beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church.

There is another area of entanglement in the Rhode Island program that gives concern. The statute excludes teachers employed by nonpublic schools whose average per-pupil expenditures on secular education equal or exceed the comparable figures for public schools. In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids....

(B)

Pennsylvania Program *[The Court found similar problems of excessive entanglement: providing state aid to sectarian schools established to propagate a particular religious faith; state restrictions and surveillance to ensure that teachers play a strictly nonideological role; reimbursement contingent on state approval of courses and teaching materials; and state auditing of a parochial school's financial records.]*

The judgment of the Rhode Island District Court in No. 569 and No. 570 is affirmed. The judgment of the Pennsylvania District Court in No. 89 is reversed, and the case is remanded for further proceedings consistent with this opinion.

MR. JUSTICE MARSHALL took no part in the consideration or decision of No. 89 *[the Pennsylvania case]*.

MR. JUSTICE DOUGLAS, whom MR. JUSTICE BLACK joins, concurring....

MR. JUSTICE MARSHALL, who took no part in the consideration or decision of No. 89, ... while intimating no view as to the continuing vitality of *Everson v. Board of Education*, 330 U.S. 1 (1947), concurs in MR. JUSTICE DOUGLAS' opinion covering Nos. 569 and 570 *[the Rhode Island cases]*.

MR. JUSTICE BRENNAN *[concurring]*....

MR. JUSTICE WHITE, concurring in the judgments in No. 153 *[Tilton v. Richardson, which sustained federal construction grants to sectarian universities]* and No. 89 and dissenting in Nos. 569 and 570....

The Court thus creates an insoluble paradox for the State and the parochial schools. The State cannot finance secular instruction if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be so taught—a promise the school and its teachers are quite willing and on this record able to give—and enforces it, it is then entangled in the "no entanglement" aspect of the Court's Establishment Clause jurisprudence....

Zelman v. Simmons-Harris

536 U.S. 639 (2002)

Doris Simmons-Harris and other state taxpayers challenged Ohio's voucher program as a violation of the Establishment Clause. The program offered a $2,250 tuition grant for each student from a low-income family enrolled in a private school within the Cleveland district. The private school could be religious or nonreligious. The majority of students who participated in the program enrolled in religiously affiliated schools. The district court granted the taxpayers summary judgment, and the Sixth Circuit affirmed. The defendant in this case is Susan Tave Zelman, Superintendent of Public Instruction of Ohio.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The State of Ohio has established a pilot program designed to provide educational choices to families with children who reside in the Cleveland City School District. The question presented is whether this program offends the Establishment Clause of the United States Constitution. We hold that it does not.

There are more than 75,000 children enrolled in the Cleveland City School District. The majority of these children are from low-income and minority families. Few of these families enjoy the means to send their children to any school other than an inner-city public school. For more than a generation, however, Cleveland's public schools have been among the worst performing public schools in the

Nation.... More than two-thirds of high school students either dropped or failed out before graduation. Of those students who managed to reach their senior year, one of every four still failed to graduate....

It is against this backdrop that Ohio enacted ... its Pilot Project Scholarship Program.... The program provides financial assistance to families in any Ohio school district that is or has been "under federal court order requiring supervision and operational management of the district by the state superintendent." ... Cleveland is the only Ohio school district to fall within that category. [*Any suburban district that agreed to participate in the program would receive a $2,250 tuition grant plus the ordinary allotment of per-pupil state funding for each program student enrolled. If parents selected a private school, the checks would be made payable to the parents, who then endorse the checks to the school. In the 1999–2000 school year, 56 private schools participated in the program, and 46 (or 82%) had a religious affiliation.*]

The Establishment Clause of the First Amendment, applied to the States through the Fourteenth Amendment, prevents a State from enacting laws that have the "purpose" or "effect" of advancing or inhibiting religion.... There is no dispute that the program challenged here was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system. Thus, the question presented is whether the Ohio program nonetheless has the forbidden "effect" of advancing or inhibiting religion.

To answer that question, our decisions have drawn a consistent distinction between government programs that provide aid directly to religious schools, ... and programs of true private choice, in which government aid reaches religious schools only as a result of private individuals.... [*Rehnquist discusses the Minnesota tax deduction program for various educational expenses, including private school costs*, Mueller v. Allen, 463 U.S. 388 (1983); *the vocational scholarship program that provided tuition aid to a blind student*, Witters v. Washington Dept. of Servs. for Blind, 474 U.S. 481 (1986); *and a federal program that permitted sign-language interpreters to assist deaf children enrolled in religious schools*, Zobrest v. Catalina Foothills School Dist., 509 U.S. 1 (1993).]

Mueller, *Witters*, and *Zobrest* thus make clear that where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause.... The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits....

We believe that the program challenged here is a program of true private choice ... and thus constitutional.... [T]he Ohio program is neutral in all respects toward religion. It is part of a general and multifaceted undertaking by the State of Ohio to provide educational opportunities to the children of a failed school district. It confers educational assistance directly to a broad class of individuals defined without reference to religion, *i.e.*, any parent of a school-age child who resides in the Cleveland City School District. The program permits the participation of *all* schools within the district, religious or nonreligious....

... The program here in fact creates financial *dis*incentives for religious schools, with private schools receiving only half the government assistance given to community schools and one-third the assistance given to magnet schools.... Families too have a financial disincentive to choose a private religious school over other schools. Parents that choose to participate in the scholarship program and then to enroll their children in a private school (religious or nonreligious) must copay a portion of the school's tuition. Families that choose a community school, magnet school, or traditional public school pay nothing....

... It is true that 82% of Cleveland's participating private schools are religious schools, but it is also true that 81% of private schools in Ohio are religious schools....

Respondents and JUSTICE SOUTER claim that even if we do not focus on the number of participating schools that are religious schools, we should attach constitutional significance to the fact that 96% of scholarship recipients have enrolled in religious schools.... We need not consider this argument in detail, since it was flatly rejected in *Mueller*, where we found it irrelevant that 96% of parents taking deductions for tuition expenses paid tuition at religious schools....

... [W]e hold that the program does not offend the Establishment Clause.

The judgment of the Court of Appeals is reversed.

It is so ordered.

[Justices O'Connor and Thomas wrote separate concurring opinions.]