newly created federal civil rights and in the flush of nationalist sentiment, first created federal jurisdiction in civil rights cases,<sup>761</sup> and then in 1875 conferred general federal question jurisdiction on the lower federal courts.<sup>762</sup> Since that time, the trend generally has been toward con-

<sup>756</sup> *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 378 (1821).

<sup>757</sup> M. Farrand, *supra* at 22, 211–212, 220, 244; 2 *id.* at 146–47, 186–87.

<sup>758</sup> *Id.* at 423–24, 430, 431.

<sup>759</sup> 1 Stat. 73. The district courts were given cognizance of “suits for penalties and forfeitures incurred, under the laws of the United States” and “of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States . . . .” *Id.* at 77. Plenary federal question jurisdiction was conferred by the Act of February 13, 1801, § 11, 2 Stat. 92, but this law was repealed by the Act of March 8, 1802, 2 Stat. 132. On § 25 of the 1789 Act, providing for appeals to the Supreme Court from state court constitutional decisions, *see supra*.

<sup>760</sup> Act of April 10, 1790, § 5, 1 Stat. 111, as amended, Act of February 21, 1793, § 6, 1 Stat. 322 (suits relating to patents). Limited removal provisions were also enacted.

<sup>761</sup> Act of April 9, 1866, § 3, 14 Stat. 27; Act of May 31, 1870, § 8, 16 Stat. 142; Act of February 28, 1871, § 15, 16 Stat. 438; Act of April 20, 1871, §§ 2, 6, 17 Stat. 14, 15.

<sup>762</sup> Act of March 3, 1875, § 1, 18 Stat. 470, now 28 U.S.C. § 1331(a). The classic treatment of the subject and its history is F. Frankfurter & J. Landis, *supra*.