

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 06–766

NEW YORK STATE BOARD OF ELECTIONS,
ET AL., PETITIONERS *v.* MARGARITA
LOPEZ TORRES ET AL.

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

[January 16, 2008]

JUSTICE STEVENS, with whom JUSTICE SOUTER joins,
concurring.

While I join JUSTICE SCALIA’S cogent resolution of the constitutional issues raised by this case, I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: “The Constitution does not prohibit legislatures from enacting stupid laws.”