

US Supreme Court Justice Scalia attacks separation of church and state

By Tom Carter
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In a speech at Colorado Christian University on Wednesday, US Supreme Court Justice Antonin Scalia declared that the Constitution does not prohibit the government from favoring “religion over nonreligion,” calling for a fight against “secularists” who contend otherwise.

In remarks quoted in the *Washington Times*, Scalia singled out for attack the position that “the state must be neutral, not only between religions, but between religion and nonreligion.”

“That’s just a lie,” Scalia continued. “Where do you get the notion that this is all unconstitutional? ... There are those who would have us adopt that rule for America, and if they want us to adopt that rule, let’s put it to a vote. But they want to do it through the Supreme Court. And that is simply not what our Constitution has ever meant.”

The Supreme Court’s most recent term featured a number of decisions undermining the separation of church and state. In its infamous *Burwell v. Hobby Lobby* decision and a related decision, the Supreme Court affirmed the “religious liberty” of employers to deny insurance coverage for birth control to female employees. The Supreme Court based its decision on the supposed “religious freedom” of corporations (See: The US Supreme Court and religion).

The Supreme Court also decided, in the recent term, the case of *Town of Greece v. Galloway*. In that case, the Supreme Court refused to hold that prayers at town hall meetings violated the Establishment Clause (See: US Supreme Court backs prayer at town meetings). The Establishment Clause, which appears in the First Amendment, part of the Bill of Rights (1791), reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The Supreme Court decision in *Town*

of Greece was supported by the *Galloway* administration, which has also repeatedly sought to appeal to the religious right on the issue of access to birth control. In June, in a dissent in the case of *Elmbrook School District v. John Doe*, which involved a public school graduation ceremony being held in a church, Scalia went so far as to argue that “the First Amendment explicitly favors religion.”

Scalia’s remarks Wednesday amounted, more or less, to a call for the “establishment of religion” in the US. “We do Him [God] honor in our pledge of allegiance, in all our public ceremonies,” Scalia said. “There’s nothing wrong with that. It is in the best of American traditions, and don’t let anybody tell you otherwise. I think we have to fight that tendency of the secularists to impose it [secularism] on all of us through the Constitution.”

Scalia has previously campaigned for this view, including in a 2012 speech arguing that the position that “our Constitution forbids anything that favors religion over nonreligion is a lie.”

Scalia is the longest-sitting Supreme Court justice, appointed by President Ronald Reagan in 1986. While he argued that the question of the separation of church and state should be “put to a vote,” Scalia joked with the audience about the fact that no popular vote could ever remove him from office. “What can they do to me? I have life tenure. It’s even better than academic tenure.”

Scalia is the ideological leader of the extreme right-wing majority on the Supreme Court, which includes Chief Justice John Roberts, Justice Clarence Thomas, Justice Samuel Alito, and “swing” Justice Anthony Kennedy. He specializes in a particular method, which he calls “originalism,” of removing legal phrases from their historical and legal context.

The application of this method is usually accompanied by frequent consultations of the dictionary, irreconcilable inconsistencies, and a sarcastic style of writing and speaking that the establishment media celebrates as “wit.”

In his remarks Wednesday, Scalia cited the Virginia Statute for Religious Freedom, which was authored by Thomas Jefferson in 1777: “God who made the mind of man made it free.” According to Scalia, this sentence supports his position that the government may “favor religion over nonreligion.” Scalia’s argument deserves a response.

As a preliminary matter, Scalia has no business whatsoever citing Jefferson. On Scalia’s watch, the Supreme Court has trampled all over the Bill of Rights, of which Jefferson was among the principal champions. In the recent period, Scalia and company have maintained a conspicuous silence on assassination, rendition, torture and boundless illegal spying on the population, all of which violate the Constitution.

Meanwhile, the Supreme Court has utterly failed to act as a check, as contemplated by the country’s founders, on the other branches of government. Instead, it has played a critical role in the march towards dictatorship, initiated under the Bush administration and continued under the Obama administration, by promoting doctrines of the unlimited “wartime” prerogatives of the president as “Commander-in-Chief,” “balancing” national security against democratic rights, “deference” to the executive, and so forth.

Thomas Jefferson’s actual position with respect to the separation of church and state could not be more clear. Of the principal theorists of the American Revolution, Jefferson was likely most adamant of all about the principle. Replying to a petition from a religious group, Jefferson famously wrote that a “wall of separation” should be erected between the state and religion.

While the sentence that Scalia quotes contains the word “God,” Jefferson was simply expressing the idea that, from the standpoint of natural law, people should be free to think whatever they like, including on religious questions. The quoted sentence mirrors in some ways the famous phrases in the Declaration of Independence that “all men are created equal” and “they are endowed by their Creator with certain

unalienable Rights.”

Scalia’s interpretation turns the meaning of Jefferson’s sentence into its opposite. The Virginia statute disestablished religion and granted freedom of conscience to all citizens; Scalia cites it in support of re-establishing religion and promoting one set of religious views over another.

Jefferson’s views were not simply his own, but were broadly shared. James Madison, the principal author of the Bill of Rights, famously denounced the idea of spending “three pence” of public funds on religion.

While it has not always been strictly observed, the separation of church and state was, in fact, one of the key democratic ideals advanced in the American Revolution. Having descended from victims of religious persecution in Europe and refugees from centuries of religious wars, the American revolutionaries viewed the separation of church and state as an essential precondition for democracy—necessary to break the power of the aristocracy, prevent oppression and promote the development of reason, science, and free thought.

Scalia’s rants against the separation of church and state underscore the extent to which support for even the most basic democratic achievements of the American Revolution have no significant constituency within the political establishment. In the epoch of imperialist reaction, the task of defending and advancing these basic democratic achievements of earlier periods falls ever more directly to the working class.

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