

STEVENS, J., dissenting from judgment

**SUPREME COURT OF THE UNITED STATES**

No. 04–1324

PATRICK DAY, PETITIONER *v.* JAMES R.  
MCDONOUGH, INTERIM SECRETARY,  
FLORIDA DEPARTMENT OF  
CORRECTIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT

[April 25, 2006]

JUSTICE STEVENS, with whom JUSTICE BREYER joins,  
dissenting from the judgment.

Although JUSTICE BREYER and I disagree on the proper answer to the question on which we granted certiorari—in my view, JUSTICE GINSBURG’s opinion for the Court correctly decides that question, while JUSTICE BREYER has joined JUSTICE SCALIA’s dissenting opinion—we agree on the proper disposition of this case. In our view, the Court should announce its opinion now, but it should postpone the entry of judgment pending our decision in *Lawrence v. Florida*, No. 05–8820 (cert. granted, Mar. 27, 2006). As JUSTICE GINSBURG notes, the question whether the Court of Appeals correctly concluded that Day’s habeas corpus petition was barred by the statute of limitations will be answered by our decision in *Lawrence*. See *ante*, at 4, n. 2. It seems improvident to affirm a possibly erroneous Court of Appeals judgment that dismissed Day’s habeas petition without an evaluation of its merits when we have already granted certiorari to address the issue on which the Court of Appeals may have erred. Of course, the Court of Appeals may avoid a miscarriage of justice by keeping this case on its docket until after we decide *Lawrence*, but it would be better practice for us to do so ourselves. Accord-

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ingly, we respectfully dissent from the entry of the Court's judgment at this time.