**CASE BRIEF**

**Facts:**The United States Bank was rechartered by congressional legislation passed in 1816 after the original charter had been allowed to expire due to intense political disagreement over the necessity and constitutionality of a national bank. The Maryland state legislature passed a law requiring that all banks not chartered by the state pay a 2% tax on the value of notes issued or a flat $15,000 fee per year. Noncompliance with the state statute resulted in a $500.00 penalty per violation. James McCulloch was the cashier at the Baltimore Maryland branch of the U.S. Bank. He refused to pay the tax arguing that the state of Maryland had no authority to tax the bank because it was a federal entity.

The state of Maryland contended that the charter of the U.S. Bank was an unconstitutional exercise of power by the national government and the states retain the sovereign right of taxation within their own geographic boundaries. Furthermore, the national government cannot infringe upon that right or any others retained by the states, because the Constitution itself was an act of the sovereign states who are independent of and supreme to the national government.
McCulloch was convicted of violating the Maryland statute. The Maryland Court of Appeals upheld the conviction and the case was appealed to the United States Supreme Court through a writ of error.

**Issues:
(1)** Whether the legislation chartering the U.S. Bank was a constitutionally acceptable exercise of Congressional powers?
**(2)** Whether the state of Maryland has authority under the U.S. Constitution to tax a federal entity?

**Holding:**
In a 7/0 decision, the United States Supreme Court declared the act of Congress creating the U.S. Bank an acceptable exercise of "implied" power granted by the Constitution. Additionally, the Supreme Court ruled that the Maryland law which imposed a tax on the U.S. bank violated the U.S. Constitution's Supremacy Clause and was therefore void.

**Rationale:**
In upholding the constitutionality of the U.S. Bank, Chief Justice Marshall defined the role of the Necessary and Proper Clause in relation to implied powers granted to Congress by the U.S. Constitution. Marshall establishes the legitimacy of implied powers by arguing that, unlike the Articles of Confederation, there are no express exclusions of implied powers in the text of the Constitution. Even the Tenth Amendment does not say, "The powers not expressly delegated to the United States by the Constitution, . . .' effectively leaving the question of whether or not certain powers rest with the state or federal government dependent upon a "fair" interpretation of the entire U.S. Constitution by the Supreme Court.

Asserting the necessity of a broad interpretation of the Constitution, Marshall reasoned that the framers wrote the Constitution with the goal of endurance. Endurance requires that Congress not be confined in the choice of means available to achieving any legitimate ends which are "within the scope of the Constitution." In other words, if Congress has a legitimate governmental interest provided for by the Constitution, then all means which are "adapted to that end" are constitutional. Furthermore, anyone who wants to challenge those means as an exception has the burden of "establishing that exception." A constitutional challenge to any means enacted by Congress will be afforded a presumption of constitutionality and the plaintiff will bear the burden of proving it unconstitutional. (Today, we call these criteria the Rational Basis Test.)

Although Article I, Section 8 does not provide for incorporation of a national bank by Congress, Clause 18 does provide that 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. "
Marshall defines the term "necessary" to include "any means calculated to produce the ends" and specifically denies a definition which would limit Congress to those means which just serve to keep the enumerated powers from being "entirely unattainable." According to Marshall, the framers intended for the Necessary and Proper Clause to expand power and not limit power because the clause itself is placed with the powers of Congress rather than with the limitations and its word structure indicates a positive action rather than a prohibition.

Specifically addressing the charter of the U.S. Bank, Marshall reasoned that a corporation, by its very nature, is not an ends but a means by which other things are accomplished. Therefore, the legislation authorizing the charter was a constitutionally acceptable exercise of congressional power under the Necessary and Proper Clause as a means of achieving other powers outlined in the Constitution.

After establishing the constitutional validity of the U.S. Bank, Marshall nullified the legality of Maryland's tax on the branch located within the geographic boundaries of the state. First, Marshall argued that while the power of taxation is an important one for the states the Constitution does provide an exception and expressly prohibits states from taxing imports or exports "except what may be absolutely necessary for execution their inspection laws.

" If a state were to impose such an unnecessary tax it would be "incompatible with and repugnant to the constitutional laws of the Union." Most importantly, Marshall asserted that Article VI, Section 2 provides that, "the Constitution and the laws made in pursuance thereof are supreme; . . . ".

The Constitution and the government created by it "proceeds directly from" all of the people of the United States and not simply from the individual state governments. Furthermore, while a state government is sovereign within their geographic boundaries, that sovereignty does not "extend to those means which are employed by Congress to carry into execution -- powers conferred on that body by the people of the United States." The principle of the Supremacy Clause prohibits actions of a state government which are hostile to anything the United States government has an acknowledged power to create and to preserve. Since the "power to tax involves the power to destroy," Maryland's tax on the United States Bank is unconstitutional and void.