

SCALIA CHAMPIONED RELIGIOUS LIBERTY

The untimely death of Supreme Court Justice Antonin Scalia is a setback for religious liberty; he was one of its greatest defenders. We are happy to report that Bill Donohue came to his defense right at the start of the new year.

In a speech before Catholic youth in Louisiana, Scalia said that the Constitution was never meant to be neutral about religion. Indeed, he said, “there is no place for that in our constitutional tradition.” He admitted that “you can’t favor one denomination over another,” but that doesn’t mean that religion cannot be favored over non-religion.

Scalia’s comments ignited a firestorm. For example, professor Jeff Schweitzer accused him of “gross ignorance unbecoming of a justice of the Supreme Court.” The marine biologist should stick to studying fish.

Scalia’s critics said he ignored the meaning of the establishment clause which supposedly bars government aid to religious institutions. In fact, it was written in support of the primary clause, the free exercise clause. University of South Dakota law professor Patrick M. Garry, author of *Wrestling with God: The Courts’ Tortuous Treatment of Religion*, notes that “The first and foremost concern of the framers of the First Amendment was not to create a separation of church and state, but to guarantee religious freedom. And the absence of an established church was just one aspect of achieving freedom of religion.”

Garry demolished the idea that the First Amendment is neutral about religion. “The First Amendment framers did not intend to strip religion of its uniqueness, or to make it exactly equal to every secular institution in society. To the contrary, the

establishment clause aims only to keep government from singling out certain religious sects for preferential treatment, not from showing any favoritism to religion in general.”

The founders publicly funded the building of churches, paid for the salaries of ministers, and allowed for state churches. That has changed, but Scalia was right to say that there is nothing in the Constitution that requires the government to be neutral about religion.