

asserted as constitutional blocks to such financial aid to education in church-related schools as is here under consideration. These do not involve the financing of religious groups but instead the financing of citizen education.⁶⁸ By providing support for such citizen education, government is in no sense undertaking religious instruction nor a blending of that with secular education. Nor is it, of course, in any way utilizing secular institutions to force religion on anyone.

In view of the decision in *Zorach v. Clauson*, there has been much speculation as to whether the Court there virtually overruled the *McColum* decision. The dissenting justices in *Zorach* believed this to have been the case, Justice Black saying that he saw "no significant difference between the invalid Illinois system and that of New York here [in *Zorach*] sustained."⁶⁹ Justice Frankfurter stated that the principles accepted by the court in *McColum* "are disregarded in reaching the result in this case,"⁷⁰ while Justice Jackson said "the *McColum* case has passed like a storm in a teacup."⁷¹ Constitutional scholars have made similar observations. Professor Kauper states: "One may well agree with the dissenters in *Zorach* that the majority decision in the *Zorach* case . . . amounted to an overruling of the *McColum* case."⁷² Undoubtedly the correct view to be taken today of the *McColum* decision is that which is plainly suggested by Chief Justice Warren speaking for the majority of the Court in *McGowan v. Maryland*.⁷³ In that case the Chief Justice, in disposing of the "establishment" contentions there raised, referred to the *McColum* case, stating its holding:

Thus, in *McColum v. Board of Education*, 333 U.S. 203, the Court held that the action of a board of education, permitting religious instruction during school hours in public school buildings and requiring those children who chose not to attend to remain in their classrooms, to be contrary to the "Establishment" Clause.⁷⁴

⁶⁸ See discussion of *Everson* at pp. 417-22 *supra*.

⁶⁹ 343 U.S. at 316 (dissenting opinion). Subsequently Justice Black in *Torcaso v. Watkins*, 367 U.S. 488, 494 (1961), noted that the Court in *Zorach* had stated: "We follow the *McColum* case." Undoubtedly this does not represent a change in Justice Black's views since in *Torcaso* he was addressing himself to the narrow question of the validity of a test oath. This was the context of his notation, which was immediately followed by his stating that nothing decided or written in *Zorach* would justify sustaining a test oath.

⁷⁰ 343 U.S. at 322-23.

⁷¹ *Id.* at 325.

⁷² Kauper, *Frontiers of Constitutional Liberty* 122 (1956).

⁷³ 366 U.S. 420 (1961).

⁷⁴ *Id.* at 442.