

E.J. Dionne Jr., The Washington Post

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.

**My (me, Matt, Matthew Kading’s) Take:** Consider his latest antics: "If securing its territory in this fashion is not within the power of Arizona, we should cease referring to it as a sovereign state," he railed - on the same day that he and four other justices denied another state (Montana) the sovereign power to regulate its own elections. As with most self-styled conservatives, states' rights for Scalia is a matter of convenience, not principle.

Not that such distinctions matter to Scalia, if he even has enough sense to notice them. He just bores ahead with his own misguided rhetoric. On Monday, this entailed slamming his fellow justices' ability to think rationally. "To say, as the Court does, that Arizona contradicts federal law by enforcing immigration law that the president declines to enforce boggles the mind."

Then, as if insulting his black-robed colleagues weren't enough, he turned his attention to the president. In a blatant politicization of his office, Scalia blamed Obama for using the

"scarce (immigration) resources" to implement a new policy shielding certain young immigrants from deportation. "Those resources," he declared, "will be eaten up by the considerable administrative cost of conducting the non-enforcement program, which will require as many as 1.4 million background checks and biennial rulings on requests for dispensation."

What if an individual state decided to adopt such a program? Would that make it OK? And what about the billions Mitt Romney wants to spend building a border fence? Presumably, that's just fine with Scalia, too.

He's thrust himself directly into the midst of a very political dialogue. But it's worse than that. What happens if, at some future date, Obama's immigration policy comes before the Supreme Court? Will Scalia recuse himself? Any ethical judge would do so, but Scalia has a knack for sacrificing ethics at the altar of his own bloated ego and warped sense of justice.

If these sentiments betray scant respect for Scalia, you'll hear no apology from this quarter. If Scalia himself disrespects the office by polluting it with political bias, why should anyone else respect *him*? Heck, he doesn't even respect his fellow justices. Case in point: He labeled one ruling authored by fellow Justice Sonia Sotomayor "unprincipled," "utter nonsense" and a "gross distortion of the facts." In another decision, he wrote that now-retired Justice Sandra Day O'Connor's opinion was "irrational" and "cannot be taken seriously."

[A more complete breakdown](#) of his attitude toward fellow justices was offered by Linda Greenhouse last year. This is the kind of rhetoric you can hear on *Judge Judy* or *Divorce Court*. It doesn't belong in the highest court in the land.

If Scalia can't even respect his fellow justices, why should anyone respect him? Respect is earned and reciprocal, not blindly offered at the feet of some aging egotist simply because he happens to be a man in black. (Apologies to Will Smith, Tommy Lee Jones and Johnny Cash for the unflattering comparison.)

Indeed, [a recent poll](#) shows that only 44 percent of the American public approves of how the Supreme Court is doing its job. Scalia's big mouth can't be helping those figures. One possible silver lining on the storm cloud of Scalia's tenure: It may be ending soon. He's 76 years old, hardly in his prime. And perhaps, just perhaps, he's feeling free to comment on issues that could come before the court in the future because he doesn't plan to stick around and rule on them.

One can only hope he's that sensible. To this point, he's hardly shown any sense at all.