

# Case Brief Example

## McCulloch v. Maryland, 17 U.S. 316 (1819)

### 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.

## An Example of a Brief Sample Court Case

### **BERGER v. CITY OF SEATTLE**

United States Court of Appeals,  
Ninth Circuit, 2008.  
512 F.3d 582.

**FACTS** The Seattle Center is an entertainment “zone” in downtown Seattle, Washington, that attracts nearly ten million tourists each year. The center encompasses theaters, arenas, museums, exhibition halls, conference rooms, outdoor stadiums, and restaurants, and features street performers. Under the authority of the city, the center’s director issued rules in 2002 to address safety concerns and other matters. Among other things, street performers were required to obtain permits and wear badges. After members of the public filed numerous complaints of threatening behavior by street performer and balloon artist Michael Berger, Seattle Center staff cited Berger for several rules violations. He filed a suit in a federal district court against the city and others, alleging, in part, that the rules violated his free speech rights under the First Amendment to the U.S. Constitution. The court issued a judgment in the plaintiff’s favor. The city appealed to the U.S. Court of Appeals for the Ninth Circuit.

**ISSUE** Did the rules issued by the Seattle Center under the city’s authority meet the requirements for valid restrictions on speech under the First Amendment?

**DECISION** Yes. The U.S. Court of Appeals for the Ninth Circuit reversed the decision of the lower court and remanded the case for further proceedings. “Such content neutral and narrowly tailored rules \* \* \* must be upheld.”

**REASON** The court concluded first that the rules requiring permits and badges were “content neutral.” Time, place, and manner restrictions do not violate the First Amendment if they burden all expression equally and do not allow officials to treat different messages differently. In this case, the rules met this test and thus did not discriminate based on content. The court also concluded that the rules were “narrowly tailored” to “promote a substantial government interest that would be achieved less effectively” otherwise. With the rules, the city was trying to “reduce territorial disputes among performers, deter patron harassment, and facilitate the identification and apprehension of offending performers.” This was pursuant to the valid governmental objective of protecting the safety and convenience of the other performers and the public generally. The public’s complaints about Berger and others showed that unregulated street performances posed a threat to these interests. The court was “satisfied that the city’s permit scheme was designed to further valid governmental objectives.”

## CASE BRIEF

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**NEAR V. MINNESOTA, 283 U.S. 697 (1931)** [complete name of case, citation, date]

**decision by Supreme Court of United States** [name of court issuing the opinion]

**FACTS:** J. M. Near published the *Saturday Press* in Minneapolis. In a series of articles he charged, in substance, that a Jewish gangster was in control of gambling, bootlegging and racketeering in the city, and that the city government and its law enforcement agencies and officers were not energetically performing their duties.

A Minnesota statute (referred to as a “gag law” provided for the abatement, as a public nuisance, of a “malicious, scandalous and defamatory newspaper, magazine or other periodical.”

Near was cited as being in violating of this law and brought into court. An injunction was issued by a district court that halted all activity of the *Saturday Press*. Near was prohibited from ever publishing the newspaper again unless he could convince the court that he could operate a newspaper free of objectionable material.

Near appealed this ruling. The Minnesota Supreme Court upheld the constitutionality of the law, holding that under its broad police power the state could regulate public nuisances, including defamatory and scandalous newspapers. The U. S. Supreme Court granted Near's petition for certiorari.

**LEGAL QUESTION:** Is the action by the state of Minnesota against the newspaper (a prior restraint) a violation of Near's Fourteenth Amendment rights, which guarantees that “no state shall deprive any person of life, liberty or property, without due process of law”?

**DECISION:** Yes. (5-4, Chief Justice Hughes wrote the majority opinion.)

**COURT'S RATIONALE:** The Minnesota statute is not designed to redress the wrongs of the individuals who have been attacked by Near. Instead, it is directed at suppression of the offending newspaper or periodical and puts the publisher under an effective suppression. The object of the law is not punishment but suppression, and not only of the offending issue but of all future issues as well. The statute is not consistent with the conception of liberty of the press as it has been historically conceived and guaranteed.

It is true that the principle as to immunity from previous restraint is stated too broadly; this immunity is not absolutely unlimited. But the limitation has been recognized only in exceptional cases. These cases include (1) certain utterances during wartime, (2) the publication of obscene matter, (3) or material that incites acts of violence and the overthrow by force of orderly government.

However, there are occasions in which limiting freedom of the press to only freedom of prior restraint is not enough. Punishment after publication can impose a kind of prior restraint upon the individual. A citizen must have the right to criticize government — without fear of punishment.

**DISSENTING OPINION:** (written by Justice Butler, joined by Justices Van Devanter, McReynolds and Sutherland)

The dissent argued that the majority decision gave freedom of the press too broad a meaning and scope. Justice Butler argued that the Minnesota statute applied only to those engaged in the business of *regularly* and *customarily* publishing “malicious, scandalous and defamatory

newspapers,” not to newspapers in general. The Minnesota statute was passed as part of the state’s police powers, and there exists in the Minnesota a state of affairs that justifies this measure for the preservation of peace and good order.

**SIGNIFICANCE OF THE CASE:** The case establishes the precedent that the press is to be protected against prior restraint by the government except in exceptional situations. It was also the first case involving newspapers in which the Supreme Court applied the provisions of the First Amendment against states through the language of the Fourteenth Amendment (incorporation of free press guarantees into those liberties that states may not abridge without due process of law).