

McCulloch v. Maryland (1819)

FACTS OF THE CASE The case of *McCulloch v. Maryland* is about Congress's power to create a national bank. After Congress created such a bank, Maryland tried to make the Baltimore branch of the bank pay a large tax. The Bank refused to pay the tax, and the state of Maryland sued.

ISSUE

Does the Constitution give Congress the power to create a national bank?

ARGUMENTS

The following is a list of arguments made in the case of *McCulloch v. Maryland*. Divide a blank piece of paper in half, and label one half McCulloch and the other Maryland. Read each argument and assign each based on whether it supports McCulloch's side (that Congress has the power to create a national bank and Maryland cannot tax it) or Maryland's side (that Congress is not allowed to create a national bank and Maryland can tax such a bank).

1. Creating a bank was not specifically stated in the Constitution, so Congress did not have the authority to do so.

2. The "elastic" clause of the Constitution says that Congress can make laws that are "necessary and proper" to the exercise of its other, enumerated powers.

3. Creating banks is a power that is reserved for the states.

4. The Constitution expressly gives Congress the powers to "lay and collect taxes; to borrow money; and to regulate commerce." A national bank would be "necessary and proper" to allow Congress to exercise these enumerated powers.

5. Maryland did not have the authority to levy the tax, because doing so interfered with the workings of the federal government. If Maryland can tax the bank, the taxes could be so high that the bank would go out of business.

6. Because states are sovereign, they have the authority to tax institutions and businesses within their borders.

7. A national bank might be an unfair competitor for Maryland's banks, which can operate only in Maryland.

8. The Constitution is the supreme law of the land. If the United States Congress passed a law within its authority under the Constitution, a state legislature could not pass a law to interfere with that action.

9. There is nothing in the Constitution restricting the powers of Congress to those specifically enumerated.

EXPLORING THE ESSENTIAL QUESTION

Categorizing After you have categorized the arguments, choose one that you think is the most persuasive and explain why you found that argument compelling.

YOU BE 
the **JUDGE**