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# Justice Ginsburg Stays Out of Trouble in Talk With Students

Tony Mauro, The National Law Journal

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U.S. Supreme Court Justice Ruth Bader Ginsburg steered clear of presidential politics Thursday in her first public appearance in Washington since her criticisms of Republican candidate Donald Trump made headlines last month.

Speaking to Duke University students and alumni Thursday night at the offices of the Jones Day law firm, Ginsburg spoke about last term's decisions and the death of her close friend Justice Antonin Scalia in February. His death, she said, was "by far the most momentous occurrence of the term."

Cheerful at times but subdued at others, Ginsburg repeated her May comment before a judicial conference that "eight is not a good number" for the Supreme Court. But in a conversation with Duke Law School professor Neil Siegel, one of her former law clerks, Ginsburg gave her colleagues high marks for making the best of a difficult situation.

"I think the court did very well" in producing only four opinions that were 4-4 ties, Ginsburg said. Asked why 4-4 opinions do not reveal the reason for the tie, she defended the practice because "the issue will come back to us again," and it is "much better not to give a preview of how we might decide the case."

In one instance discussed by Ginsburg, Scalia's absence resulted in a significant decision rather than a 4-4 tie that would have had no precedential value. In the [Fisher v. University of Texas](#) affirmative-action case, Justice Elena Kagan was recused because she was involved at earlier stages in her previous role as solicitor general.

As a result, if Scalia were alive, the case would have been decided by eight justices, likely resulting in a 4-4 tie. Because the case challenged a lower court ruling upholding the affirmative action program, a 4-4 tie would have left that decision in place without nationwide ramifications.

But Scalia's death meant *Fisher* was decided by a seven-justice court, and the vote was 4-3 in favor of the Texas admissions program. Justice Anthony Kennedy wrote a majority opinion that sent

a national message supporting affirmative action.

"It came out the same way, but we were able to set precedent," Ginsburg said. "So universities can relax." Most university presidents, she said, "breathed a great sigh of relief."

Siegel asked no politically fraught questions, and no television camera or questions from students were allowed. The 90-minute session ended with the 83-year-old justice urging students to go to law school. "I'm very high on being a lawyer."

A scant three weeks ago, Ginsburg was in the news for remarks she made about Trump in three press interviews. "I can't imagine what the country would be with Donald Trump as our president," Ginsburg [told The New York Times](#), also half-joking when she said she might move to New Zealand if Trump was elected.

She made similar remarks to The Associated Press, and in a CNN interview Ginsburg called Trump a "faker."

Commentators across the political spectrum criticized Ginsburg for making seemingly partisan remarks that could undermine the court's independence. In a July 13 tweet, Trump was more direct: "Justice Ginsburg of the U.S. Supreme Court has embarrassed all by making very dumb political statements about me. Her mind is shot - resign!"

As the controversy escalated, Ginsburg retreated, [issuing a statement](#) on July 14: "On reflection, my recent remarks in response to press inquiries were ill-advised and I regret making them. Judges should avoid commenting on a candidate for public office. In the future I will be more circumspect."

Read more:

[Ginsburg, in Apology, Says Her Donald Trump Remarks Were 'Ill-Advised'](#)

[Ginsburg Takes Heat for Remarks on Trump](#)

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