

General Discussion

MCCULLOCH v MARYLAND, 17 U.S. 316 (1819)



Marshall

McCulloch v Maryland, 17 U.S. 316 (1819) (hereafter McCulloch) was delivered by Chief Justice John Marshall. The ruling established two important principles of constitutional law—that implied powers exist in constitutional law and states cannot impede valid constitutional exercises of power by the Federal government. The decision declared the source of sovereignty in this nation lies with the people rather than the states. This fact is significant as many in the convention movement believe the states, specifically the state legislatures, possess sole sovereign authority and therefore can control all aspects of an Article V Convention with no input from the American people whatsoever. McCulloch makes it clear that sovereign authority, and hence the authority to alter the Constitution, comes from the people, not the states. Therefore the state legislatures are not empowered to disenfranchise the American people from the amendment process.

Moreover the decision places grave doubt on the theory advocated by some that states may “rescind” applications already submitted by them to Congress for a convention call. As already noted by Madison, Congress has no vote, debate or committee in the process. To accomplish a rescission of an application requires all three. Under the circumstance of no vote, debate or committee therefore such action violates a valid constitutional exercise of power by Congress in that it imposes on Congress an action it cannot constitutionally fulfill and prevents a convention call when otherwise the call is mandated to occur.

McCulloch is too long to present in full length. The only the excerpt related to Marshall’s explanation of why the people of the United States are the source of sovereignty in this country is presented. In sum Marshall states that while the state legislatures may have drafted the Constitution, it only became an effective legal document when the people, meeting in conventions, ratified the document. Thus, it was by consent *of the people* that the Constitution assumed sovereignty over us, not because state legislatures drafted it. Marshall also states that by this action the people also bound the states to the terms of the Constitution thus terminating any concept of independent sovereignty that had existed in the Articles of Confederation. Hence, the McCulloch decisions makes it clear that any actions taken by the colonies or while those colonies/states existed under the Articles of Confederation *had* no validity as sovereign power under the Constitution.