

1. The Memorandum states that the Court has ruled in *Everson* that across-the-board grants are prohibited.¹³³ First, it must be considered that the broad speculative generalizations respecting the scope of the No Establishment Clause appearing in Justice Black's opinion—"The 'establishment of religion' clause of the First Amendment means at least this"¹³⁴—must be considered as limited by the opinion of the Court in *Zorach v. Clauson*.¹³⁵ This was recognized by Justice Black himself in his dissenting opinion in the *Zorach* case. It is no answer to assert, as does the Memorandum, that the Court in *Zorach* stated that "Government may not finance religious groups,"¹³⁶ since the principal effect of government aid to parochial schools, when seen from the point of view of the public interest, would not be to aid "religious groups" but to further the public interest in education of the citizenry. The opinion of the Court in *Zorach* markedly departs from the opinion of the Court in *Everson* insofar as the scope of disestablishment is concerned, and makes it clear that state and church, though separate, may commonly participate in matters related to the public interest. Indeed in *Zorach* it was said:

When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs.¹³⁷

Secondly, *Everson* conclusively establishes the "social benefits" doctrine. We are then left, apparently, to ascertain some point at which the "social benefit" is inconsiderable and the "religious function" is predominant.¹³⁸ The Court in *Everson* did not have before it a question of "across-the-board"¹³⁹ aid, but it may logically be argued that, so far as the teaching of *Everson* goes, its essential "social benefits" doctrine applied today would encompass even "across-the-board" aid. The dissenting opinion of Justice Rutledge in *Everson* was not able to distinguish between degrees of aid, or differences

¹³³ HEW Memorandum 351.

¹³⁴ 330 U.S. at 15-16.

¹³⁵ 343 U.S. 306 (1952).

¹³⁶ HEW Memorandum 352.

¹³⁷ 343 U.S. at 313-14.

¹³⁸ 330 U.S. at 18.

¹³⁹ Although it must be noted that the Memorandum never defines the term, "across-the-board," which it employs.