

## Judicial Opinion Writing Activity—Answer Key

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

**What you need to know before you begin:** In a given term between October and April, the U.S. Supreme Court usually hears oral arguments in 70 to 80 cases. For one hour, the attorneys for the **petitioner** (who lost in the lower court and is now appealing the decision) and **respondent** (who won in the lower court) present arguments and answer the justices' questions. Later that week, the justices hold a private conference and discuss the case. The justices vote on the outcome of the case starting with the chief justice and then the associate justices in order of seniority with the most junior justice going last. The party in the majority with at least five votes wins. The chief justice or the most senior justice in the majority will assign a justice the job of writing a legal explanation, called an **opinion**. The justice will write a draft of the Court's **majority opinion** and circulate it to the other justices in the majority who will sign on to the opinion if they agree. The same procedure will happen to the justices in the minority who will write a **dissenting opinion**. Justices who agree with the outcome of the majority but for different legal reasons may write **concurring opinions** to explain their differences. There can also be more than one dissenting opinion.

**How it's done:** You have been given the background, facts, issues, constitutional text and amendments, and arguments of the case. Consider and apply the constitutional text and amendments to the case *McCulloch v. Maryland*. Carefully consider all of the arguments. Decide if you will find for the **petitioner** (McCulloch), and **reverse** the decision of the lower court or for the **respondent** (Maryland), and uphold or **affirm** the lower court's decision. Assume the majority of justices agree with you and write the Court's **majority opinion** explaining the reasons for the decision.

---

**Case name:** *McCulloch v. Maryland*    **Date decided:** \_\_\_\_\_ (today's date).

**Justice** \_\_\_\_\_ (your name) delivered the opinion of the Court.

**The questions presented are:** 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?

1. Brief summary of case and lower court decision(s):  
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.
2. Write a paragraph explaining how the constitutional test(s) or amendment(s) apply:

Student answers will vary but should include the Necessary and Proper Clause, the Supremacy Clause, and the 10<sup>th</sup> Amendment to the United States Constitution.

3. Write a paragraph explaining which arguments are most persuasive and why:  
Student answers will vary but should be chosen from the petitioner's and respondent's arguments provided.
4. Therefore, we find for the petitioner / respondent (circle one), \_\_\_\_\_  
(name of party) and therefore reverse / affirm (circle one) the decision of the lower court.  
Student answers will vary.

In a unanimous decision, the Supreme Court found for McCulloch.

After students complete the Judicial Opinion Writing Activity, consider sharing the [complete case summary of \*McCulloch v. Maryland\*](#) or the [decision summary and key excerpts from the unanimous opinion](#).

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

**Argued:** February 22–26, 1819

**Reargued:** 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 the power to Congress 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—providing implied powers—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. While James Madison was president, the First Bank’s charter was not renewed. 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 on demand.

### **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\*, 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.”

### **Arguments for McCulloch (petitioner)**

- 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.

---

\* In the Supreme Court’s opinion for this case, James McCulloch’s surname was spelled M’Culloch.

- 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.
- 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.
- 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.

### ***Arguments for Maryland (respondent)***

- The Constitution never says that Congress may establish a national bank.
- The Constitution says that the powers not delegated to the United States are reserved to the states.
- 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.
- The establishment of a national bank interferes with the states’ abilities to control their own supply of money and their own economies.