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Focus on Freedom

McCULLOCH v. MARYLAND

In 1818 the state of Maryland passed a statute taxing all banks operating in Maryland not chartered by the state. When James McCulloch, a cashier of the Bank of the United States in Baltimore, refused to pay the tax, Maryland prosecuted. The United States Supreme Court reversed the Maryland Court of Appeals in 1819.

The first question made in the cause is—has congress power to incorporate a bank?

The bill for incorporating the Bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood.

The counsel for the state of Maryland have deemed it of some importance . . . to consider that instrument [the constitution], not as emanating from the people, but as the act of sovereign and independent states. The powers of the general government, it has been said, are delegated by the states, who alone are truly sovereign. . . . It would be difficult to sustain this proposition. The convention which framed the constitution was indeed elected by the state legislatures. But the instrument [constitution], when it came from their hands, was a mere proposal, without obligation, or pretensions to it. . . . The instrument was submitted to the people. They acted upon it . . . by assembling in convention. . . . From these conventions, the constitution derives its whole authority.

After the most deliberate consideration, it is the unanimous and decided opinion of this court, that the act to incorporate the Bank of the United

States is a law made in pursuance of the constitution, and is part of the supreme law of the land.

If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights. . . . This was not intended by the American people.

We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

—CHIEF JUSTICE JOHN MARSHALL

Examining the Document

Reviewing Facts

1. Explain on what basis Maryland argued against the Bank of the United States.
2. Describe how Marshall proved that national law was sovereign over state law.

Critical Thinking Skills

3. Predicting Consequences What could have happened to national institutions if Marshall had ruled in favor of Maryland?