Testimony Before the House of Representatives
Subcommittee on Domestic and International Monetary Policy
of the Committee on Financial Services
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Thank you Chairman King, Representative Maloney. I appreciate the opportunity to be here today to speak in support of HR 2768.

Last spring, the Citizens Commemorative Coin Advisory Committee recommended that a coin commemorating the 250th anniversary of the birth of Chief Justice John Marshall be minted in 2005. Neither Marshall nor the Court has previously been honored with a commemorative coin.

While people all over the country are familiar with the likes of George Washington, Thomas Jefferson and Benjamin Franklin, significantly fewer know about the remarkable contributions of the fourth Chief Justice. A commemorative coin would provide an opportunity to educate all Americans about the man known as "the Great Chief Justice."

John Marshall served as Chief Justice of the United States for thirty-four years - from 1801 until 1835. He was born in the Blue Ridge

foothills of Virginia, about fifty miles west of present-day Washington. He had very little formal education. But by the time he reached twenty-five years of age, he had served as a Captain commanding a line company of artillery in the Battles of Brandywine and Monmouth during the Revolutionary War. He had also suffered through the terrible winter at Valley Forge with George Washington and the rest of the Continental troops. It was this experience which led him to remark that he looked upon the "United States as his country, and Congress as his government." Not an unusual sentiment today, to be sure, but quite an unusual sentiment for a Virginian at that time.

After mustering out of the service, he studied law very briefly and was admitted to the Virginia Bar. He was elected a member of Congress from Virginia, and at the time of his appointment as Chief Justice, he was serving as President Adams' Secretary of State. He was much better known as a politician than as a legal scholar.

Today -- due in large part to John Marshall -- the Federal Judiciary, headed by the Supreme Court, is regarded as a co-equal branch of the federal government, along with the Legislative and the

Executive Branches. But in the first decade of the new republic -- from 1790 to 1800 -- the judiciary was very much a junior partner.

To illustrate the low estate of the Supreme Court at this time, the federal government was in the process of moving from Philadelphia, which had been the capital for ten years, to the new capital of Washington in the District of Columbia. The White House, then called the President's House, was finished, and John Adams was the first President to occupy it. The Capitol building had been constructed on Capitol Hill, and was ready for Congress, though it was not nearly the building we know today as the Capitol. But no provision whatever had been made for housing the Supreme Court. Finally, at the last minute, a room in the basement of the Capitol was set aside for the third branch, and in that rather undistinguished environment the Court would sit for eight years.

Marshall's principal claim to fame as Chief Justice -- though by no means his only one -- is his authoring the Court's opinion in the famous case of Marbury v. Madison. Decided in 1803 -- two years after he became Chief Justice -- he turned what otherwise would have been an

obscure case into the fountainhead of all of our present-day constitutional law.

The case arose out of a suit by William Marbury, who had been nominated and confirmed as a Justice of the Peace in the District of Columbia, against James Madison, whom Thomas Jefferson had appointed as his Secretary of State. Although Marbury had been nominated and confirmed, his commission had not been issued by the time of the change in administration, and James Madison refused to issue it.

Marbury contended that once he had been nominated by the President, and confirmed by the Senate, the issuance of his commission was simply a ministerial task for the Secretary of State who had no choice but to issue it. He brought an original action in the Supreme Court, relying on a provision of the Judiciary Act of 1789 which said that the Supreme Court could issue writs of mandamus to any federal official where appropriate; he said that James Madison was a public official -- which no one denied -- and that a writ of mandamus -- a recognized judicial writ available to require public officials to perform their duty -- was appropriate in his case.

The opinion in Marbury v. Madison is a remarkable example of judicial statesmanship. The Court says that Marbury is entitled to his commission, and Madison is wrong to withhold it. It says that this is the sort of ministerial duty of a public official such as Madison which can be enforced by a writ of mandamus. But the Court concludes by saying that Congress -- in granting the Supreme Court the power to issue a writ of mandamus in a case like this -- has run afoul of the original jurisdiction provision of the Supreme Court contained in Article III of the Constitution. Madison and Jefferson are verbally chastised, but it turns out that there is nothing that the Supreme Court can do about it because Congress tried to give the Supreme Court more authority than the Constitution would permit. The doctrine of judicial review -- the authority of federal courts to declare legislative acts unconstitutional -- is established, but in such a self-denying way that it is the Court's authority which is cut back.

During the thirty-four years he served as Chief Justice, Marshall wrote over 500 opinions -- most of the important cases that the Court decided. In Gibbons v. Ogden, decided in 1824, he wrote the opinion adopting a broad construction of the power of Congress under its

authority to regulate interstate commerce contained in Article I of the Constitution. In the Dartmouth College Case, he gave a generous interpretation to the prohibition in the Constitution against state impairment of the obligation of contract. One could name several other opinions authored by Marshall of nearly equal importance, but suffice it to say that by the time of John Marshall's death in 1835, the Supreme Court was a full partner in the federal government.

Oliver Wendell Holmes once said, "if American law were to be represented by a single figure, skeptic and worshipper alike would agree without dispute that the figure could be one alone, and that one John Marshall." A commemorative coin in his honor would be a fitting way to mark the 250th anniversary of his birth.