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[Back to previous page](#)

Justice Scalia must resign

By [E.J. Dionne Jr.](#), Published: June 27

Justice Antonin Scalia needs to resign from the Supreme Court.

He'd have a lot of things to do. He's a fine public speaker and teacher. He'd be a heck of a columnist and blogger. But he really seems to aspire to being a politician — and that's the problem.

So often, Scalia has chosen to ignore the obligation of a Supreme Court justice to be, and appear to be, impartial. He's turned "judicial restraint" into an oxymoronic phrase. But what he did this week, when the court announced its [decision on the Arizona immigration law](#), should be [the end of the line](#).

Not content with issuing a fiery written dissent, Scalia offered a [bench statement questioning](#) President Obama's decision to allow some immigrants who were brought to the United States illegally as children to stay. Obama's move had nothing to do with the case in question. Scalia just wanted you to know where he stood.

"After this case was argued and while it was under consideration, the secretary of homeland security announced a program exempting from immigration enforcement some 1.4 million illegal immigrants," Scalia said. "The president has said that the new program is 'the right thing to do' in light of Congress's failure to pass the administration's proposed revision of the immigration laws. Perhaps it is, though Arizona may not think so. But to say, as the court does, that Arizona *contradicts federal law* by enforcing applications of federal immigration law that the president declines to enforce boggles the mind."

What boggles the mind is that Scalia thought it proper to jump into this political argument. And when he went on to a broader denunciation of federal policies, he sounded just like an Arizona Senate candidate.

"Arizona bears the brunt of the country's illegal immigration problem," [the politician-justice proclaimed](#). "Its citizens feel themselves under siege by large numbers of illegal immigrants who invade their property, strain their social services, and even place their lives in jeopardy. Federal officials have been unable to remedy the problem, and indeed

have recently shown that they are simply unwilling to do so.

“Arizona has moved to protect its sovereignty — not in contradiction of federal law, but in complete compliance with it.” Cue the tea party rally applause.

As it happens, Obama has stepped up immigration enforcement. But if the 76-year-old justice wants to dispute this, he is perfectly free as a citizen to join the political fray and take on the president. But he cannot be a blatantly political actor and a justice at the same time.

Unaccountable power can lead to arrogance. That’s why justices typically feel bound by rules and conventions that Scalia seems to take joy in ignoring. Recall a 2004 incident. Three weeks after the Supreme Court announced it would hear a case over whether the White House needed to turn over documents from an energy task force that Dick Cheney had headed, Scalia went off on Air Force Two for [a duck-hunting trip with the vice president](#).

Scalia scoffed at the idea that he should recuse himself. [“My recusal is required](#) if . . . my ‘impartiality might reasonably be questioned,’ ” he wrote in a 21-page memo. Well, yes. But there was no cause for worry, Scalia explained, since he never hunted with Cheney “in the same blind or had other opportunity for private conversation.”

Don’t you feel better? And can you just imagine what the right wing would have said if Vice President Biden had a case before the court and went duck hunting with Justice Elena Kagan?

Then there was the speech Scalia gave at [Switzerland’s University of Fribourg](#) a few weeks before the court was to hear a case involving the rights of Guantanamo detainees.

“I am astounded at the world reaction to Guantanamo,” he declared in response to a question. “We are in a war. We are capturing these people on the battlefield. We never gave a trial in civil courts to people captured in a war. War is war and it has never been the case that when you capture a combatant, you have to give them a jury trial in your civil courts. It’s a crazy idea to me.”

It was a fine speech for a campaign gathering, the appropriate venue for a man so eager to brand the things he disagrees with as crazy or mind-boggling. Scalia should free himself to pursue his true vocation. We can then use his resignation as an occasion for a searching debate over just how political this Supreme Court has become.

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