CIVIL RIGHTS—STATUTE OF LIMITATIONS—STATE LIMITATION PERIOD FOR PERSONAL INJURY ACTIONS APPLIES TO ALL SECTION 1983 CLAIMS—*Wilson v. Garcia*, 105 S. Ct. 1938 (1985).

> *"Few areas of the law stand in greater need of firmly defined, easily applied rules than does the subject of periods of limitations."**

When enacting new legislation, Congress often fails to provide for a specific statute of limitations.[1] Consequently, the task of determining the appropriate limitation period is relegated to the courts.[2] One issue that has caused uncertainty and confusion among the Federal circuit courts is the applicable statute of limitations for actions brought under 42 U.S.C. § 1983, which was originally part of the Reconstruction Civil Rights Act.[3] Recently, however, the United States Supreme Court resolved this issue in *Wilson v. Garcia*.[4] In *Wilson*, the Court held that because section "1983 claims are best characterized as personal injury actions," courts should apply the appropriate state statute of limitations for actions of this nature.[5]

The *Wilson* litigation arose on January 28, 1982, when Gary Garcia brought an action in the United States District Court for the District of New Mexico against Richard Wilson, a New Mexico State Police officer, and Martin Vigil, Wilson's superior officer.[6] Garcia claimed that on April 27, 1979, he had been "unlawfully arrested," "brutally and viciously" beaten, and sprayed in the face with tear gas by Wilson.[7] Garcia further alleged that Vigil had failed to supervise

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* Wilson v. Garcia, 105 S. Ct. 1938, 1942 (1985) (quoting Chardon v. Fumero Soto, 462 U.S. 650, 667 (1983) (Rehnquist, J., dissenting)).

1 *See id.* (citing Board of Regents v. Tomanio, 446 U.S. 478, 483 (1980)).

2 *See id.*

3 *See* Act of Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13, 13 (current version at 42 U.S.C. § 1983 (1982)). Section 1983 provides that

> [e]very 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 person 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.

42 U.S.C. § 1983 (1982); *see also infra* notes 30-33 and accompanying text (discussing history of § 1983).

4 105 S. Ct. 1938 (1985).

5 *Id.* at 1949.

6 *Id.* at 1940.

7 *Id.* Garcia claimed that Wilson committed these acts while under the color of state law. *Id.*

Wilson properly.[8] These events, Garcia argued, had deprived him of the civil rights guaranteed by the fourth, fifth, and fourteenth amendments to the United States Constitution.[9]

The defendants moved to dismiss Garcia's action, which was filed two years and nine months after the abuses allegedly occurred, on the ground that it was barred by the two-year statute of limitations provided in the New Mexico Tort Claims Act.[10] In support of their motion, the defendants relied on a New Mexico Supreme Court case,[11] *De Vargas v. State ex rel. New Mexico Department of Corrections*.[12] *De Vargas*, which was factually similar to Garcia's action, "held that the Tort Claims Act provides 'the most closely analogous state cause of action' to [a section] 1983" claim commenced in the New Mexico courts.[13] Nevertheless, the district court rejected the defendants' argument.[14] In an unpublished opinion, the court noted that the state decision failed to bind the Federal courts because the statute of limitations under section 1983 was a matter of Federal law.[15] After examining other New Mexico statutes of limitations,[16] the district court held that the most appropriate New Mex-

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8 *Id.* Garcia alleged that Vigil had notice of Wilson's "violent propensities" and had failed to reprimand Wilson for these actions. *Id.*

9 *Id.* Garcia sought monetary relief for both his constitutional claims and an additional claim for the personal injuries he suffered as a result of Wilson's actions. *Id.*

10 *Id.* at 1939, 1940. The New Mexico Tort Claims Act provides as follows:

> Actions against a governmental entity or a public employee for torts shall be forever barred, unless such action is commenced within two years after the date of occurrence resulting in loss, injury or death, except that a minor under the full age of seven years shall have until his ninth birthday in which to file. This subsection applies to all persons regardless of minority or other legal disability.

N.M. STAT. ANN. § 41-4-15A (1978).

11 *Wilson*, 105 S. Ct. at 1940.

12 97 N.M. 563, 642 P.2d 166 (1982).

13 *Wilson*, 105 S. Ct. at 1940 (quoting *De Vargas*, 97 N.M. at 564, 642 P.2d at 167).

14 *See id.* at 1941.

15 *Id.*

16 In addition to examining the statute of limitations contained in the New Mexico Tort Claims Act, the district court reviewed a three-year statute of limitations for "injury to the person or reputation of any person," which more specifically provides as follows:

> Actions must be brought against sureties on official bonds and on bonds of guardians, conservators, personal representatives and persons acting in a fiduciary capacity, within two years after the liability of the principal or the person from whom they are sureties is finally established or determined by a judgment or decree of the court, and for an injury to the person or reputation of any person, within three years.

N.M. STAT. ANN. § 37-1-8 (1978). The four-year residual statute of limitations that was selected by the court provides that all actions "founded upon accounts and

ico statute of limitations was one that embraced all actions not otherwise provided for or specified.[17] This statute established a four-year limitation period.[18] Accordingly, the court denied the defendants' motion for dismissal.[19]

Immediately thereafter, the defendants filed an interlocutory appeal, which the Tenth Circuit accepted.[20] A unanimous en banc panel affirmed the ruling of the district court; however, it did so on alternate grounds.[21] The circuit court agreed with the district court on the inapplicability of *De Vargas*.[22] Nevertheless, it determined that the district court had chosen an incorrect limitation period.[23] Instead, the circuit court held that the appropriate limitation period for section 1983 actions was the New Mexico statute of limitations for injuries to personal rights.[24] The court reasoned that there should be one limitation period for all section 1983 matters and that actions for injuries to personal rights are common to every section 1983 claim.[25] Because the New Mexico statute of limitations for personal injuries was three years, the court affirmed the lower court's decision.[26] The defendants then appealed to the United States Supreme Court.[27] The Court granted certiorari[28] and, in a seven-to-one decision, affirmed the Tenth Circuit's holding.[29]

Section 1983's predecessor, contained in the Civil Rights Act of 1871,[30] was enacted as a result of the racial discrimination that was

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unwritten contracts[,] those brought for injuries to property or for the conversion of personal property or for relief upon the ground of fraud, and all other actions not herein otherwise provided for and specified [must be brought] within four years." *Id.* § 37-1-4.

17 *Wilson*, 105 S. Ct. at 1941.

18 *See* N.M. STAT. ANN. § 37-1-4; *see also supra* note 16 (text of this provision).

19 *Wilson*, 105 S. Ct. at 1941.

20 *Id.* at 1941 & n.8. The district court certified the interlocutory appeal pursuant to 28 U.S.C. § 1292(b) (1982). *Wilson*, 105 S. Ct. at 1941.

21 *See* Garcia v. Wilson, 731 F.2d 640, 651 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985).

22 *Id.* at 651 n.5.

23 *Id.* at 651.

24 *Id.*; *see also supra* note 16 (discussing personal injuries statute of limitations).

25 *See* Garcia v. Wilson, 731 F.2d 640, 650-51 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985).

26 *Id.*

27 *See Wilson*, 105 S. Ct. at 1942.

28 Wilson v. Garcia, 469 U.S. 815 (1984).

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

30 Ch. 22, § 1, 17 Stat. 13, 13 (current version at 42 U.S.C. § 1983 (1982)). The Act was also popularly known as the Ku Klux Act. *See* Monroe v. Pape, 365 U.S. 167, 171 (1961).

widespread during the Civil War and the Reconstruction era.[31] This legislation was implemented with such haste that Congress neglected to provide a specific statute of limitations.[32] Thus, the courts were left to determine the appropriate statute of limitations for section 1983 actions.[33]

The judicial development of the applicable statute of limitations for section 1983 actions can be traced to the early-nineteenth-century case of *McCluny v. Silliman*.[34] In *McCluny*, the practice of borrowing state statutes of limitations originated.[35] The case involved an action against a Federal official for refusing to accept the plaintiff's application to purchase tracts of land.[36] The official argued that the action should be dismissed because it was time-barred by a state statute of limitations.[37] In a landmark decision, the Supreme Court held that under the Rules of Decision Act,[38] Federal courts must adopt state law where Congress has failed to legislate.[39] Accordingly, the Court applied the state statute of limitations and dismissed the action.[40]

Sixty-five years later, in 1895, the Supreme Court extended the application of the Rules of Decision Act in *Campbell v. Haverhill*.[41] The Court addressed the question of whether state statutes of limi-

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31 *See* Monroe v. Pape, 365 U.S. 167, 172-83 (1961) (general discussion of the Act's purpose).

32 *See Wilson*, 105 S. Ct. at 1942; *see also* Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13, 13 (current version at 42 U.S.C. § 1983 (1982)).

33 *See Wilson*, 105 S. Ct. at 1942.

34 28 U.S. (3 Pet.) 270 (1830).

35 *See id.* Commentators disagree, however, on whether *McCluny* is the seminal case in this area. *Compare* Note, *A Limitation on Actions for Deprivation of Federal Rights*, 68 COLUM. L. REV. 763, 767-68 (1968) [hereinafter cited as Note, *Limitation on Actions*] *and* Note, *A Call for Uniformity: Statutes of Limitations in Federal Civil Rights Actions*, 26 WAYNE L. REV. 61, 64 n.25 (1979) [hereinafter cited as Note, *Call for Uniformity*] (both asserting that the reason state law was applied was because *McCluny* involved a state action in Federal court based on diversity jurisdiction) *with* Hill, *State Procedural Law in Federal Nondiversity Litigation*, 69 HARV. L. REV. 66, 79 (1955) *and* Comment, *Statutes of Limitations in Federal Civil Rights Litigation*, 1976 ARIZ. ST. L.J. 97, 102 n.37 (both arguing that the *McCluny* Court applied a state statute of limitations to a Federally created cause of action).

36 *McCluny*, 28 U.S. (3 Pet.) at 275-76.

37 *See id.* at 276.

38 Ch. 20, § 34, 1 Stat. 73, 92 (1789) (current version at 28 U.S.C. § 1652 (1982)). The Rules of Decision Act provided "[t]hat the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States in cases where they apply." *Id.*

39 *See McCluny*, 28 U.S. (3 Pet.) at 277-78.

40 *Id.* at 278.

41 155 U.S. 610 (1895).

tations apply to patent infringement actions.[42] The defendant argued that the plaintiff's claim was barred by the Massachusetts statute of limitations,[43] and the Court agreed.[44]

Initially, the *Campbell* Court noted that when patent statutes were originally enacted, they included an express limitation period for infringement actions.[45] When these statutes were later revised, however, Congress neglected to provide any limiting provisions.[46] Despite the fact that the plaintiff's action was brought during a time when no express limitation period existed, the Supreme Court refused to infer that there was an unlimited time period to bring suit in patent actions.[47] To remedy this situation, the Court applied the Rules of Decision Act, which required the Court to look to the forum state for an applicable limiting statute.[48] While the Court ultimately invoked the statute of limitations for tort actions, it neither explained its holding nor addressed alternative limitations.[49]

It was not until 1914, in the case of *O'Sullivan v. Felix*,[50] that the Court applied the provisions of the Rules of Decision Act to civil rights actions. In that case, the defendants allegedly assaulted the plaintiff to prevent him from voting.[51] The plaintiff sued for damages, but failed to initiate the action until over two years after the incident.[52]Accordingly, the defendants moved to bar the action based on the state one-year statute of limitations for the recovery of damages.[53] The plaintiff, however, countered that the Federal five-year limitation period for the enforcement of penalties was control-

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42 *Id.* at 613. Some commentators believe that *Campbell* is the seminal case in this area. *See* Note, *Limitation on Actions*, *supra* note 35, at 768; Note, *Call for Uniformity*, *supra* note 35, at 64 & n.25.

43 *Campbell*, 155 U.S. at 611. The trial court agreed and granted a directed verdict in favor of the defendant. *Id.* The plaintiff then appealed upon a writ of error to the Supreme Court. *Id.*

44 *Id.* at 621.

45 *Id.* at 613-14.

46 *Id.* at 614.

47 *Id.* at 616-17.

48 *Id.* at 614-16.

49 *See id.* at 614, 621. Two theories have been suggested for the Court's selection of the statute of limitations for tort actions. *See* Comment, *supra* note 35, at 104-05. Either the Court determined that tort actions were most closely analogous to patent infringement actions or it used the tort limiting period because the time period for the lapsed Federal limitation was identical. *Id.*

50 233 U.S. 318 (1914).

51 *Id.* at 320.

52 *Id.* at 321.

53 *Id.* The state one-year statute of limitations was to be invoked for "offenses or quasi offenses." *Id.* at 322.

ling.[54] The Court rejected the plaintiff's argument, reasoning that actions brought for the deprivation of civil rights seek the remedy of damages rather than punishment.[55] Thus, relying on *Campbell*, the Supreme Court concluded that the state statute of limitations was the proper statute to apply.[56]

The advent of 42 U.S.C. § 1988 eliminated the need for courts to apply the "borrowing" doctrine in choosing the applicable limitation period for Reconstruction Civil Rights litigation.[57] Section 1988 provides a three-step analysis that Federal courts must make when determining the applicable statute of limitations.[58] First, the court should search Federal law to determine if a suitable provision exists.[59] Second, if no Federal law applies, the court must select an appropriate state provision.[60] Finally, if a state limiting period is chosen, the court must assure its consistency with Federal laws and policy.[61] Hence, it has been argued, the application of the section 1988 test requires a court to choose the "most analogous" state limiting period for section 1983 actions.[62]

This selection process, which on its face appears to be relatively simple, is responsible for the difficulty that plagued the circuit

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54 *See id.* at 321-22. The Federal five-year statute was to be applied to actions for the "prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States." *Id.* at 322.

55 *Id.* at 324-25.

56 *See id.* at 321.

57 *See* 42 U.S.C. § 1988 (1982) (originally enacted as Act of Apr. 9, 1866, ch. 31, § 3, 14 Stat. 27, 27). The Act, as amended, provides as follows:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title and of Title "Civil Rights," and of Title "Crimes," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or 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, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Id.

58 *See id.*

59 *See id.*

60 *See id.*

61 *See id.*

62 *See* Board of Regents v. Tomanio, 446 U.S. 478, 488 (1980).

courts when analyzing section 1983 cases.[63] Although the pre-*Wilson* Supreme Court articulated the general rule—courts must apply an analogous state statute of limitations to civil rights actions where Congress neglects to provide a specific limiting period—it failed to delineate specific guidelines for the lower courts to follow.[64] Consequently, a split occurred within the circuits on the issue of whether courts should employ the specific facts of a case to determine the proper state statute of limitations (the "factual-analysis approach") or disregard the facts involved and focus on the cause of action (the "uniform approach").[65]

Under the factual-analysis approach, a court examines the plaintiff's complaint to determine which state actions are the most analogous to the facts set out in the plaintiff's section 1983 claim.[66] Next, the court determines which state statute of limitations applies to the analogous state claim.[67] This limiting period is then applied to the section 1983 action.[68] The Federal courts that followed the factual approach were the First, Third, Fifth, Eleventh, District of Columbia, and, until its decision in *Wilson*, the Tenth Circuits.[69]

The Third Circuit's decision in *Polite v. Diehl*[70] illustrates the factual-analysis methodology. In *Polite*, the plaintiff brought an action against police officers of the McKeesport Police Department under section 1983.[71] The plaintiff was involved in a motor vehicle accident and was subsequently arrested by the police for drunken driving.[72] The plaintiff complained that he was beaten, sprayed in the face with mace, and forced to plead guilty to crimes he did not commit.[73] Approximately twenty-three months after his arrest, the

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63 *See, e.g.*, Garcia v. Wilson, 731 F.2d 640, 643 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985); Polite v. Diehl, 507 F.2d 119 (3d Cir. 1974).

64 *See* Garcia v. Wilson, 731 F.2d 640, 643 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985).

65 *See infra* notes 70-81 & 87-111 and accompanying text.

66 *See* Biehler, *Limiting the Right to Sue: The Civil Rights Dilemma*, 33 DRAKE L. REV. 1, 5 (1983).

67 *Id.*

68 *Id.*

69 *See, e.g.*, McGhee v. Ogburn, 707 F.2d 1312 (11th Cir. 1983); Gashgai v. Leibowitz, 703 F.2d 10 (1st Cir. 1983); Clulow v. Oklahoma, 700 F.2d 1291 (10th Cir. 1983); McClam v. Barry, 697 F.2d 366 (D.C. Cir. 1983); Shaw v. McCorkle, 537 F.2d 1289 (5th Cir. 1976); Polite v. Diehl, 507 F.2d 119 (3d Cir. 1974).

70 507 F.2d 119 (3d Cir. 1974).

71 *Id.* at 121.

72 *Id.* Before arresting the plaintiff, the policemen transported the plaintiff and his passengers to a local hospital. *Id.*

73 *Id.* The plaintiff asserted that he was "forced to plead guilty to charges of disorderly conduct, resisting arrest, and failure to have a driver's license and ownership card as required by Pennsylvania law." *Id.*

plaintiff filed a section 1983 action against the defendants.[74] The defendants then moved for summary judgment on the ground that the statute of limitations had run, claiming that the one-year statute of limitations for false arrest was controlling.[75] The plaintiff countered that the court should use the two-year statute of limitations for personal injuries.[76]

The district court granted the defendants' motion for summary judgment, and the plaintiff appealed to the circuit court.[77] The Third Circuit determined that the district court should have applied different statutes of limitations to each claim.[78] Accordingly, the court applied a one-year limitation period to the false arrest claim[79] and other limitation periods to the plaintiff's remaining claims.[80] The court reasoned that this approach was the most appropriate because the application of a single limiting period to multiple claims would have the "anomalous result" of dismissing certain actions that should be allowed and allowing other actions that should be dismissed.[81]

In contrast to the factual-analysis methodology, the Second, Fourth, Seventh, Eighth, and Ninth Circuit Courts of Appeals have applied the uniform approach in determining the appropriate limitation period under section 1983.[82] This method requires a court to examine the *nature* of a section 1983 cause of action to determine which state cause of action best exemplifies the purpose of section

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74 *Id.* at 121 & n.1.

75 *Id.* at 121-22. The Pennsylvania statute the defendants relied on provided as follows: "Every suit to recover damages for malicious prosecution or for false arrest . . . must be brought within one year from the date of the accruing of such right of action, and not thereafter. . . ." PA. STAT. ANN. tit. 12, § 51 (Purdon 1953).

76 *Polite*, 507 F.2d at 122. The Pennsylvania statute the plaintiff argued should control provided that "[e]very suit hereafter brought to recover damages for injury wrongfully done to the person, in cases where the injury does not result in death, must be brought within two years from the time when the injury was done and not afterwards." PA. STAT. ANN. tit. 12, § 34 (Purdon 1953).

77 *Polite*, 507 F.2d at 122.

78 *Id.*

79 *Id.*; *see supra* note 75.

80 *Polite*, 507 F.2d at 123. The court determined that the two-year limiting period should apply to the plaintiff's assault and battery claim, that a six-year limiting period should apply to the plaintiff's action for recovery of his automobile, and that a two-year limiting period should apply to his allegation that he was coerced into pleading guilty. *Id.*

81 *Id.*

82 *See, e.g.*, Garmon v. Foust, 668 F.2d 400 (8th Cir.), *cert. denied*, 456 U.S. 998 (1982); Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982); Beard v. Robinson, 563 F.2d 331 (7th Cir. 1977), *cert. denied*, 438 U.S. 907 (1978); Almond v. Kent, 459 F.2d 200 (4th Cir. 1972); Smith v. Cremins, 308 F.2d 187 (9th Cir. 1962).

1983.[83] The court then applies the statute of limitations for the state action to the plaintiff's 1983 claim.[84] Once a circuit determines which state statute of limitations is appropriate for section 1983 actions, each court within the circuit must use the same type of state action for all section 1983 claims.[85] The following were the most commonly applied state statutes of limitations: those for liability created by statutes, those for torts or personal injuries, those created for state actions comparable to section 1983 actions, and catch-all or general limitations.[86]

In 1962, the Ninth Circuit first recognized the movement toward a uniform limitation period in *Smith v. Cremins*.[87] *Smith* involved a section 1983 action against two Los Angeles police officers.[88] The plaintiff complained that he was deprived of his constitutional rights when the police officers confiscated the religious leaflets he was publicly distributing.[89] The district court dismissed the action for the plaintiff's failure to comply with California's one-year statute of limitations "for assault, battery, false imprisonment, and certain actions for damages for seizure of property."[90] On appeal to the circuit court, the plaintiff asserted that the proper limiting period was the California three-year statute of limitations for "liability created by statute."[91] In reversing the district court's holding,[92] the court of appeals espoused the rationale that subsequently became the cornerstone of later courts' approval of the uni-

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83 *See* Biehler, *supra* note 66, at 5, 7.

84 *See, e.g., supra* note 82.

85 *See, e.g.*, McCausland v. Mason County Bd. of Educ., 649 F.2d 278, 279 (4th Cir.), *cert. denied*, 454 U.S. 1098 (1981).

86 Biehler, *supra* note 66, at 3; *see, e.g.*, Garmon v. Foust, 668 F.2d 400 (8th Cir.), *cert. denied*, 456 U.S. 998 (1982); Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982); Smith v. Cremins, 308 F.2d 187 (9th Cir. 1962) (all applying state statute of limitations for liability created by statute); Kosikowski v. Bourne, 659 F.2d 105 (9th Cir. 1981) (applying state statute of limitations for cases comparable to § 1983 actions); Beard v. Robinson, 563 F.2d 331 (7th Cir. 1977) (applying state catch-all statute of limitations); Almond v. Kent, 459 F.2d 200 (4th Cir. 1972) (applying state statute of limitations for torts); Rinehart v. Locke, 454 F.2d 313 (7th Cir. 1971) (applying state catch-all statute of limitations).

87 308 F.2d 187 (9th Cir. 1962).

88 *Id.* at 188.

89 *Id.* The plaintiff was distributing the leaflets at the Los Angeles International Airport "to protest the arrival . . . of Russian Deputy Premier Anastas Mikoyan." *Id.* Specifically, the plaintiff argued that he was deprived of his constitutional "right to free speech and free exercise of religion, the right not to be deprived of property without due process of law, the right to be secure against unreasonable searches and seizures, and the privilege of discussing national issues." *Id.*

90 *Id.* at 189.

91 *Id.*

92 *Id.* at 190.

form approach.[93]

First, the *Smith* court rejected the application of a limiting period based on a common law tort.[94] Noting Justice Harlan's concurrence in *Monroe v. Pape*,[95] the court pointed out that the elements of a section 1983 action are more expansive than those of a common law tort.[96] Second, the court recognized the practical considerations involved in selecting the limiting period for liability created by statute.[97] The court reasoned that had it segregated each claim made by the plaintiff, it would have had to apply two or more distinct statutes of limitations, which would have caused inconsistency and confusion in its decision.[98] Stressing the need for uniformity, the Ninth Circuit concluded that the appropriate time period was one for liability created by statute.[99]

In the years that followed, the acceptance of a uniform approach grew among the circuits.[100] In 1981, the Second Circuit decided *Pauk v. Board of Trustees* [101] and further clarified the uniform methodology. In that case, a professor at Queens College sued the school's board of trustees for denying him an appointment and tenure.[102] The professor was unsuccessful in an action brought in state court and thus subsequently initiated a section 1983 action in a Federal district court.[103] The district court determined that the professor's action was time-barred, and the professor appealed to the Second Circuit.[104] The appellate court, however, affirmed the lower court's decision.[105]

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93 *See* Biehler, *supra* note 66, at 33 ("The Ninth Circuit, by its decision of *Smith v. Cremins*, was one of the forerunners of consistency and uniformity in its decision making process for civil rights limitation application.").

94 *Smith*, 308 F.2d at 189.

95 365 U.S. 167 (1961).

96 *Smith*, 308 F.2d at 190. The court stated that " 'a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state tort and the deprivation of a constitutional right.' " *Id.* (quoting Monroe v. Pape, 365 U.S. 167, 196 n.5 (1961) (Harlan, J., concurring)).

97 *Id.*

98 *Id.*

99 *Id.*

100 *See, e.g.*, cases cited *supra* note 82.

101 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982).

102 *Id.* at 858-59. The professor claimed that his employment was terminated because of his involvement with a faculty union. *Id.* at 859.

103 *Id.* Before the professor initiated his action in a state court, he had pursued a nonjudicial course by filing a grievance with an arbitrator "in accordance with the collective bargaining agreement between the [board of trustees] and the faculty union." *Id.* One month later, however, the professor withdrew his grievance. *Id.*

104 *Id.* at 858.

105 *Id.*

The *Pauk* court began its analysis by noting that it had previously held that the applicable statute of limitations for section 1983 actions was the three-year period for "liability created or imposed by statute."[106] The court recognized, however, that its previous holdings had to be reconsidered in light of a then-recent Supreme Court decision, which held that section 1983 is remedial in nature and does not create substantive rights.[107] First, the court explained that it disapproved of limitation periods that were less than three years because they were inconsistent with the remedial purposes of section 1983.[108] The court further noted that there existed no perfect analogy to a state statute for section 1983 claims.[109] Thus, in the interest of attaining uniformity within a state, the court concluded that its application of the three-year period for statutory liability was correct.[110]

The factual-analysis approach and the uniform methodology represented the two opposing views held by the circuit courts concerning the limiting period to apply to section 1983 claims.[111] In *Wilson*, the Supreme Court attempted to resolve this conflict.[112] Writing for the majority, Justice Stevens began the opinion of the Court by noting that Congress had failed to provide a specific statute of limitations for section 1983 actions.[113] The Court explained that the established practice under these circumstances was to borrow a state statute of limitations and to apply it to the Federal law.[114]

To determine the appropriate state limitation period, the majority stated that courts should follow the three-step process outlined in section 1988.[115] Justice Stevens opined that the issue in

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106 *See id.* at 859.

107 *Id.* at 861; *see* Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618-20 (1979). The professor asserted that it was illogical to apply a statute of limitations that was specifically enacted for "liability created or imposed by statute." *Pauk*, 654 F.2d at 861. Instead, the professor urged that the six-year limitation period for either contract actions or residual claims should be applied. *Id.* While the board of trustees agreed with the professor that the statute for "liability created or imposed by statute" was incorrect, they advocated that the court apply either the one-year-and-ninety-day period for actions against a city or its employees or the four-month period for actions against officers. *See id.*

108 *See id.* at 861-62.

109 *See id.*

110 *See id.* at 866.

111 *See supra* notes 65-105 and accompanying text.

112 *See Wilson*, 105 S. Ct. at 1942.

113 *Id.*

114 *Id.*

115 *Id.*; *see also supra* notes 57-61 and accompanying text (discussing the three-step process).

Wilson primarily involved the second step, which requires the selection of state law if no Federal law exists.[116] He set forth three questions, however, that courts must address before adopting the "most appropriate" or "most analogous" state law.[117]

First, the majority stated that a court must consider whether section 1983 claims are to be characterized by state or Federal law.[118] Again, the Court borrowed the text of section 1988.[119] Justice Stevens observed that a proper reading of this statute requires a court to exhaust all principles of Federal law before invoking state law.[120] The Court then pointed out that "[t]he characterization of § 1983 for statute of limitations purposes is derived from [both] the elements of the cause of action, and Congress' purpose in providing it."[121] Therefore, because Federal law exists to address this issue, the majority concluded that section 1988 requires a court to treat its characterization as a Federal matter.[122]

Furthermore, Justice Stevens stated that the third step in section 1988 supports this conclusion.[123] The step requires the limiting period borrowed from a state to be consistent with Federal law.[124] The Court reasoned that this "emphasizes 'the predominance of the federal interest' in the borrowing process, taken as a whole."[125] Hence, once a state statute is borrowed, it loses its state identity and becomes a part of the larger Federal scheme.[126]

In addition, the Court believed that Congress clearly did not intend that state legislatures and courts should play a significant role in the formation of a Federal cause of action.[127] The Court also reviewed prior decisions and determined that the characterization of Federal claims " 'is ultimately a question of federal law.' "[128] Thus, Justice Stevens agreed with the *Wilson* lower courts that the Federal courts were not bound by *De Vargas*, a New Mexico Supreme Court

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116 *Wilson*, 105 S. Ct. at 1943.

117 *Id.*

118 *Id.*

119 *See id.*

120 *Id.*

121 *Id.*

122 *Id.* The Court held that the only questions that are characterized as state issues are the length, application, and tolling of the limitation period. *Id.*

123 *Id.*; *see supra* note 61 and accompanying text.

124 *Wilson*, 105 S. Ct. at 1943.

125 *Id.* (quoting Burnett v. Grattan, 468 U.S. 42, 48 (1984)).

126 *See id.*

127 *Id.* at 1944.

128 *Id.* (quoting International Union, United Auto., Aerospace & Agricultural Implement Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 706 (1966)).

decision.[129]

After concluding that the Federal law should apply to the characterization of section 1983 actions, the Court addressed the second question—whether a factual-analysis approach or a uniform approach should be employed in determining the appropriate limitation period under section 1983.[130] Initially, Justice Stevens noted that because section 1983 remedies are unlike any remedies available under state law, any analogy between section 1983 and a state cause of action is bound to be deficient.[131] On the other hand, the majority observed that almost every section 1983 action can be analogized to numerous common law actions, each of which have different limiting periods.[132] Thus, the Court stated that the application of a factual-analysis approach would allow an attorney to argue effectively that two or more limiting periods should apply to a specific section 1983 action.[133] The Court stated that the Congress that enacted section 1983 could not have intended this use of the factual-

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129 *Id.*; *see also supra* notes 10-26 (discussing the lower courts' decisions in *Wilson*).

130 *See Wilson*, 105 S. Ct. at 1945-47. The second part of the Court's analysis began with a discussion of the repugnant nature of timeless actions. *See id.* at 1944-45. The Court noted that without limiting periods, an equitable determination of a case would be impossible. *Id.* at 1944. Hence, the Court declared that by borrowing state statutes of limitations, Federal courts not only achieve a policy of repose, but benefit from the state's judgment on the proper length of time to bring suit in specific actions. *Id.* at 1945.

131 *Id.* The Court noted that claims under § 1983 are unique to Federal law because they are brought to preserve protected constitutional rights against state incursions. *Id.* In addition, the Court recognized that although § 1983 remedies are supplemental to state rights, they have no equivalent in state law. *Id.* Thus, the Court concluded that any remedy that might appear to be similar to a § 1983 remedy is only coincidence. *Id.*

132 *Id.* For example, the Court explained that Garcia's

> § 1983 claim is arguably analogous to distinct state tort claims for false arrest, assault and battery, or personal injuries. Moreover, the claim could also be characterized as one arising under a statute, or as governed by the special New Mexico statute authorizing recovery against the State for the torts of its agents.

Id.

133 *Id.* at 1946. For instance, the Court noted that claims

> alleged under § 1983 would encompass numerous and diverse topics and subtopics [such as] discrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of schoolchildren, deliberate indifference to the medical needs of prison inmates, the seizure of chattels without advance notice or sufficient opportunity to be heard—to identify only a few.

Id. (footnotes omitted). If this approach were used, Justice Stevens stated, "different statutes of limitations would be applied to the various § 1983 claims arising in the same State, and multiple periods of limitations would often apply to the same case." *Id.* (footnotes omitted).

analysis approach.[134] The majority thus adopted the uniform approach because of the practical considerations of simplicity of application and certainty.[135] Although the Court recognized that it had opposed national uniformity in civil rights litigation in prior decisions, it held that a uniform approach in each state is consistent with section 1988.[136]

Finally, the Court addressed the question of which state cause of action has the most appropriate limiting period for section 1983 claims.[137] After reviewing the post-Civil War atrocities, which were the catalyst for the enactment of section 1983's predecessor (the Reconstruction Civil Rights Act), the Court observed that these actions clearly "sounded in tort."[138] While the Court noted that it had previously used tort analogies to establish the *elements* of a section 1983 claim, it recognized that a section 1983 *remedy* embraces a wider range of possible tort analogies.[139] After reviewing the potential analogies, the Court ultimately determined that section 1983 actions should be characterized as "injuries to personal rights."[140] Accordingly, the Court concluded that the court of appeals had "correctly applied the 3-year statute of limitations governing actions 'for an injury to the person or reputation of any person.' "[141]

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134 *See id.* at 1946-47. The Court acknowledged that the Congress that enacted § 1983 could not have foreseen the wide variety of actions that would be brought under the statute. *Id.* at 1946. Moreover, the Court asserted that the simplistic nature of § 1988 is consistent with the belief that Congress intended the selection of a state statute of limitations to be an uncomplicated process. *Id.* at 1946-47.

135 *See id.*

136 *Id.* at 1947. The Court determined that "the need for national uniformity 'has not been held to warrant the displacement of state statutes of limitations for civil rights actions.' " *Id.* (quoting Board of Regents v. Tomanio, 446 U.S. 478, 489 (1980)).

137 *See id.* at 1947-48.

138 *Id.* The Court quoted the congressional debates on the Reconstruction Civil Rights Act to emphasize the heinous events of the times:

> "While murder is stalking abroad in disguise, while whippings and lynchings and banishing [sic] have been visited upon unoffending American citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective. Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of public tribunals are searched in vain for any evidence of effective redress."

Id. at 1947 (quoting CONG. GLOBE, 42d Cong., 1st Sess. 374 (1871) (remarks of Rep. Lowe)).

139 *Id.* at 1948. The Court suggested that the possible tort analogies spanned the spectrum "from injuries to property to infringements of individual liberty." *Id.*

140 *Id.*

141 *Id.* at 1949 (citation omitted); *see also supra* notes 20-26 (discussion of Tenth Circuit's decision). The Court opined that had the Congress in 1871 focused on

In reaching this conclusion, the Court expressly rejected limitations based on catch-all statutes and limitations based on wrongful acts of public officials.[142] Recognizing the scarcity of statutory actions when section 1983 was enacted, the Court believed that a catch-all approach was not intended by Congress.[143] Justice Stevens further reasoned that Congress could not have intended courts to apply a state statute of limitations for offenses committed by public officials to section 1983 actions because the ineffective remedies under state law were the very reason for Congress's enactment of section 1983.[144] The majority therefore concluded that a uniform approach, which characterizes all section 1983 claims as actions for personal injuries, should be used.[145]

In a dissenting opinion, Justice O'Connor declared that the majority had incorrectly abandoned the "venerable" rule of borrowing state statutes of limitations from factually similar state actions.[146] She believed that by adopting the uniform approach, the majority had ignored the policies of section 1988.[147] The dissent agreed with the majority, however, that section 1983 claims should be characterized as Federal matters.[148]

Justice O'Connor reviewed the historical development of section 1983 actions and determined that it was consistent with the factual-analysis approach.[149] She noted that while Congress could have provided a limiting period for section 1983, it chose instead to require Federal courts to adopt the state limiting period for similar actions.[150] Thus, the dissent asserted that the majority's decision

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the issue in *Wilson*, "it would have characterized § 1983 as conferring a general remedy for injuries to personal rights." *Wilson*, 105 S. Ct. at 1948.

142 *See Wilson*, 105 S. Ct. at 1948-49.

143 *Id.* at 1948. The Court pointed out that catch-all limitation periods were a product of statutes that were enacted by the states long after the enactment of § 1983's predecessor. *See id.* The majority further noted that § 1983 is only a remedial statute and fails to create substantive rights. *Id.*

144 *Id.* at 1949.

145 *Id.* The Court noted that "personal injury" statutes have long been used to characterize § 1983 claims and that it is unlikely that the application of their limiting period would hinder any Federal right. *Id.*

146 *Id.* (O'Connor, J., dissenting).

147 *Id.*

148 *Id.*

149 *See id.* at 1949-50 (O'Connor, J., dissenting). Justice O'Connor traced the origins of borrowing state statutes of limitations back to McCluny v. Silliman, 28 U.S. (3 Pet.) 270 (1830). *Wilson*, 105 S. Ct. at 1950 (O'Connor, J., dissenting); *see also supra* notes 34-40 (discussing the *McCluny* case).

150 *Wilson*, 105 S. Ct. at 1950 (O'Connor, J., dissenting). Justice O'Connor further pointed out that "a number of bills proposed to recent Congresses to standardize § 1983 limitations periods have failed of enactment." *Id.* at 1951

amounted to judicial legislation.[151] Furthermore, Justice O'Connor believed that previous Supreme Court decisions supported the factual-analysis approach.[152]

Justice O'Connor then turned her attention to the policy considerations underlying the factual-analysis approach.[153] Justice O'Connor pointed out the benefits of relying on the wisdom of state legislatures when choosing an analogous state limitation period for a Federal action.[154] For example, the dissent explained that because actions sounding in defamation are obviously different than those brought under contract, it is logical to have limiting periods of varying length.[155] In addition, the dissent noted that evidence becomes stale quicker in some situations than in others.[156] Therefore, Justice O'Connor approved of the procedure of choosing state statutes of limitations on a case-by-case basis.[157]

(O'Connor, J., dissenting). The dissent asserted that this should be interpreted to mean that Congress does not agree with a uniform approach. *Id.* at 1951-52 (O'Connor, J., dissenting).

151 *See id.*

152 *Id.* at 1950 (O'Connor, J., dissenting). Justice O'Connor asserted that the "Court has consistently interpreted § 1988 as instructing that the rule applicable to the analogous state claim shall furnish the rule of decision." *Id.* (citing Board of Regents v. Tomanio, 446 U.S. 478 (1980); Robertson v. Wegmann, 436 U.S. 584 (1978); Johnson v. Railway Express Agency, 421 U.S. 454 (1975)).

153 *See id.*

154 *Id.* Quoting *Johnson v. Railway Express Agency*, Justice O'Connor stated:

> "Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting prosecution of stale ones. . . . In borrowing a state period of limitation for application to a federal cause of action, a federal court is relying on the State's wisdom in setting a limit . . . on the prosecution of a closely analogous claim."

Id. (quoting Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1975)).

155 *See id.* Justice O'Connor remarked that a state legislature's selection of different limiting periods for different claims is based on "its evaluation of the characteristic of those claims relevant to the realistic life-expectancy of the evidence and the adversary's reasonable expectations of repose." *Id.*

156 *See id.*

157 *See id.* at 1950-51 (O'Connor, J., dissenting). The dissent stated, "Despite vocal criticism of the 'confusion' created by individualized statutes of limitation, most Federal Courts of Appeal and state courts have continued the settled practice of seeking appropriate factual analogies for each genus of § 1983 claim." *Id.* at 1950. In support of her statement, the dissent cited the following decisions: Brown v. United States, 742 F.2d 1498 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 2153 (1985); Gashgai v. Leibowitz, 703 F.2d 10 (1st Cir. 1983); McClam v. Barry, 697 F.2d 366 (D.C. Cir. 1983); Blake v. Katter, 693 F.2d 677 (7th Cir. 1982); White v. United Parcel Serv., 692 F.2d 1 (5th Cir. 1982); Kilgore v. City of Mansfield, 679 F.2d 632 (6th Cir. 1982); Polite v. Diehl, 507 F.2d 119 (3d Cir. 1974). *See also* Note, *Choice of Law Under Section 1983*, 37 U. CHI. L. REV. 494, 504 (1970) (the uniform

Justice O'Connor reprobated the majority for accepting the state's judgment on the appropriate length of time to bring suit in specific state actions while refusing to acknowledge that an analogy between section 1983 and any state cause of action was plausible.[158] Furthermore, she stated that the majority had failed to make a "serious attempt" at explaining its rejection of the factual-analysis approach.[159] Justice O'Connor recognized the appealing aspects of the Court's "all-purpose analogy"; however, she believed that "so sweeping an analogy is no analogy at all."[160] In conclusion, Justice O'Connor asserted that the majority's promise of uniformity among the statutes was illusory.[161] She explained that because section 1983 actions are usually joined with state actions based on the same facts—which are not always "personal injuries"—inconsistencies would exist between the statute of limitations for actions brought in state courts and those brought in Federal courts.[162] Hence, Justice O'Connor declared that the Court was creating "fresh problems of asymmetry that are of far greater moment to the local practitioner."[163]

Despite the *Wilson* Court's "bright-line" determination of which state statute of limitations is most applicable to section 1983 actions, its decision is not without shortcomings. The most notable deficiency lies in the majority's failure to recognize exceptions to its rule. Instead of writing an opinion setting forth persuasive arguments leading to sound conclusions, the majority wrote a defensive decision that had as its main purpose the justification of its holding.

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approach "disregard[s] the unanimous judgment of the states that periods of limitations should vary with the subject matter of the claim").

158 *Wilson*, 105 S. Ct. at 1951 (O'Connor, J., dissenting).

159 *Id.* Justice O'Connor explained that the only fundamental difference that the Court identified between state actions and § 1983 actions are the latter's " 'uniqueness,' its 'high purposes,' [and] its 'supplementary' nature." *Id.* These, she continued, "in no way explain the determination that a single inflexible analogy should govern what the Court concedes is the 'wide diversity' of claims [that a] § 1983 remedy embraces." *Id.*

160 *Id.* Justice O'Connor conceded that "[t]he Court's all-purpose analogy is appealing; after all, every compensable injury, whether to constitutional or statutory rights, through violence, deception or broken promises, to the person's pocketbook, person or dignity, might plausibly be described as a 'personal injury.' " *Id.*

161 *Id.* at 1952 (O'Connor, J., dissenting).

162 *Id.* The dissent noted that under some circumstances, state actions, will become stale prior to § 1983 actions, and in other cases, the § 1983 action will become stale prior to the state action. *Id.* Furthermore, Justice O'Connor explained that some states—such as Utah—do not have a statute of limitations for claims alleging "personal injuries." *See id.* at 1953 (O'Connor, J., dissenting). Thus, she asserted that "the rule the Court adopts fail[s] in application." *Id.*

163 *Id.*

While the dissent offered a more cogent opinion, its determination was far less appealing than the majority's. Thus, neither opinion presents a consummate determination of the issues.

Although the majority's decision provides an attractive alternative to the problematic factual-analysis approach, it is a clear departure from prior law.[164] In previous decisions, the Court explained that the need for national uniformity in civil rights litigation should not displace the application of state statutes of limitations.[165] To circumvent these holdings, the majority discussed its approach in terms of state uniformity.[166] The result, however, was a procedure that established a uniform method of applying state statutes of limitations for "personal injury" actions to every section 1983 claim brought in a Federal court.

Moreover, the majority's decision permits plaintiffs to forum shop. Forum shopping occurs when a litigant attempts to have his claim heard by a court in a jurisdiction where he would receive a favorable decision.[167] Logically, most plaintiffs will try to use procedural rules to move their case to a jurisdiction with a longer statute of limitations. This not only wastes time, but creates difficulties when witnesses are forced to travel to other jurisdictions. A better solution would be for Congress to set forth uniform national guidelines for the various types of actions brought under section 1983.

Another drawback of the majority's decision is that it fails to provide for any exceptions. Prior to *Wilson*, every circuit court had applied one or more exceptions to its chosen approach.[168] These exceptions were formulated in response to the realization that section 1983 actions involve a myriad of subjects, which are impossible to categorize in a like manner.[169] By imposing one statute of limitations for all section 1983 actions, the majority disregarded the perception that statutes of limitations should vary according to the subject matter of a claim.

Conversely, the dissent's conclusion reaches a result that is incongruent with the purposes of civil rights litigation. The Recon-

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164 *See supra* note 152.

165 *See, e.g.*, Board of Regents v. Tomanio, 446 U.S. 478, 489 (1980).

166 *See Wilson*, 105 S. Ct. at 1947.

167 BLACK'S LAW DICTIONARY 590 (5th ed. 1979).

168 *See, e.g.*, Kosikowski v. Bourne, 659 F.2d 105 (9th Cir. 1981) (Oregon statutorily provided a limiting period for § 1983 actions).

169 *See* Garcia v. Wilson, 731 F.2d 640, 647 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985). The Tenth Circuit noted that "[a]lthough the [Seventh Circuit] indicated that one limitations period should uniformly be applied to all civil rights claims, the court has found it impossible to do so given the differing statutes of limitations in other states." *Id.*

struction Civil Rights Acts were created to allow quick resolutions of infractions of guaranteed constitutional rights.[170] The pre-*Wilson* decisions, however, occasionally required costly and lengthy procedural hearings in order to resolve section 1983 actions.[171] Requiring civil rights litigants to incur these burdens in determining whether their claims were barred might compel some parties to forego their actions. Accordingly, the dissenting opinion, which favored the factual-analysis approach, leaves a lot to be desired.

In addition, the Court's decision neglects to address the question of how its holding will affect the other sections of the Reconstruction Civil Rights Acts.[172] Two schools of thought have addressed this inquiry.[173] The first suggests that the holding of the majority should be applied to the remaining sections.[174] This view is based upon section 1988's application to all of the sections that do not have specific statutes of limitations[175] and the broad sweep of the individual Acts.[176] Furthermore, the Supreme Court has applied a state statute of limitations for "personal injuries" to other sections.[177] Thus, practical considerations and simplicity suggest the use of this approach.[178]

The opposing view maintains that the majority's decision should not be used for the remaining sections of the Reconstruction Civil Rights Acts.[179] Instead, proponents of this view argue, alternate analogies that have separate purposes and histories and are

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170 *See generally* Monroe v. Pape, 365 U.S. 167, 172-83 (1961) (discussing the Acts' purposes).

171 *See Wilson*, 105 S. Ct. at 1945 & n.25.

172 *See generally* Act of May 31, 1870, ch. 114, § 16, 16 Stat. 140, 144 (current version at 42 U.S.C. § 1981 (1982)); Act of Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27, 27 (current version at 42 U.S.C. § 1982 (1982)); Act of July 31, 1861, ch. 33, 12 Stat. 284 (current version at 42 U.S.C. § 1985 (1982)).

173 *See infra* notes 174-182.

174 *See, e.g.*, Goodman v. Lukens Steel Co., 777 F.2d 113, 119 (3d Cir. 1985) (*Wilson* decision applies to § 1981 actions).

175 *See supra* notes 57-62 (discussing § 1988's method of determining the appropriate limiting period).

176 *See, e.g.*, Runyon v. McCrary, 427 U.S. 160, 180-82 (1976) (state statute of limitations for "personal injuries" applies to § 1981 actions).

177 *See, e.g., id.* at 181 (Court applied two-year state statute of limitations for personal injuries to § 1981 claim).

178 *But see* Goodman v. Lukens Steel Co., 777 F.2d 113, 131 (3d Cir. 1985) (Garth, J., dissenting) ("This conclusion is inconsistent with history, precedent, and logic, and in any event is not required by *Wilson*.").

179 *See id.* at 131-38 (Garth, J., dissenting); *see also* Comment, *supra* note 35, at 101 ("There seems to be no reason for adopting different analogies for actions under sections 1981 or 1982 than for actions under sections 1983 and 1985.").

substantially different should be sought for the other sections.[180] Furthermore, they argue that the various sections have been primarily used for divergent situations.[181] Hence, this school asserts that it is incorrect to apply the holding in *Wilson* to all of the sections of the Acts.[182]

While both views present viable alternatives, additional Supreme Court decisions will inevitably be required to reach a final determination of the issue. Noting the apparent difficulties with the Court's decision, a better approach to determining the proper limiting period for section 1983 actions would be a legislative enactment by Congress. Although Justice O'Connor pointed out that Congress has attempted to legislate in this area without success,[183] the salient point that she neglects to discuss is the fact that each of the recent bills that were proposed to Congress included various other changes to section 1983.[184] If a bill were proposed that provided only limiting periods for the various sections without specific statutes of limitations, it would more likely be passed. Thus, the time, money, and effort that is presently being channeled into appeals from time-barred civil rights actions should be used to enlist the aid of Congress to reach an answer. Only then will these questions be put to rest.

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180 *See* Goodman v. Lukens Steel Co., 777 F.2d 113, 132 (3d Cir. 1985) (Garth, J., dissenting).

181 *See id.* at 131 (Garth, J., dissenting).

182 *Id.*

183 *Wilson*, 105 S. Ct. at 1951 (O'Connor, J., dissenting).

184 *See, e.g.*, S. 436, 99th Cong., 1st Sess. (1985); S. 1983, 96th Cong., 1st Sess. (1979).