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Civil Rights: Determining the Appropriate Statute of Limitations for Section 1983 Claims

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Civil Rights: Determining the Appropriate Statute of Limitations for Section 1983 Claims

The Civil Rights Act of 1871[1] provides private individuals with a civil cause of action for deprivation of their constitutional rights.[2] Although many states prescribe a limitations period, the Civil Rights Act fails to incorporate such a period for a cause of action initiated by a private plaintiff.[3] When federal legislation fails to establish a limitations period, the courts adopt a local statute of limitations as federal law.[4]

While this practice usually works well, two problems arise with section 1983 claims.[5] First, federal courts disagree on how to determine the applicable state limitations period. Each state has several limitations statutes, and federal courts presently use different analyses to determine which one to apply.[6] The Supreme Court partially solved this problem in *Wilson v. Garcia*.[7] Second, section 1983 is a federal statute. Adopting a state statute of limitations allows the state, if it chooses, to limit or expand that federal law. This affords the state the opportunity to impose its own will over federal law when the state's interest conflicts with federal interests.[8]

Part I of this note examines the relevant law, before and after the *Wilson* decision, concerning the statute of limitations in a section 1983 private cause of action. Part II reviews the judicial interpretations of the *Wilson* rule. Part III discusses the inherent conflicts involved when a federal right is subjected to state law. Finally, Part IV concludes that, absent specific Supreme Court direction, Congress should act to resolve the problems plaguing litigants in this area.

I. Statutes of Limitations Applicable to Section 1983 Claims: Status of the Law

A. *Judicial Treatment Prior to* Wilson v. Garcia

Section 1983[9] provides a private individual with a civil cause of

1 42 U.S.C. § 1983 (1982). *See* note 9 *infra*.
2 *See* notes 9-11 *infra* and accompanying text.
3 *See* notes 12-13 *infra* and accompanying text.
4 *See* notes 14-17 *infra* and accompanying text.
5 42 U.S.C. § 1983 (1982). *See* note 9 *infra*.
6 *See* notes 18-73 *infra* and accompanying text.
7 105 S. Ct. 1938 (1985). *See* notes 34-52 *infra* and accompanying text.
8 *See* notes 74-97 *infra* and accompanying text.
9 Originally enacted as § 1 of the Civil Rights Act of 1871 (Ku Klux Klan Act), ch. 22, 17 Stat. 13 (1871) (codified as amended at 42 U.S.C. § 1983 (1982)). This section provides:

action against any person[10] who deprives the litigant of any constitutionally guaranteed right, privilege, or immunity under color of law.[11] Although Congress provided aggrieved parties with a private cause of action for infringement of their constitutional rights, Congress specifically omitted enacting a statute of limitations[12] to govern section 1983 cases.[13] The void created by this omission, while unfortunate, is hardly uncommon in federal legislation.[14] When Congress fails to provide a governing limitations period for a particular piece of legislation, the established practice of federal courts is to "adopt" or "borrow" a local limitations period as federal law[15]

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

10 The term "person" in § 1983 includes private individuals and corporations acting under color of law, Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), and local governmental entities and natural persons such as state, county, and municipal officials, Monell v. New York City Dep't of Social Servs., 436 U.S. 658 (1978). Courts conflict on whether states are "persons" for the purposes of § 1983. *Compare* Smith v. Michigan, 122 Mich. App. 340, 348-52, 333 N.W.2d 50, 54-56 (1983) (state is a "person") *with* Edgar v. State, 595 P.2d 534, 537-38 (Wash. 1979) (en banc) (state is not a "person"), *cert. denied sub nom.* Edgar v. Washington, 444 U.S. 1077 (1980). *See also* Note, *Amenability of States to Section 1983 Suits: Reexamining* Quern v. Jordan, 62 B.U.L. REV. 731 (1982) (arguing that states are "persons" under § 1983).

11 42 U.S.C. § 1983 (1982); *see* note 9 *supra*. This statute does not create substantive rights. Rather, it provides a remedy for the violation of rights created elsewhere in federal law. *See, e.g.*, Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 616-18 (1979). *See also* CONG. GLOBE, 42d Cong., 1st Sess. 568 (1871) ("All civil suits . . . which this act authorizes, are not based upon it; they are based upon the right of the citizen. The act only gives a remedy.") (statement of Sen. Edmunds).

12 Statutes of limitation govern the "limited period of time . . . for the bringing of an action and, if the action is not commenced in time, the lapse of time will constitute a defense to the suit or will deprive the plaintiff of his right." W. FERGUSON, THE STATUTES OF LIMITATION SAVING STATUTES 1 (1978).

13 *See* Board of Regents v. Tomanio, 446 U.S. 478 (1980); O'Sullivan v. Felix, 233 U.S. 318 (1914).

14 *Tomanio*, 446 U.S. at 483.

15 The Rules of Decision Act, 28 U.S.C. § 1652 (1982), provides statutory authority for adopting a state statute of limitations as federal law. Invoking this authority, federal courts have applied state limitations periods to a variety of cases. The Act provides: "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply." *Id.* The Court first applied the Act to require borrowing of a local limitations period in McCluny v. Silliman, 28 U.S. (3 Pet.) 167 (1830) (a six year state statute used to bar a malfeasance claim against a registrar of an United States land office). A state statute of limitations was first used to limit an exclusive federal right in Campbell v. Haverhill, 155 U.S. 610 (1895) (a six year state statute used to bar a patent infringement claim). The Act was extended to the Reconstruction Civil Rights Acts in O'Sullivan v. Felix, 233 U.S. 318 (1914) (case brought under § 1983 and § 1985 based on a conspiracy to deprive citizens of voting rights). Further statutory author-

as long as this period does not conflict with federal law or federal policy concerns.[16] Congress has implicitly endorsed this approach with regard to claims brought under the Reconstruction Civil Rights Acts.[17]

Prior to the recent United States Supreme Court decision in *Wilson v. Garcia*,[18] the Supreme Court instructed lower federal courts to select the "most appropriate,"[19] or "the most analogous"[20] state statute of limitations when hearing section 1983 cases. Although the Supreme Court required this, the Court provided lower courts with little guidance in choosing the most appropriate statute of limitations.[21] Each circuit had to develop its own reasoned approach in determining the appropriate statute of limitations.[22]

Before *Wilson*, the approaches utilized by the circuits fell into two separate categories.[23] Some circuits applied a factual approach in determining the appropriate limitation which required an analysis of the facts leading to the alleged injury.[24] Others reasoned that

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ity is found in 42 U.S.C. § 1988 (1982); *see* note 17 *infra*. Courts have also justified borrowing local statutes of limitations as the appropriate interpretation of congressional intent. *See* Runyon v. McCrary, 427 U.S. 160 (1976); Holmberg v. Armbrecht, 327 U.S. 392 (1946).

16 *See, e.g., McCrary*, 427 U.S. at 180-82 (1976); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 703-05 (1966); Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 397-98 (1906); McClaine v. Rankin, 197 U.S. 154, 158 (1905); Campbell v. Haverhill, 155 U.S. 610, 617 (1895).

17 The relevant portion of 42 U.S.C. § 1988 (1982) provides:

> In all cases where [the provisions of this Title] . . . are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, *so far as the same is not inconsistent with the Constitution and laws of the United States*, shall be extended to and govern the said courts in the trial and disposition of the cause.

Id. (emphasis added). The Supreme Court approved the use of state statutes of limitations for civil rights cases in *O'Sullivan*, 233 U.S. 318. The Supreme Court now considers this practice mandated by § 1988. *See* Burnett v. Grattan, 104 S. Ct. 2924, 2928-29 (1984); Chardon v. Soto, 462 U.S. 650, 655-56, 661 (1983); *Tomanio*, 446 U.S. at 484-86; Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 464 (1975).

18 105 S. Ct. 1938 (1985).

19 *Railway Express*, 421 U.S. at 462.

20 *Tomanio*, 446 U.S. at 488.

21 *See* Biehler, *Limiting the Right to Sue: The Civil Rights Dilemma*, 33 DRAKE L. REV. 1, 14 (1983).

22 *Id.* at 15.

23 *Id.* at 16-34. *See* Garcia v. Wilson, 731 F.2d 640 (1984), *aff'd*, 105 S. Ct. 1938 (1985) (a scholarly analysis of the different methods employed by the federal circuits prior to *Wilson* when faced with a § 1983 limitations issue). *See also* Jarmie, *Selecting an Analogous State Limitations Statute in Reconstruction Civil Rights Acts Claims: The Tenth Circuit's Resolution*, 15 N.M.L. REV. 11 (1985). *See generally* Special Project, *Civil Rights*, 62 DEN. L. REV. 59 (1985).

24 Aitchison v. Raffiani, 708 F.2d 96 (3d Cir. 1983); McGhee v. Ogburn, 707 F.2d 1312 (11th Cir. 1983); McClam v. Barry, 697 F.2d 366 (D.C. Cir. 1983); Morrell v. City of Picayune, 690 F.2d 469 (5th Cir. 1982); Kilgore v. City of Mansfield, 679 F.2d 632 (6th Cir. 1982); Burns v. Sullivan, 619 F.2d 99 (1st Cir.), *cert. denied*, 449 U.S. 893 (1981); Zuniga v.

because the source of the federal cause of action was statutory, the appropriate statute of limitations was one based upon liability created by statute.[25] By selecting one of these methods of analysis, each state would be internally consistent. There would be, however, no consistency among the states.[26]

Moreover, even the methods themselves created problems. The factual analysis method proved most problematic. This analysis required courts to rely upon the often misleading allegations in the pleadings.[27] In *Wilson*, the Supreme Court noted that this approach "inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purposes of § 1983."[28] The Court also recognized that "[a]lmost every § 1983 claim can be favorably analogized to more than one of the ancient common-law forms of action, each of which may be governed by a different statute of limitations."[29] While the factual approach caused confusion, the other approach, the statutory liability analogy, is not analytically correct.[30] Section 1983 itself does not create substantive rights; the underlying rights it enforces originate elsewhere in federal law.[31] Therefore, this method of analysis "is flawed in that it focuses on the statutory remedy and away from the elements of the cause of action."[32] The problems with the two approaches have added to the existing confusion in this area and have led to further inconsistent applications of the law.[33]

AMFAC Foods, Inc., 580 F.2d 380 (10th Cir. 1978). *See also Garcia*, 731 F.2d at 643-48; Biehler, *supra* note 21, at 15-27.

25 Garmon v. Foust, 668 F.2d 400 (8th Cir.) (en banc), *cert. denied*, 456 U.S. 998 (1982); Plummer v. Western Int'l Hotels Co., 656 F.2d 502 (9th Cir. 1981); Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981); Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980); Beard v. Robinson, 563 F.2d 331 (7th Cir. 1977), *cert. denied*, 438 U.S. 907 (1978). *See also Garcia*, 731 F.2d at 643-48; Biehler, *supra* note 21, at 27-33.

26 Biehler, *supra* note 21, at 34.

27 Commentators have openly criticized this method. *See* Biehler, *supra* note 21; Note, *A Call for Uniformity: Statutes of Limitation in Federal Civil Rights Actions*, 26 WAYNE L. REV. 61 (1979); Comment, *Statutes of Limitations in Federal Civil Rights Litigation*, 1976 ARIZ. ST. L.J. 97; Annot., 45 A.L.R. FED. 548 (1979).

28 *Wilson*, 105 S. Ct. at 1945.

29 *Id.*

30 Jarmie, *supra* note 23, at 25.

31 *See* note 11 *supra*.

32 Jarmie, *supra* note 23, at 25.

33 *See* Comment, *Statutes of Limitations in Federal Civil Rights Litigation*, 1976 ARIZ. ST. L.J. 97. The commentator noted that:

> Inconsistency in the time periods for bringing suit from state to state poses only a minor inconvenience to litigants when compared with the difficulties they face in determining which state statute of limitation applies to the facts of a particular case. The problem has assumed substantial proportions. In some circuits today neither plaintiffs nor defendants can know whether a federal civil rights claim is barred unless they seek a circuit decision on the facts of the case.

Id. at 98 (footnote omitted). *See also* Annot., 45 A.L.R. FED. 548, 553-54 (1979).

B. *The Effect of* Wilson v. Garcia

In *Wilson v. Garcia,*[34] the respondent brought a cause of action under section 1983 against a New Mexico state police officer and the chief of the state police.[35] The respondent sought damages to compensate him for the deprivation of his constitutional rights;[36] specifically, an unlawful arrest and vicious beating by the officer.[37] Respondent filed the complaint in the United States District Court for the District of New Mexico two years and nine months after the alleged incident.[38] The New Mexico Tort Claims Act provided a two year statute of limitations which would have barred respondent's claim.[39] The district court denied petitioners' motion to dismiss the action under the New Mexico statute[40] and certified an interlocutory appeal.[41]

The Court of Appeals for the Tenth Circuit, sitting en banc, unanimously affirmed the district court's order denying petitioner's motion to dismiss.[42] The court concluded that "every section 1983 claim is in essence an action for injury to personal rights."[43] Therefore, the court held that for cases arising in New Mexico, courts should use a three year statute[44] which applies to injury to the person or reputation.[45]

The United States Supreme Court granted certiorari[46] because "the conflict, confusion, and uncertainty concerning the appropriate statute of limitations to apply to this most important, and ubiquitous, civil rights statute provided compelling reasons."[47] The Supreme Court affirmed the Tenth Circuit's decision, with Justice O'Connor dissenting.[48] The Court held that section 1983 civil

34 105 S. Ct. 1938 (1985).

35 *Id.* at 1940.

36 As guaranteed by the fourth, fifth, and fourteenth amendments. *Id.*

37 *Id.*

38 *Id.*

39 *Id.* N.M. STAT. ANN. § 41-4-15(A) (1978).

40 The district court held that "§ 1983 actions are best characterized as actions *based on statute.*" *Wilson,* 105 S. Ct. at 1941 (quoting appendix to petition for cert. 43-44) (emphasis added).

41 The interlocutory appeal was certified pursuant to 28 U.S.C. § 1292(b) (1982).

42 Garcia v. Wilson, 731 F.2d 640 (10th Cir. 1984).

43 *Id.* at 651.

44 N.M. STAT. ANN. § 37-1-8 (1978).

45 731 F.2d at 651.

46 105 S. Ct. 79 (1984).

47 105 S. Ct. at 1942.

48 *Id.* at 1949. In her dissent, Justice O'Connor pursued three primary avenues of attack. First, she argued that the Court, perceiving a need for uniformity, "simply seized the opportunity to legislate it" even though Congress considered standardizing the § 1983 limitations period recently and failed to enact appropriate legislation. *Id.* at 1951. Upon careful reading of the *Wilson* opinion, however, it becomes clear that the foundation for the Court's opinion was an analysis of the intent of the Congress to address offenses closely analogous to personal injury torts. The Court successfully augmented its position by not-

rights claims "are best characterized as personal injury actions."[49] The Court based its determination on an analysis of the intent of Congress in enacting this legislation,[50] emphasizing that "[t]he atrocities that concerned Congress in 1871 plainly sounded in tort."[51] Thus, the Supreme Court rejected both the factual analysis method and the statutory liability analogy method to determine the appropriate statute of limitations for section 1983 claims. The new rule provides that the appropriate statute of limitations for section 1983 cases is the state statute applicable to personal injury actions.[52]

II. Judicial Interpretations of the New "Borrowing" Rule

The Supreme Court's decision in *Wilson* will not solve all problems associated with section 1983 actions. The decision, however, at least provides a degree of much needed direction in an area of law where little existed before.[53] After *Wilson*, the lower federal courts which had utilized the flawed factual analysis method[54] will be relieved of determining the appropriate limitations period on a case by case and issue by issue basis. Moreover, the courts which formerly applied the limitations period appropriate for actions created by statute will no longer be required to use a method which is analytically imprecise and which neither the Supreme Court nor Congress explicitly sanctioned as proper.[55] Therefore, the *Wilson* decision mitigates the conflict, confusion, and uncertainty which has concerned both courts and commentators.[56] Presently, to de-

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ing that the present (pre-*Wilson*) "borrowing" rules actually interfere with the enforcement of the Civil Rights Act, clearly a situation Congress wanted to avoid. Thus, the Court did not merely seize the opportunity to legislate uniformity. Instead, it handed down a well-reasoned opinion, consistent with the intent of Congress in this area, and also consistent with the objective of effective civil rights enforcement. Justice O'Connor argued further that the *Wilson* decision "effectively forecloses legislative creativity on the part of the States." *Id.* at 1952. Justice O'Connor, however, failed to adequately address the fact that § 1983 is a federal right designed to promote federal interests and federal policies. States enact statutes of limitations with their own state interests in mind, not with concern for federal interests. "Legislative creativity on the part of the States" (*id.*) is simply not appropriate in this situation. Justice O'Connor's final argument that "there is no guarantee state law will obligingly supply a limitations period to match [the *Wilson*] analogy," *id.* at 1953, is addressed in the text of this note. *See* text accompanying notes 58-73 *infra*.

49 *Wilson*, 105 S. Ct. at 1949.

50 *Id.* at 1947-49.

51 *Id.* at 1948.

52 *Id.* at 1949.

53 *See* notes 18-33 *supra* and accompanying text.

54 *See* notes 24, 27-29 *supra* and accompanying text.

55 *See* notes 25, 30-32 *supra* and accompanying text.

56 *See, e.g.*, *Garcia*, 731 F.2d 640 (10th Cir. 1984); Aitchison v. Raffiani, 708 F.2d 96 (3d Cir. 1983); Gashgai v. Leibowitz, 703 F.2d 10 (1st Cir. 1983); McClam v. Barry, 697 F.2d 366 (D.C. Cir. 1983); Morrell v. City of Picayune, 690 F.2d 469 (5th Cir. 1982); Kilgore v. City of Mansfield, 679 F.2d 632 (6th Cir. 1982); Garmon v. Faust, 668 F.2d 400 (8th Cir.)

termine the appropriate limitations period for section 1983 suits, all federal courts, in accordance with *Wilson*, will utilize the local limitations period applicable to personal injury actions.[57]

Although *Wilson* is a relatively recent decision,[58] many lower federal courts have subsequently faced section 1983 limitations issues. The weight of authority thus far indicates that the *Wilson* decision has been enthusiastically received and competently applied by the lower courts.[59] A United States district court, however, found sufficient ambiguity in *Wilson* to hand down a ruling inconsistent with the spirit of the Supreme Court's decision in that case.

In *Shorters v. City of Chicago*,[60] the plaintiffs filed suit in July 1985 against the City of Chicago and a police officer under section 1983. The plaintiffs sought damages for an alleged violation of their civil rights in August 1982.[61] Applying *Wilson*, the defendants moved to dismiss plaintiffs' complaint because the applicable two year statute of limitations for personal injury actions barred the claim.[62] Plaintiffs countered by arguing that the applicable statute of limitations was not the two year statute advocated by defendants, but instead was the five year catch-all statute.[63] Ruling in favor of the plaintiffs, the *Shorters* court held that the applicable statute of limitations to be applied to section 1983 actions in Illinois is the five year catch-all statute; therefore, the plaintiffs filed their complaint within the statutory period.[64] This decision is directly contrary to *Wilson*. The *Wil-*

(en banc), *cert. denied*, 456 U.S. 998 (1982); Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc); Plummer v. Western Int'l Hotels Co., 656 F.2d 502 (9th Cir. 1981); Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982); Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980); Beard v. Robinson, 563 F.2d 331 (7th Cir. 1977), *cert. denied*, 438 U.S. 907 (1978); Biehler, *supra* note 21; Jarmie, *supra* note 23.

57 *See* notes 46-52 *supra* and accompanying text.

58 The Court decided *Wilson* on April 17, 1985.

59 Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985); Altair Corp. v. Pesquera De Busquets, 769 F.2d 30 (1st Cir. 1985); Bailey v. Faulkner, 765 F.2d 102 (7th Cir. 1985); Serrano v. Torres, 764 F.2d 47 (1st Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188 (3d Cir. 1985); Burkhart v. Randles, 764 F.2d 1196 (6th Cir. 1985); Knoll v. Springfield Township School Dist. 763 F.2d 584 (3d Cir. 1985); Jones v. Precuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985); Acoff v. Abston, 762 F.2d 1543 (11th Cir. 1985).

60 617 F. Supp. 661 (N.D. Ill. 1985).

61 *Id.* at 661-62.

62 *Id.* at 662. The Illinois statute is codified at ILL. ANN. STAT. ch. 110, ¶ 13-202 (1984).

63 617 F. Supp. at 662-63. The relevant portion of that section provides:

> [A]ctions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover possession of personal property or damages for the detention or conversion thereof, and *all civil actions not otherwise provided for*, shall be commenced within 5 years next after the cause of action accrued.

ILL. ANN. STAT. ch. 110, ¶ 13-205 (1984) (emphasis added).

64 617 F. Supp. at 666.

son Court would have applied the personal injury, rather than the catch-all, statute of limitations.[65]

Initially, the *Shorters* decision seems to reflect Justice O'Connor's concern in her *Wilson* dissent that "there is no guarantee state law will obligingly supply a limitations period to match an abstract analogy."[66] Because the two year limitations statute failed to encompass the broad range of potential remedies available under section 1983, the *Shorters* court opted to apply the five year catch-all statute. The *Shorters* court justified this decision with heavy reliance on dictum in *Wilson* emphasizing that section 1983 claims are broadly used by aggrieved parties in modern times to remedy a variety of wrongs.[67]

The *Shorters* court correctly noted the broad use of section 1983 actions in modern times. The court, however, plainly ignored the Supreme Court's explicit holding that section 1983 claims should be characterized more narrowly as personal injury actions when determining an appropriate limitations period.[68] The *Wilson* opinion emphasized this point several times.[69] The court could have applied the two year statute of limitations in this case consistently with the *Wilson* directive. Therefore, *Shorters* cannot realistically be characterized as a case in which state law failed to provide a limitations period to match the *Wilson* analogy. In ruling contrary

65 The *Shorters* court ruled, in the alternative, that even if the applicable statute of limitations for section 1983 cases in Illinois is, in fact, the two year statute, the plaintiffs' case still should not be barred. The court reasoned that because the *Wilson* rule operated to reduce the applicable limitations period in Illinois, potential plaintiffs should be given a reasonable amount of time after the decision, as determined by state law, to file § 1983 actions which would have been timely under the prior statute of limitations. *Id.* at 667-68. The court based its decision upon the following factors:

> 1. Plaintiffs are likely to have relied on the [previous] rule.
> 2. Nonretroactivity would not seriously jeopardize the policies of uniformity, certainty and minimization of unnecessary litigation, while it would serve the broad remedial purposes of Section 1983.
> 3. Retroactive application would impose a burden of inequity on plaintiffs.

Id. at 667. The plaintiffs filed suit 75 days after *Wilson* was decided. The *Shorters* court determined that this was a reasonable period according to the applicable state law. *Id.* at 668. The court's reasoning in determining the appropriate statute of limitations for § 1983 claims was flawed and, therefore, should not be followed. In light of the potential inequities involved in this case, if the court had strictly applied *Wilson*, its alternative holding was probably correct.

66 *Wilson*, 105 S. Ct. at 1953 (O'Connor, J., dissenting). *See* note 48 *supra*.

67 617 F. Supp. at 663-64. The *Shorters* court attempted to augment its position by noting that "Illinois adheres to the principle that a statute of limitations bars only actions coming clearly within its terms." *Id.* at 666 n.6. The *Shorters* court, however, blatantly ignored the Supreme Court's explicit direction to apply the local personal injury statute of limitations to § 1983 actions. *See* notes 46-52 *supra* and notes 68-69 *infra* and accompanying text.

68 *Wilson*, 105 S. Ct. at 1949.

69 For example, the Supreme Court noted the following:

> "[T]he Court of Appeals concluded that the tort action for the recovery of damages for

to *Wilson*, the *Shorters* court merely seized upon dictum in *Wilson* in a weak attempt to harmonize its decision with recent Supreme Court doctrine.

Although the *Shorters* case does not represent the foregoing problem identified by Justice O'Connor,[70] it is merely a matter of time before such a case arises. Should this problem materialize, however, a practical solution is readily available. *Wilson* provides the analysis for determining the statute of limitations applicable to section 1983 claims. A court should look first to a local statute of limitations expressly applicable to personal injury actions.[71] If such a statute is not available, the court could then apply the local statute actually utilized by the local courts in determining a limitations period for personal injury actions.[72] Unfortunately, *Wilson* does not go so far as to provide for this situation.[73]

III. Problems Remaining After *Wilson*

A. *Conflicting Interests: State Interest v. Federal Interest*

A potentially serious problem in limiting section 1983 actions looms on the horizon. Section 1983 claims are designed to protect particularly important federal interests; mainly, effective enforcement of fourteenth amendment guarantees.[74] But, section 1983

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personal injuries is the best alternative available. We agree that this choice is supported by the nature of the § 1983 remedy." *Id.* at 1947 (citations omitted).

"The atrocities that concerned Congress in 1871 plainly sounded in tort." *Id.* at 1948.

"Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury." *Id.* at 1948.

"In essence, § 1983 creates a cause of action where there has been injury, under color of state law, to the person or to the constitutional or federal statutory rights which emanate from or are guaranteed to the person. In the broad sense, every cause of action under § 1983 which is well-founded results from 'personal injuries.' " *Id.* at 1948 (quoting Almond v. Kent, 459 F.2d 200, 204 (4th Cir. 1972)).

"In view of our holding that *§ 1983 claims are best characterized as personal injury actions*, the Court of Appeals correctly applied the 3-year statute of limitations governing actions 'for an injury to the person or reputation of any person.' " *Id.* at 1949 (emphasis added).

70 *See* notes 66-69 *supra* and accompanying text. *See also* note 48 *supra*.

71 *Wilson*, 105 S. Ct. at 1949.

72 When a legitimate question arises regarding which particular statute of limitation should apply, judicial policy favors application of the longer statute. *See* Marshall v. Kleppe, 637 F.2d 1217, 1224 (9th Cir. 1980); Shah v. Halliburton, 627 F.2d 1055, 1059 (10th Cir. 1980); Reid v. Volkswagon of Am., 512 F.2d 1294, 1297 (6th Cir. 1975); Payne v. Ostrus, 50 F.2d 1039, 1042 (8th Cir. 1931).

73 As an alternative, when an explicit statute is unavailable in the jurisdiction, the federal court could use the method of analysis they utilized prior to *Wilson*. However, as evidenced by the holding in *Wilson* which rejects the previously employed methods, the Supreme Court would not likely approve of this alternative.

74 Section 1983 provides a vehicle by which private persons can act to ensure effective enforcement of their constitutional rights. Congress intended, through § 1983, to promote peace, justice, and the security of life, liberty, and property through civil enforcement.

A plaintiff's uncertainty over which statute of limitations to apply may invalidate his

claims are subject to state statutes of limitations.[75] This allows state law to control the application of constitutional guarantees. Conflicts between state and federal interests are inherent in this structure. The Supreme Court noted that "[s]tate legislatures do not devise their limitations periods with national interests in mind."[76] State legislatures accordingly enact statutes of limitations that advance their own policies and goals irrespective of any possible federal interest. In light of this, it becomes "the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies."[77] Indeed, Congress has instructed that state law can apply to civil rights actions *only* when the state law does not conflict with federal law.[78] The Supreme Court emphasized that even under the *Wilson* rule, which borrows local personal injury statutes of limitations, a court should not adopt the local law if it is inconsistent with either the federal law or the federal interest involved.[79]

The Supreme Court has yet to instruct the lower federal courts regarding when a state's statute of limitation encroaches upon federal interests. It remains unclear after *Wilson* whether a state statute of limitations for a short period, for example six months, sufficiently protects federal interests.[80] It also remains unclear what remedy a court should fashion if it determines that a state statute of

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otherwise valid claim. This uncertainty hampers effective enforcement of civil rights claims.

Uniformity is also a federal interest consistent with the § 1988 borrowing provision; *see* note 17 *supra* and accompanying text. A uniform statute of limitations for § 1983 cases would ensure that federal courts treat plaintiffs in all jurisdictions with similar claims similarly. *See* notes 88-97 *infra* and accompanying text.

75 *Wilson* continues the lineage of cases recognizing this point. 105 S. Ct. at 1942. *See* notes 12-17 *supra* and accompanying text.

76 Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367 (1977).

77 *Id.*

78 *See* note 17 *supra.*

79 *Wilson*, 105 S. Ct. at 1943-44. For example, *Wilson* directs that "state law shall only apply 'so far as the same is not inconsistent with' federal law." *Id.* at 1943 (quoting 42 U.S.C. § 1988 (1982)). Also, *Wilson* noted that "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." *Id.* at 1944.

80 The lower federal courts have recognized that insufficient statutes of limitations might discriminate against plaintiffs pursuing a recovery under the Civil Rights Acts. The appropriate durational threshold, however, has been elusive. *See, e.g.*, Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985) (§ 1983 case; one year sufficient); Warner v. Perrino, 585 F.2d 171 (6th Cir. 1978) (§ 1982 case; 180 days sufficient); Johnson v. Davis, 582 F.2d 1316 (4th Cir. 1978) (§ 1983 case; one year insufficient). The Supreme Court has sanctioned periods as brief as one year. *See* Chardon v. Fumero Soto, 462 U.S. 650 (1983) (§ 1983 case); Chardon v. Fernandez, 454 U.S. 6 (1981) (§ 1983 case); Johnson v. Railway Express Agency, 421 U.S. 454 (1975) (§ 1983 case). The Court refused to authorize the use of a six month statute of limitations applicable to an administrative action for "borrowing" in a civil rights action. The Supreme Court did not, however, definitively state that the specific problem with the statute was the limited duration. The limited duration did concern the Court. The Court was also concerned, however, because the statute, applicable to state administrative

limitations does not adequately protect federal interests. The *Wilson* decision emphasizes the necessity of protecting the federal interest, a critical area plaguing the federal courts, but provides little guidance on how to accomplish this objective. To solve the problems remaining after *Wilson*, it helps to analyze the general policies supporting statutes of limitations and the federal interests at stake in section 1983 cases. Any workable solution will necessarily involve a balancing of interests in these areas.[81]

B. *Statutes of Limitations: Policy Considerations*

Statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared" by requiring the initiation of a cause of action within a specified time period.[82] Such limitations periods promote stability in society[83] by providing potential defendants with repose, a precise day in which the threat of a suit is removed.[84] Moreover, statutes of limitations assist in conserving scarce judicial resources by relieving the courts of the burden of hearing stale claims,[85] thereby allowing courts to concentrate their resources on current conflicts.[86] Finally, statutes of limitations effectively express society's opinion that some actions are more worthwhile than

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actions, was not appropriately analogous to civil rights claims. Burnett v. Grattan, 104 S. Ct. 2924 (1984) (§§ 1981, 1983, 1985, and 1986 case).

While the appropriate durational threshold remains unclear, it is clear that a state cannot prescribe an unduly short limitations period expressly to circumvent federal law. Such a period would violate the § 1988 borrowing provision; *see* note 17 *supra*. The Court probably would examine state legislative intent if confronted with this issue. *See generally* Wallace v. Jaffree, 105 S. Ct. 2479 (1985) (the Court examined state legislative intent in a first amendment case).

81 For example, *Wilson* was concerned with preserving the policies of repose while protecting the greater federal interest. Also, 42 U.S.C. § 1988 (1982) allows importation of state law in a federal cause of action provided that state law is not inconsistent with the federal law; *see* note 17 *supra*. *See also* note 16 *supra* and accompanying text. *See generally* Burnett v. Grattan, 104 S. Ct. 2924 (1984); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229 (1969).

82 Order of R.R. Telgraphers v. Railway Express Agency, Inc., 321 U.S. 342, 348-49 (1944). The Court stated that: "The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Id.* at 349.

83 Statutes of limitations promote economic stability as well by alleviating the disruptive effects of uncertainty in commercial enterprise. *See Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950).

84 Note, *Limitation Borrowing in Federal Courts*, 77 MICH. L. REV. 1127, 1128-29 (1979). *See also* Adams v. Woods, 6 U.S. (2 Cranch) 336, 341 (1805).

85 Special Project, *Time Bars in Specialized Federal Common Law: Federal Right of Action and State Statutes of Limitations*, 65 CORNELL L. REV. 1011, 1016-17 (1980).

86 Ester, *Borrowing Statutes of Limitation and Conflict of Laws*, 15 U. FLA. L. REV. 33, 36 (1962). *See also* Burnett v. New York Cent. R.R., 380 U.S. 424, 428 (1965).

others.[87] Section 1983 does not incorporate a statute of limitations nor is there an ancilliary federal statute of limitations that applies to section 1983 actions. Therefore, the federal interests are not addressed; it is left up to the states to serve these interests.

C. *Effective Enforcement of Section 1983: The Federal Interests*

If a local limitations period conflicts with an overriding federal law or policy, it cannot be applied to a federal cause of action.[88] Congress, through section 1983, emphasized the "predominance of the federal interest"[89] in civil rights cases. The major federal interest involved in section 1983 actions pertains to the effective enforcement of fourteenth amendment guarantees.[90]

Congress intended, through section 1983, to promote peace, justice, and the security of life, liberty, and property through civil enforcement.[91] Section 1983 provides a vehicle by which private persons can act to ensure effective enforcement of their constitutionally guaranteed civil rights. According to the Supreme Court "[t]he specific historical catalyst for the Civil Rights Act of 1871 was the campaign of violence and deception . . . which was denying decent citizens their civil and political rights."[92] Given the purpose and importance of the civil rights leglislation, a federal court cannot adopt a local limitations period as federal law if it conflicts with these goals.

Certainty is another federal interest at stake when a federal court adopts a local statute of limitations in section 1983 actions. The Supreme Court has noted that uncertainty in applying statutes of limitations creates additional litigation. This, in turn, expends judicial resources and hampers the enforcement of civil rights claims.[93] Moreover, a plaintiff's uncertainty over which statute to apply may invalidate his otherwise valid claim. Similarly, because of uncertainty, potential defendants cannot properly calculate their potential liability.[94] Thus, the policy concerns underlying statutes

87 Leflar, *The New Conflicts-Limitations Act*, 35 MERCER L. REV. 461 (1984). Statutes of limitations reflect "social attitudes . . . that express favor or disfavor toward certain classes of claims or parties." *Id.* at 471.

88 *Wilson*, 105 S. Ct. at 1942. *See* notes 16-17 *supra* and accompanying text.

89 Burnett v. Grattan, 104 S. Ct. 2924, 2929 (1984).

90 *See* Monroe v. Pape, 365 U.S. 167 (1961). The Court stated that:

> It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because . . . state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.

Id. at 180.

91 *Wilson*, 105 S. Ct. at 1947.

92 *Id.*

93 *Id.*

94 *Id.* at n.34.

of limitations are frustrated by "borrowing" state statutes on an ad hoc basis.

The Supreme Court identified uniformity within each state as a federal interest consistent with the section 1988 borrowing provision.[95] A uniform statute of limitations for section 1983 actions applicable to all states would ensure that all potential claims are treated identically among states. Thus, courts would treat plaintiffs in all jurisdictions with similar claims similarly. The Court, however, in *Wilson* again emphasized its position in *Board of Regents v. Tomanio*[96] that the need for national uniformity in civil rights actions standing alone cannot override local statutes of limitations.[97]

IV. Conclusion

Section 1983 provides a private plaintiff with a civil cause of action for deprivation of constitutionally guaranteed rights under color of law. Congress has not specifically enacted a statute of limitations applicable to these actions. When Congress fails to provide an appropriate limitations period, the federal courts "adopt" or "borrow" a local statute of limitations as federal law as long as this period does not conflict with federal law or federal policy concerns.

In *Wilson v. Garcia*,[98] the Supreme Court directed the lower courts to "adopt" the local statute of limitations applicable to personal injury actions in section 1983 cases. This decision cured many problems faced by the lower courts when applying a local limitations period to section 1983 actions. However, a serious problem still remains after *Wilson*: state legislatures enact statutes of limitations to advance their own interests. Because section 1983 actions are subject to state limitations periods, states are given an opportunity to impose their own will over federal law.

Ideally, Congress should legislate a specific limitations period for either section 1983 actions individually or for civil rights claims generally.[99] The result should be a well-reasoned process of balancing the federal interest in enforcing civil rights law with the policies supporting repose.

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95 *Id.* at 1947. *See* note 17 *supra* and accompanying text.

96 446 U.S. 478 (1980).

97 *Wilson*, 105 S. Ct. at 1947.

98 105 S. Ct. 1938 (1985).

99 Congress recently considered but failed to enact a number of bills designed to standardize the § 1983 limitations period. *See, e.g.*, S. 436, 99th Cong., 1st Sess. (1985); S. 1983, 96th Cong., 1st Sess. (1979); H.R. 12874, 94th Cong., 2d Sess. (1976).

Congressional action would not be unprecedented. Congress has enacted some federal statutes of limitations in areas where state statutes had formerly been adopted. For example, Congress enacted a limitation period applicable to the Clayton Act in 1955 (codified as amended at 15 U.S.C. § 15b (1982)). Also, in 1897 Congress enacted legislation to limit patent claims (codified as amended at 35 U.S.C. § 286 (1982)).

As an alternative, Congress could enact a general limitations statute to apply to all federal actions unless separately provided for in federal law.[100] Such sweeping legislation would be easily applied and would cure a major problem. Use of this method, however, bypasses the sound reasoning process necessary to fine-tune the law to meet the needs of all the complex and sometimes competing interests involved.

Use of either method is preferable to use of neither method, or even worse, no action at all. The *Wilson* Court could have prescribed the minimum limitations period necessary to vindicate the federal interests involved in section 1983 cases.[101] By doing so, the Supreme Court would have, for all practical purposes, laid to rest the question of what the appropriate statute of limitations is for section 1983 claims. Until either Congress or the Supreme Court acts on this issue, the federal courts will have to continue untangling the problems still remaining after *Wilson*.

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100 Several commentators favor this position. *See, e.g.*, Blume & George, *Limitations and the Federal Courts*, 49 MICH. L. REV. 937, 992-93 (1951); Recent Cases, 32 MINN. L. REV. 65, 68 (1947); Note, *Federal Statutes Without Limitations Provisions*, 53 COLUM. L. REV. 68, 77-78 (1953); Note, *Disparities in Time Limitations on Federal Causes of Action*, 49 YALE L.J. 738, 745 (1940). Congress unsuccessfully attempted to legislate a one year limitations period applicable to federal statutory rights of action which have no limitations provision. *See* S. 1013, 79th Cong., 1st Sess. (1945) and H.R. 2788, 79th Cong., 1st Sess. (1945).

101 In order to avoid a criticism of judicial activism, the Court should have fashioned this remedy consistent with the § 1988 borrowing provision.