**McCulloch v. Maryland**

**You Make the Call: Using the 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 below. In your own words, explain each of the excerpts.
3. Read the summary of the arguments presented by each side below. With whom do you agree? Why?
4. Write your decision. Be sure to include at least one idea from each of the three excerpts from the U.S. Constitution.

**Excerpts from the 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.

**Background Summary & Questions**

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](http://caselaw.lp.findlaw.com/data/constitution/article01/). 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.

**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](http://caselaw.lp.findlaw.com/data/constitution/article01/) 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?

**Marbury v. Madison**

**Introductory Scenario: Who Should Decide?**

The Congress passes a law that says all citizens who were not born in this country must return to their country of birth within one month.  The president signs the law and says he will have the armed forces help to enforce compliance.

**Questions to Consider**

1. Do the people have any recourse? In other words, can anything be done about this? If so, what?
2. In the United States, all courts have the power to review decisions of other branches and determine their constitutionality, but the "final" power of judicial review rests with nine appointed judges. In England, the decisions of the highest court are subject to review by the legislature. Who is best suited to have this authority? Explain and defend your answer.
3. Could we have a workable system of government without judicial review? How would such a system be organized?
4. Does the fact that the Court currently has the power to review actions of the legislative and executive branches relieve these two branches of the obligation to review their own decisions to be certain they are constitutional?

**Background Summary & Questions**

Thomas Jefferson, a member of the Republican Party, won the election of 1800. The outgoing President, John Adams, proceeded to rapidly appoint 58 members of his own party to fill government posts created by Congress.

It was the responsibility of the Secretary of State, John Marshall, to "deliver the commissions," finish the paperwork, and give it to each of the newly appointed judges. Although Marshall signed and sealed all of the commissions, he failed to deliver 17 of them to the respective appointees. Marshall assumed that his successor would finish the job, but when Jefferson became President, he told his new Secretary of State, James Madison, not to deliver some of the commissions, because he did not want members of the opposing political party to take office. Those individuals couldn't take office until they actually had their commissions in hand.

William Marbury, whom Adams had appointed as justice of the peace of the District of Columbia, was one of these last-minute appointees who did not receive his commission. Marbury sued James Madison and asked the Supreme Court of the United States to issue a *writ of mandamus*, a court order that requires an official to perform or refrain from performing a certain duty. In this case, the writ would have ordered Madison to deliver the commission.

Marbury argued that he was entitled to his commission and that the Judiciary Act of 1789 gave the Supreme Court of the United States original jurisdiction to issue a *writ of mandamus*. Madison disagreed. When the case came before the Court, John Marshall — the person who had failed to deliver the commission in the first place — was the new Chief Justice. If this situation were to arise today, Marshall would likely disqualify himself because of a conflict of interest.

**Questions to Consider**

1. Who was Marshall likely to side with, Marbury or Madison? Why?
2. If the Court decided that Marbury was entitled to the commission, how could it be sure that the executive branch would deliver it? Does the Court have the power to force compliance? What would happen if the Court issued the writ, but the executive branch refused to comply?
3. According to Article 3, Section 2 of the Constitution, in what types of cases does the Supreme Court of the United States have original jurisdiction? Does the Congress have the authority to alter the Court's jurisdiction?