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Justice Ginsburg's Exit Interviews

The more we think about Ruth Bader Ginsburg's recent public outbursts, the more we wonder if the 83-year-old Justice can still perform her duties on the Supreme Court. Her fellow Justices need to stage an intervention and suggest that she make way for someone who knows how a judge is supposed to behave.

We say this more in sadness than anger; Justice Ginsburg would never have talked this way 20 years ago and there's no joy in seeing a reputation implode. She'd also probably be replaced by another, much younger progressive. But as she indulges her inner Bernie Sanders in public, she is hurting the reputation of the Court and setting a terrible example for other judges.

It's important to understand how far out of bounds Justice Ginsburg was in her comments to the *New York Times*. She barged into the presidential race by saying "I can't imagine what the country would be with Donald Trump as our president," joking that her late husband would say they should move to New Zealand if he won. The Justice kept it up in an interview on Monday with CNN, calling Mr. Trump "a faker" and wondering "how has he gotten away with not turning over his tax returns?"

Such overt partisanship from a judge should disqualify her from hearing any case related to the presidential election—such as voter ID laws. It would also raise doubts about her fairness in judging executive-branch actions if Mr. Trump becomes President.

Justice Ginsburg further violated judicial norms by lecturing the Senate for not confirming President Obama's Supreme Court nominee, Merrick Garland. "That's their job," she said. "There's nothing in the Constitution that says the president stops being president in his last year."

There's also nothing in the Constitution that says the Senate can't operate on its own schedule or even that it must vote on a nominee. Judges—especially Justices who are supposed to set a judicial example—are supposed to stay out of such political disputes unless they become

controversies that merit adjudication.

Justice Ginsburg also betrayed the confidence of her Supreme Court colleagues on the left and right. She patted Justice Anthony Kennedy on the head for agreeing with her on racial preferences and abortion decisions, calling him "the great hero of this term." She condescended that "I know abortion cases are very hard for him."

Though Justice Elena Kagan recused herself in the Fisher race case, Justice Ginsburg said Justice Kagan would have voted with her too: "It would have been 5 to 3. That's about as solid as you can get." Justice Kagan is 56 years old and could lead a liberal majority for many years. We wonder how she feels about having Justice Ginsburg portray a liberal Court's rulings in advance as little more than lock-step political exercises?

The Court's most senior liberal also all but cheered that Justice Antonin Scalia wasn't around to provide conservative majorities on cases involving immigration and public unions. "Think what would have happened had Justice Scalia remained with us," she said.

She even declared how she'd vote on future cases—a first order judicial offense. "I'd love to see Citizens United overruled," she said, referring to the 2010 case that restored the speech rights of unions and corporations.

Concerning a landmark 2008 Second Amendment case, she said, "I thought Heller was a very bad decision." According to the Times, she said the Court would have a chance to reconsider Heller when it takes up another gun challenge. Heller was decided 5-4.

Each of these verbal eruptions is a major breach of judicial decorum but taken together they raise larger issues. Under Section 28 US Code 455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." A judge is also expected to disqualify himself "[w]here he has a personal bias or prejudice concerning a party."

Justice Ginsburg talks as if the Court is a purely political body and seems oblivious to the damage she is doing. All of this raises questions about her judgment, her temperament, and her continuing capacity to serve as a

judge. She should resign from the Court before she does the reputation of the judiciary more harm.