

TESTIMONY OF

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Executive Director

AMERICANS UNITED FOR SEPARATION
OF CHURCH AND STATE

Mr. Chairman and Members of the Committee,

I am Robert L. Maddox, executive director of Americans United for Separation of Church and State, a 39-year old national organization dedicated exclusively to the preservation of religious liberty and the separation of church and state. We represent within our membership of 50,000 a broad spectrum of religious and political viewpoints. But we are all united in the conviction that separation of church and state is essential. As Justice Wiley Rutledge observed in his 1947 Everson opinion: "We have staked the very existence of our country on the faith that a complete separation between the state and religion is best for the state and best for religion."

We at Americans United believe that religious liberty is the preeminent liberty of the American republic, the benchmark of all other civil liberties. We believe that the constitutional guarantee of religious liberty through the separation of church and state is the single most important contribution this country has made to Western civilization during the past two centuries. We believe in the inherent strength of the American religious community to manage its own affairs, make its own mark, and impart a sense of values to the nation. This rich and diverse community does not need propping up by the government and should, at all costs, remain free from government entanglement.

Therefore, respectfully, we believe the Senate should carefully consider the appointment of an individual who seems hostile to the time-honored principle of the separation of church and state. Judge Scalia has criticized the direction this Court has taken in its decisions on religious liberty.

In 1978 Mr. Scalia and Americans United testified at the same set of hearings before the Senate Finance Committee on a bill to give tuition tax credits to patrons of private and parochial schools. Mr. Scalia supported that bill. Americans United opposed that bill.

At that session, in our opinion, Mr. Scalia demonstrated a disregard for the Establishment Clause of the First Amendment. Mr. Scalia, who has been characterized as a strict constructionist, told the Senate not to worry about the question of whether tuition tax credits were constitutional, but to decide on the basis of what "the fundamental traditions of the society require." He argued that the denial of tuition tax credits to parents of students at religious schools was an "anti-religious result" that the Framers of the Constitution had not intended.

Fortunately, the Congress rejected that unwise advice when it defeated the tuition tax credit bill later that year.

In his testimony at that hearing, Mr. Scalia cited what he called the "utter confusion" of Supreme Court rulings on church-state separation. Mr. Scalia's characterization of the past forty years of Supreme Court rulings deeply disturbs us. The Court's decisions do not represent confusion, particularly in the area of public assistance for church-related schools. Beginning in 1971 the Supreme Court rejected scheme after scheme which state legislatures had devised to circumvent the Constitution and provide substantial public subsidies for church schools. Indeed the landmark Lemon case has established guidelines to test the constitutionality of any legislation which might run afoul of the Establishment Clause. Those guidelines represent a major achievement of the Burger Court. We wonder if Mr. Scalia would dismantle them. We worry about the consequences to religious freedom both for the taxpayer who does not wish to be taxed involuntarily for religion and for the church schools themselves which need to be protected from government intervention and meddling.

Mr. Scalia also questioned the High Court's policy of granting broad standing to taxpayers to file lawsuits in First Amendment church-state cases. "That has enabled cases to reach the Court which couldn't have gotten there before," he added. Taxpaying citizens of the United States should have a right to seek redress under the law when they believe their religious liberties are being infringed. It would be a terrible retrenchment if we were to restrict the freedom of citizens to challenge governmental action in the sensitive area of religion.

Finally, Mr. Chairman, let us take stock of the direction in which the Reagan Administration seems to be taking the Supreme Court. Those of us who labor for religious freedom day in and day out experience grave anxiety by the apparent attempt of the President to reshape the entire direction of our Supreme Court. We see individual liberties suffering. We see citizen's rights sacrificed by and to the state. We fear that a Rehnquist/Scalia axis in the Court could further subvert individuals to the power of the state. Americans thought many of the issues of personal liberty were settled. We thought that religious freedom was safe from the buffeting winds of change. We thought there was a consensus in this country that religion was too sacred and precious an area for government to meddle in or for government to support and thereby attempt to control.

Now a spirit of uncertainty prevails in this country. We no longer know whether the Supreme Court will remain a bastion of liberty and a bulwark of justice.

We make the assumption that Judge Scalia reflects the views of President Reagan on church and state, views we find inimical. On the basis of Judge Scalia's record and in vigorous protest to the attitudes of the Reagan Administration who appointed him, we oppose the nomination.

We ask you to reject the nomination of Judge Scalia to the United States Supreme Court.