

## Classifying Arguments Activity

### *McCulloch v. Maryland (1819)*

After reading the **background, facts, issue, constitutional text and amendments**, read each of the arguments below. If the argument supports the petitioner, McCulloch write **MC** on the line after the argument. If the argument supports the respondent, Maryland, write a **MD** on the line after the argument. Work in groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

#### **Arguments**

1. The Constitution does give Congress the power to levy taxes, borrow or spend money, and raise and support an army and navy, among other things. Establishing a national bank is “necessary and proper” to the exercise of all of those other powers. \_\_\_\_\_
2. The Constitution never says that Congress may establish a national bank. \_\_\_\_\_
3. The establishment of a national bank interferes with the states’ abilities to control their own supply of money and their own economies. \_\_\_\_\_
4. The Necessary and Proper Clause permits Congress to make laws as they see fit. A law creating a national bank is necessary for the running of the country. \_\_\_\_\_
5. The Constitution says that the powers not delegated to the United States are reserved to the states. \_\_\_\_\_
6. If Congress passed a law within its authority under the Constitution, a state cannot interfere with that action. Maryland is attempting to interfere with Congress’ action and might try to tax the bank so heavily that that it would be unable to exist. The Supremacy Clause prohibits that kind of state interference with federal law. \_\_\_\_\_
7. While the Constitution does not specifically say that Congress has the power to establish a national bank, there is also nothing in the Constitution restricting the powers of Congress to those specifically enumerated. \_\_\_\_\_
8. The federal government shares the ability to raise taxes with the states—it is a concurrent power. Taxation within a sovereign state’s border, including of federal entities, is a state’s exercise of a state constitutional power that is a necessary attribute of its sovereignty and essential to its ability to function effectively. \_\_\_\_\_

## ***McCulloch v. Maryland (1819)***

**Argued:** February 22–26, 1819 and March 1–3, 1819

**Decided:** March 6, 1819

### ***Background***

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. In particular, many people focused on the fact that the Constitution did not expressly grant Congress the power to charter corporations or banks. Many thought that the only way to justify the federal government's creation of a central bank would be to interpret the Constitution as giving the federal government "implied" powers. This idea of implied powers worried many individuals who feared that this interpretation of the Constitution would create an all-powerful national government that would threaten the presumed sovereignty of the states.

The debate about the constitutionality of the First Bank was intense. Some people, such as Alexander Hamilton, argued for the supremacy of the national government and a broad 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 narrower interpretation of the national government's powers under the Constitution and, therefore, no bank.

President Washington decided that a national bank should be established and signed the bill creating it. The First Bank had a 20-year charter and was generally a success. However, while James Madison was president, the bank's charter was allowed to expire in 1811. Congress proposed a Second Bank of the United States in 1816. President Madison, who was a staunch opponent of the creation of the First Bank, approved the charter, believing that its constitutionality had been settled by prior practices and understandings.

The Second Bank established branches 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. (At this point in history, there was no single currency in the United States. Each state issued its own money, and the Bank of the United States also had authority to issue currency.) Second, the states found many of the managers of the Second Bank 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.

**Facts**

Maryland attempted to close the Baltimore branch of the national bank by passing a law that forced all banks chartered outside of the state to pay a yearly tax (the Second Bank was the only such bank in the state). James McCulloch<sup>1</sup>, the chief administrative officer of the Baltimore branch, refused to pay the tax. The state of Maryland sued McCulloch, saying that Maryland had the power to tax any business in its state and that the Constitution does not give Congress the power to create a national bank. McCulloch was convicted, but he appealed the decision to the Maryland Court of Appeals. His attorneys argued that the establishment of a national bank was a “necessary and proper” function of Congress, one of many implied, but not explicitly stated, powers in the Constitution.

The Maryland Court of Appeals ruled in favor of Maryland, and McCulloch appealed again. The case was heard by the Supreme Court of the United States.

**Issues**

Did Congress have the authority under the Constitution to commission a national bank? If so, did the state of Maryland have the authority to tax a branch of the national bank operating within its borders?

**Constitutional Provisions**

- **Article I, Section 8, Clause 18 (Necessary and Proper Clause) of the U.S. Constitution**  
“The Congress shall have 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 (Supremacy Clause) of the U.S. Constitution**  
“This 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.”
- **10<sup>th</sup> Amendment to the U.S. Constitution**  
“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.”

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<sup>1</sup> In the Supreme Court’s opinion for this case, James McCulloch’s surname was spelled M’Culloch.