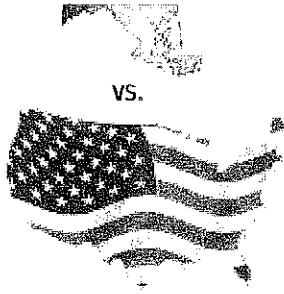


McCulloch v. Maryland

Name: _____

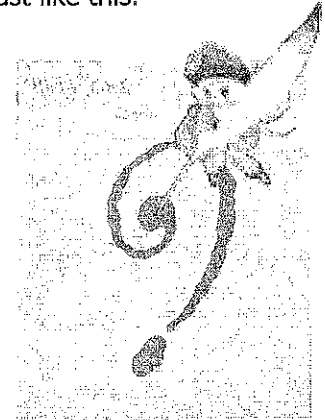


Power Play: State vs. Nation

What if someone gave you the power to read stories to a first grade class in the library—but gave the first graders the power to decide whether you're allowed to use any books? Or imagine you have the power to decide which TV shows your family will watch on Friday nights, but your kid sister has the power to decide whether anyone is allowed to turn the TV on. Who's really in control? In 1816, the state of Maryland tried to make a play against the United States government that would have worked just like this.

A New Government = Big Questions

In order to understand the tension between Maryland and the federal government, you have to imagine what it was like when the United States was first born. Our Founding Fathers had created a brand new government. There had never been another government exactly like it. Even though the Constitution described how it was supposed to work, the Constitution could not describe every detail. There were lots of questions—especially about how much power the federal government had.



POOL POWER

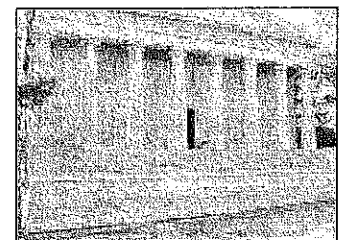
You have a summer job as a lifeguard at the community pool. Your boss gives you the power to make the rules about food and drinks at the pool. You decide that people can bring their own beverages, but they shouldn't bring their own snacks. In order to carry out this rule, you make arrangements to have a snack bar built on the pool patio so customers can buy the snacks there. Whoa! Did your boss give you *that* kind of power??

Constitutional Powers

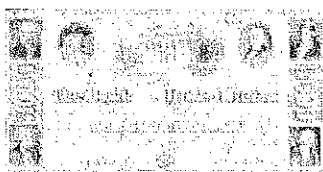
The U.S. Constitution created three branches of government and gave each branch certain powers. The legislative branch is made up of Congress, which is made up of the Senate and the House of Representatives. Article I of the Constitution gives Congress a long list of powers. It also says Congress can "make all Laws which shall be necessary and proper" for carrying out these powers. But what does that mean? (Is a building a snack bar "necessary and proper" for making rules about food and drinks at the pool?) In 1816, Congress made a decision that tested out the "necessary and proper" question in a big way.

Congress Creates a Bank

All nations need money to carry out their business, and the United States was no different. To make it easier for the government to do business, in 1816 Congress passed a law creating a national bank. The Bank of the United States was just like any other bank, except it was where the federal government did its banking business. In those days, state banks issued bank notes that functioned like money. The Bank of the U.S. was also allowed to issue bank notes. In exchange for this special treatment, it agreed to loan money to the U.S. government.



The bank's main branch still stands in Philadelphia. Courtesy of National Park Service.



A \$3,000 bank note

Maryland Passes a Tax

Once the bank was established, it opened branches in different states. One branch was located in Baltimore, Maryland. The U.S. government didn't ask Maryland for permission—it just opened the branch and started doing business. Maryland's state banks weren't very happy about having a new competitor in town where people could do their banking. And they didn't

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McCulloch v. Maryland

Name: _____

(continued from previous page)

like that the Bank of the U.S. had a privileged relationship with the U.S. government. In response, Maryland's government passed a law of its own: Any bank that had not been chartered, or organized, in the state of Maryland had to pay a special tax. The Bank of the U.S. refused to pay, so the state of Maryland sued the bank in state court.



James William McCulloch was the cashier at the Baltimore branch of the Bank of the United States.



John Marshall was the Chief Justice of the U.S. Supreme Court and wrote the Court's opinion in McCulloch v. Maryland.

Who Has the Power?

The Maryland courts sided with Maryland. So in 1819, the bank appealed to the United States Supreme Court. There were two main questions that needed to be answered: Did the Constitution allow Congress to start a bank? And if so, was a state allowed to tax a bank that was part of the federal government?

As always, the Supreme Court decided the case by looking at what the Constitution says. The Constitution gives Congress the power "to regulate Commerce . . . among the several States." *Regulate* means to make rules about something. *Commerce* is another word for business or trade. The Constitution also gives Congress the power to borrow money and collect taxes. But the Constitution does *not* say Congress has the power to start a bank. Could Congress start one anyway?

If It's Necessary and Proper, It's Okay

In a unanimous decision, the Supreme Court said yes. First, a bank is "necessary and proper" for carrying out the powers related to commerce, borrowing, and taxes. But even without the power to do what is "necessary and proper," Congress would still be able to start a bank. Why? Because sometimes in order to be able to do one thing, you have to be able to do something else. For example, the Court pointed out that the Constitution gives Congress the power to maintain a navy but says nothing about steam ships. Even so, "no one doubts the power of Congress to use them." In the same way, the Court said, "A bank is a proper and suitable instrument to assist the operations of the government."

This decision expanded the powers of the national government. It did this by saying the government could take any action that was appropriate for carrying out its powers—even if that action was not specifically mentioned in the Constitution, like starting a bank. Congress was only prohibited from doing things the Constitution specifically said it could *not* do.

Since Congress can...

- Regulate commerce
- Borrow money
- Collect taxes



Then Congress can also...

- Establish a national bank



State Interference? Not Okay.

As for Maryland's bank tax, the Constitution says that laws of the United States "shall be the supreme law of the land" and states must follow them. The Court said that if Maryland were allowed to tax the Bank of the U.S., it would have the power to tax the bank so heavily that the bank would be forced to leave the state. The court said that states are not allowed to interfere with the business of the U.S. government. This decision affirmed that the national United States government is "supreme" over state governments, just like the Constitution says. Maryland could not try to force the bank out by making it pay taxes.

