

McCulloch v. Maryland (1819)

You Make the Call: Using the U.S. Constitution to Decide the Outcome

Congratulations! The year is 1819 and you are a justice on the Supreme Court of the United States. Your responsibility is to use the U.S. Constitution to determine the outcome of the *McCulloch v. Maryland* case. In order to make an educated decision, you must follow these procedures:

1. Prepare yourself by reading the **Background Summary**.
2. Read the excerpts from **The U.S. Constitution**. In your own words, explain each of the excerpts.
3. Read the **Summary of the Arguments** presented by each side. With whom do you agree? Why?
4. Discuss the questions below and write your decision. Be sure to include at least one idea from each of the three excerpts from the U.S. Constitution.

Questions to Consider:

1. What are the advantages for the federal government of establishing a national bank? Read through Article I, Section 8, Clause 18 of the U.S. Constitution to determine which functions of Congress might be helped by such a bank.
2. Why would states feel threatened by a national bank?
3. In your opinion, does the United States government have the authority to establish a national bank? Provide justification for your answer. You may want to review Article I, Section 8, Clause 18 of the Constitution to see what powers it specifically gives Congress.
4. If the United States does have authority to establish a bank, does Maryland have the authority to tax that bank? Why or why not?
5. Why do you think the Supreme Court of the United States agreed to hear this case? What larger principles were at stake?

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Background Summary

In 1791, the first Bank of the United States was established to serve as a central bank for the country. It was a place for storing government funds, collecting taxes, and issuing sound currency. At the time it was created, the government was in its infancy and there was a great deal of debate over exactly how much power the national government should have. Some people, such as Alexander Hamilton, argued for the supremacy of the national government and a loose interpretation of its powers, which would include the ability to establish a bank. Others, such as Thomas Jefferson, advocated states' rights, limited government, and a stricter interpretation of the national government's powers under the Constitution and, therefore, no bank. While Jefferson was President, the Bank's charter was not renewed. After the War of 1812, President James Madison determined that the country could utilize the services of a national bank to help fulfill its powers listed in Article I, Section 8, Clause 18 of the Constitution. In response to his suggestion, Congress proposed a Second Bank of the United States in 1816.

President Madison approved the charter and branches were established throughout the United States. Many states opposed opening branches of this bank within their boundaries for several reasons. First, the Bank of the United States competed with their own banks. Second, the states found many of the managers of the Bank of the United States to be corrupt. Third, the states felt that the federal government was exerting too much power over them by attempting to curtail the state practice of issuing more paper money than they were able to redeem on demand.

One state opposed to the Bank of the United States was Maryland. In an attempt to drive the Baltimore branch of the Bank of the United States out of business, the Maryland State Legislature required that all banks chartered outside of Maryland pay an annual tax of \$15,000. There was a \$500 penalty for each violation of this statute. James McCulloch, cashier of the Baltimore branch of the Bank of the United States, refused to pay the tax.

The State of Maryland took him to court, arguing that because Maryland was a sovereign state, it had the authority to tax businesses within its border, and that because the Bank of the United States was one such business, it had to pay the tax. Luther Martin, one of the attorneys for Maryland, reasoned that because the federal government had the authority to regulate state banks, Maryland could do the same to federal banks. Besides, he argued, the Constitution does not give Congress the power to establish a Bank of the United States. McCulloch was convicted by a Maryland court of violating the tax statute and was fined \$2,500.

McCulloch appealed the decision to the Maryland Court of Appeals. His attorneys, who included Daniel Webster, asserted that the establishment of a national bank was a "necessary and proper" function of the Congress. Webster stated that many powers of the government are implied rather than specifically stated in the Constitution. Furthermore, he argued, Maryland did not have the authority to levy the tax, because doing so interfered with the workings of the federal government.

After the Maryland Court of Appeals upheld the original decision against McCulloch, he appealed again. The case was heard by the Supreme Court of the United States, then headed by Chief Justice John Marshall.

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The U.S. Constitution

Article I, Section 8

The Congress shall have the Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article VI, Clause 2

The Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Summary of the Arguments

For McCulloch: Daniel Webster argued that although the power to charter a national bank is not specifically stated in the Constitution, it is one of the implied powers that the "necessary and proper" clause grants Congress. According to Webster, the bank was a "necessary and proper" way for Congress to conduct the financial affairs of the country. On the issue of whether or not Maryland could tax the bank, Webster argued that if Maryland were allowed to tax the bank, the state could destroy the bank by taxing it out of existence.

For Maryland: Maryland's Attorney General, Luther Martin, represented the state. He challenged Webster's assertion that the authority to establish a national bank is an implied power, saying that because creating a bank was not specifically stated in the Constitution, Congress did not have the authority to do so. Rather, it is a power that is reserved for the states. He went on to argue that because states are sovereign, they have the authority to tax institutions and businesses within their borders.