Washington and Lee Law Review

Volume 44 | Issue 1 Article 8

Winter 1-1-1987

Retroactive Application Of Wilson V. Garcia: Continued Confusion To A Troubled Topic

RETROACTIVE APPLICATION OF *WILSON V. GARCIA*: CONTINUED CONFUSION TO A TROUBLED TOPIC

Section 1983 of title 42 of the United States Code provides a private right of action for individuals wrongfully injured by anyone acting under color of state authority.[1] Congress did not furnish section 1983 with a statute of limitations.[2] Federal courts, under authority of section 1988 of title 42 of the United States Code, borrowed the most analogous statute of limitations from the forum state to provide section 1983 actions the limitations periods they lacked.[3] The federal courts' substitution of analogous state statutes of limitations resulted in decades of confusion and uncertainty over the proper characterization of section 1983 actions for statute of limitations purposes.[4] The confusion led circuit courts to characterize section

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1. Civil Rights Act of 1871, 42 U.S.C. § 1983 (1982); *see infra* note 12 (quoting text of § 1983).

2. Wilson v. Garcia, 105 S. Ct. 1938, 1942 (1985).

3. *See* Civil Rights Act of 1866, 42 U.S.C. § 1988 (1982) (directing federal courts to borrow analogous state statutes when federal statutes do not furnish suitable remedies); *see infra* note 25 (quoting text of § 1988).

4. *See* Garcia v. Wilson, 731 F.2d 640, 643 (10th Cir. 1984), *aff'd*, 105 S. Ct. 1938 (1985). In *Garcia v. Wilson*, the United States Court of Appeals for the Tenth Circuit stated that, in light of the varied factual circumstances producing civil rights violations and the diversity of state statute of limitations, the court was not surprised that the circuit courts had not uniformly characterized § 1983 for statute of limitations purposes. *Id.* In *Garcia*, the Tenth Circuit surveyed the circuit courts' various approaches to characterizing § 1983 for statute of limitations purposes. *Id.* at 643-48. The First Circuit applied limitations periods for tort liability to § 1983 actions. *See* Ramirez de Arellano v. Alvarez de Choudens, 575 F.2d 315, 318-19 (1st Cir. 1978). The First Circuit, however, also analogized § 1983 actions to specific common law torts and applied the statute of limitations periods for those specific common law tort actions to § 1983 claims. *See* Gashgai v. Leibowitz, 703 F.2d 10, 11-12 (1st Cir. 1983). The First Circuit also held that a single statute of limitations should apply to most, if not all, § 1983 actions. *See* Walden, III, Inc. v. Rhode Island, 576 F.2d 945, 947 (1st Cir. 1978).

The United States Court of Appeals for the Second Circuit held that courts should characterize all § 1983 actions for statute of limitations purposes as actions on a liability created by statute. *See* Pauk v. Board of Trustees, 654 F.2d 856, 861 (2nd Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982). The Second Circuit found that the constitutional civil rights protected by § 1983 were significantly different than state common law torts. *Garcia*, 731 F.2d at 644. The United States Court of Appeals for the Third Circuit held that federal courts in the Third Circuit should choose the limitations period that a state court would apply in the forum state if a plaintiff brought the action under state law. *See* Polite v. Diehl, 507 F.2d 119, 123 (3rd Cir. 1974). The Third Circuit defined the civil rights cause of action in terms of factually similar state actions as determined by the forum state's limitations scheme. *Garcia*, 731 F.2d at 645.

The United States Court of Appeals for the Fourth Circuit has applied the forum state's personal injury statute of limitations to § 1983 actions. *See* Almond v. Kent, 459 F.2d 200, 203 (4th Cir. 1972). The Fourth Circuit, however, broke its consistent pattern of applying a state's personal injury statute of limitations by applying North Carolina's limitation period

1983 in two contradictory manners.[5] Some circuit courts characterized section

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for liability created by statute to all § 1983 claims arising in North Carolina. *See* Cole v. Cole, 633 F.2d 1083, 1092 (4th Cir. 1980). Furthermore, the Fourth Circuit rejected a state statute of limitations expressly created for §1983 actions. *See* Johnson v. Davis, 582 F.2d 1316, 1318 (4th Cir. 1978). The Fourth Circuit held that the expressly created statute of limitations period was too short and underestimated the § 1983 remedy. *Id.* at 1318-19.

The United States Court of Appeals for the Fifth Circuit has followed two lines of analysis to determine the appropriate statute of limitations for § 1983 actions. *See* Shaw v. McCorkle, 537 F.2d 1289, 1292 (5th Cir. 1976). The first method required courts within the Fifth Circuit to engage in a two-step analysis. *Id.* In the first step, a federal court must determine the essential nature of the federal claim. *Id.* In the second step, a federal court must decide which statute of limitations period applies to a similar state claim. *Id.* A court then must apply the limitations period of the analogous state claim to the § 1983 claim. *Id.* The second line of analysis directed a federal court to inquire which state statute of limitations the forum state would enforce if the plaintiff brought an action seeking similar relief in state court. *Id.* Both lines of analysis employed by the Fifth Circuit have led to inconsistent decisions. *Garcia*, 731 F.2d at 646. For example, Louisiana and Texas state courts have viewed unconstitutional termination of employment as a tortious act, while Mississippi state courts have viewed the same cause of action as a breach of contract. Jones v. Orleans Parish School Board, 688 F.2d 342, 344 (5th Cir. 1982) (Louisiana), *cert. denied*, 461 U.S. 951 (1983); *see* Moore v. El Paso County, 660 F.2d 586, 589-90 (5th Cir. 1981) (Texas), *cert. denied*, 459 U.S. 822 (1982); White v. United Parcel Service, 692 F.2d 1, 3 (5th Cir. 1982) (Mississippi).

The United States Court of Appeals for the Sixth Circuit's characterization of § 1983 has varied according to available state limitations periods. *Garcia*, 731 F.2d at 646. In Michigan, state courts characterized employment discrimination as a personal injury for § 1983 purposes. *See* Madison v. Wood, 410 F.2d 564, 567 (6th Cir. 1969). Subsequent Sixth Circuit decisions relating to actions arising in Ohio and Kentucky characterized employment discrimination as a liability created by statute. *See* Mason v. Owens-Illinois Inc., 517 F.2d 520, 521-22 (6th Cir. 1975) (Ohio); Garner v. Stephens, 460 F.2d 1144, 1148 (6th Cir. 1972) (Kentucky). In other § 1983 actions, the Sixth Circuit adopted the limitations period for factually similar common law torts. *See* Kilgore v. City of Mansfield, 679 F.2d 632, 633-34 (6th Cir. 1982).

The United States Court of Appeals for the Seventh Circuit mended a split in its decisions by holding that courts should characterize all § 1983 actions for limitations purposes as statutory causes of action. *See* Beard v. Robinson, 563 F.2d 331, 336 (7th Cir. 1977), *cert. denied*, Mitchell v. Beard, 438 U.S. 907 (1978). Courts within the Seventh Circuit, however, have found it impossible to adhere to the Seventh Circuit's uniform characterization because of the different lengths of the limitations periods in the states within the Seventh Circuit. *See* Sacks Brothers Loan Co. v. Cunningham, 578 F.2d 172 (7th Cir. 1978).

The United States Court of Appeals for the Eighth Circuit has followed two inconsistent lines of analysis for characterizing § 1983 for statute of limitations purposes. *Garcia*, 731 F.2d at 647. One Eighth Circuit decision directed federal courts within the Eighth Circuit to analogize the § 1983 cause of action to similar state common law torts. *See* Johnson v. Dailey, 479 F.2d 86, 88 (8th Cir. 1973), *cert. denied*, 414 U.S. 1009 (1973). Other Eighth Circuit opinions, however, held that analogies to state common law torts are improper because a civil rights claim is fundamentally different from a common law tort. *See* Lamb v. Amalgamated Labor Life Ins. Co., 602 F.2d 155 (8th Cir. 1979). Subsequently, the Eighth Circuit adopted the second line of analysis, which rejected analogies to common law torts and favored characterizing § 1983 claims as a liability created by statute for limitations period purposes. *See* Garmon v. Foust, 668 F.2d 400, 404 & 406 (8th Cir. 1982), *cert. denied*, 456 U.S. 998 (1982).

The United States Court of Appeals for the Ninth Circuit consistently has characterized claims under § 1983 as actions on a liability created by statute. *See* Plummer v. Western International Hotels Co., 656 F.2d 502, 506 (9th Cir. 1981). The Ninth Circuit, however, also

1983 actions in terms of the specific facts of each case.[6] Other circuit courts characterized section 1983 actions in terms of an automatic general characterization, applied regardless of the specific facts of the claim.[7] Confronted with this muddled situation, the United States Supreme Court attempted to bring uniformity to circuit court decisions regarding section 1983 limitations periods.

In *Wilson v. Garcia*,[8] the United States Supreme Court attempted to alleviate the confusion surrounding the proper characterization of section 1983 actions for statute of limitations purposes. The Supreme Court in *Wilson* held that a uniform characterization of section 1983 actions for statute of limitations purposes best advances the remedial purposes of section 1983.[9] The *Wilson* Court also held that a uniform characterization of section 1983 actions based on the forum state's personal injury statute of limitations is the most appropriate comparison to the section 1983 cause of action.[10] Unfortunately, *Wilson* created a new confusion among the circuit courts concerning whether the Supreme Court's decision in *Wilson v. Garcia* should receive retroactive application. Retroactive application of *Wilson v. Garcia* would bar many section 1983 claims that accrued before the Supreme Court's *Wilson* decision.[11]

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adopted an Oregon statute of limitations expressly created for § 1983 actions. *See* Kosikowski v. Bourne, 659 F.2d 105, 107 (9th Cir. 1981); OR. REV. STAT. §30.275(3) (1977) (providing two-year statute of limitations for actions commenced against public bodies or employees).

The United States Court of Appeals for the Tenth Circuit has employed several methods of analysis to determine the appropriate limitations period for § 1983 actions. *Garcia*, 731 F.2d at 648-49. Subsequently, the Tenth Circuit adopted the forum state's personal injury statute of limitations as the uniform characterization for all § 1983 claims. *Id.* at 651. The United States Court of Appeals for the Eleventh Circuit, like the Fifth Circuit, has directed federal courts to determine which state statute of limitations the forum state would enforce if the plaintiff had brought an action seeking similar relief in a state court. *See* Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (noting decision of Eleventh Circuit judges to consider Fifth Circuit cases prior to September 30, 1981 as established precedent for the new Eleventh Circuit).

The United States Court of Appeals for the District of Columbia Circuit has based its § 1983 statute of limitations decisions on the assumption that the facts establishing the elements peculiar to a § 1983 civil rights cause of action are simple to prove. *See* McClam v. Barry, 697 F.2d 366, 372-73 (D.C. Cir. 1983). The District of Columbia Circuit held that the § 1983 elements do not render the constitutional claim so different from the comparable state cause of action that the particular state limitations period is inappropriate for a § 1983 action. *Id.*

5. *See Garcia*, 731 F.2d at 648. The circuit courts have disagreed whether courts should characterize § 1983 claims in terms of the specific facts of the case or whether the courts should apply a more general characterization, despite the particular facts of the case. *See id.* at 643-48.; *supra* note 4 (discussing various approaches followed by circuit courts for characterizing § 1983 claims for statute of limitations purposes).

6. *Garcia*, 731 F.2d at 648.

7. *Id.*

8. 105 S. Ct. 1938 (1985).

9. *Id.* at 1945.

10. *Id.* at 1949.

11. *See Id*, at 1938 (Supreme Court decided *Wilson v. Garcia* on April 17, 1985).

At the center of the retroactivity dilemma is section 1983 itself. Section 1983 provides a private right of action to any citizen of the United States or any person within the jurisdiction of the United States who suffers a deprivation of any constitutional or federal right, privilege, or immunity.[12] The person depriving a section 1983 claimant of a constitutional right must be acting under the sanction of a state statute, ordinance, regulation, custom, or usage.[13]

Congress initially enacted section 1983, originally entitled "The Ku Klux Klan Act of 1871,"[14] to aid terrorized blacks in the post-Civil War South.[15] Congress enacted the Ku Klux Klan Act of 1871 to provide a measure of federal control over state and territorial officials who were reluctant to enforce state laws against individuals who violated the federal and constitutional rights of the recently emancipated slaves and individuals who sympathized with the Union cause.[16]

In recent years, the Supreme Court has extended section 1983 protection to persons in every possession and territory of the United States.[17] In *Monell v. Department of Social Services*,[18] the Supreme Court overruled prior Supreme Court precedent and held that municipal governments and their officers could be liable under section 1983 for actions which violated the civil rights of individuals within their jurisdictions.[19] Because it opens the federal courts to private citizens with grievances against state officials, section 1983 offers a uniquely federal remedy against invasions of civil rights under the alleged authority of state law.[20]

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12. *See* 42 U.S.C. § 1983 (1982). Section 1983 of title 42 of the United States Code provides that

> 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 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, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Id.

13. *Id.*

14. H.R. REP. NO. 548, 96th Cong., 1st Sess. 1, *reprinted in* 1979 U.S. CODE CONG. & AD. NEWS 2609.

15. *See* CONG. GLOBE, 42nd Cong., 1st Sess. 166 (1871). In 1871, Senator Sherman of Ohio dramatized the plight of black citizens in the post-Civil War South by reporting to Congress the story of how ninety Ku Klux Klansmen stormed a prison at night and released an individual accused of murdering a black man. *Id.*

16. *Id.*

17. H.R. REP. NO. 548, 96th Cong., 1st Sess. 2, *reprinted in* 1979 U.S. CODE CONG. & AD. NEWS. 2609, 2610.

18. *See* 436 U.S. 658 (1978) (overruling Monroe v. Pape, 365 U.S. 167 (1961).).

19. *Id.* at 690-91.

20. Mitchum v. Foster, 407 U.S. 225, 239 (1972). The Supreme Court in *Mitchum v. Foster* observed that Congress modeled § 1983 after § 2 of the Civil Rights Act of 1866. *Id.*

Congress originally did not establish a statute of limitations for section 1983, nor has any subsequent Congress passed legislation giving section 1983 a federally defined statute of limitations.[21] Such absences of explicit limitations periods in federal statutory law are common.[22] By directing federal courts to apply an analogous state statute of limitations, Congress anticipates that the federal courts will rely on the wisdom of the states in creating limitations periods.[23] Section 1988 of title 42 of the United States Code instructs federal courts to apply the law of the state in which the federal court decides the civil rights case.[24] Section 1988 directs that, when federal statutes provide an inadequate remedy or punishment, the common law, as modified by the state in which the court resides, shall furnish the necessary provisions.[25] A federal court may not borrow state common law if the state law is inconsistent with the Constitution or laws of the United States.[26]

Federal courts use state statutes to limit the period of time during which a plaintiff may bring a section 1983 action. In *Burnett v. Grattan*,[27] the Supreme Court discussed the application of section 1988 to section 1983 claims.[28] The *Burnett* Court construed section 1988 as directing federal

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at 238; *see* Civil Rights Act of 1866, 14 STAT. 27 (1866) (granting private right of action to individuals whose civil rights were violated). The Court further stated that both § 1983 and § 2 of the Civil Rights Act of 1866, as guardians of the Fourteenth Amendment, played an important role in establishing the federal government as a protector of basic federal rights against state power. *Mitchum*, 407 U.S. at 238-39.

21. *See Wilson*, 105 S. Ct. at 1942 (Reconstruction Civil Rights Acts do not contain specific limitations period governing § 1983 actions). *But see id.* at 1951 (O'Connor, J. dissenting).

In her dissent to *Wilson*, Justice O'Connor noted that Congress, at least three times, has proposed standardized § 1983 limitations periods and all three proposals failed. *Id.* Justice O'Connor stated that the Supreme Court normally would perceive a failed proposal as a persuasive indication that Congress does not see a need for uniform limitations periods for § 1983 claims. *Id.*

22. Board of Regents v. Tomanio, 446 U.S. 478, 483 (1980).

23. *See* Johnson v. Railway Express Agency, 421 U.S. 454, 462 (1975) (controlling limitations period ordinarily would be most appropriate period provided by state law).

24. *Wilson*, 105 S. Ct. at 1942; Civil Rights Act of 1866, 42 U.S.C. § 1988 (1982); *see infra* note 25 (quoting text of § 1988).

25. *See* 42 U.S.C. § 1988 (1982). Section 1988 of title 42 of the United States Code provides that

> [I]n all cases where they [federal statutes] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against the 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.

26. *Id.*

27. 468 U.S. 42 (1984).

28. *Id.* at 47-48.

courts to follow a three part test to determine which rules of decision are applicable to civil rights claims.[29] The first part of the test requires courts to follow the laws of the United States to the extent that the federal statutes effectuate the civil rights statutes.[30] Part two requires courts to apply the law of the forum state if no appropriate federal law exists.[31] Finally, part three directs courts to apply state law only if the state law is not inconsistent with the federal Constitution or federal laws.[32]

The conflict and confusion concerning the appropriate limitations period for section 1983 actions culminated in the Supreme Court's decision in *Wilson v. Garcia*. Prior to *Wilson*, the Supreme Court had offered some guidance for determining the proper limitations period for section 1983 actions.[33] For example, in *Board of Regents v. Tomanio*[34] the Supreme Court directed federal courts to borrow the most analogous state statute of limitations to bar tardily commenced section 1983 proceedings.[35]

Confronted by the Supreme Court's consistent command to borrow the most analogous state limitations period, the circuit courts have developed two methods to determine which state statute of limitations is most analogous to the plaintiff's section 1983 claim.[36] The first method requires a federal court to examine the "essential nature" of the federal claim.[37] After determining the essential nature of the claim, a court must decide which state claim is of the same general category and apply that claim's statute of limitations.[38] The second method of determining the proper limitations period requires a federal court to choose the appropriate limitations period based upon how a state court, faced with a similar claim, would characterize

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29. *Id.*

30. *Id.* at 48.

31. *Id.*

32. *Id.*

33. *See, e.g.*, Johnson v. Railway Express Agency, 421 U.S. 454, 462 (1975) (controlling limitations period ordinarily would be most appropriate period provided by state law); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 704 (1966) (state statutes supply periods of limitation for federal causes of action when federal legislation is silent); O'Sullivan v. Felix, 233 U.S. 318, 322 (1914) (fact that action arises under federal law does not preclude federal court from applying state limitations period).

34. 446 U.S. 478 (1980).

35. *Id.* at 483-86.

36. *See* Jarmie, *Selecting an Analogous State Limitations Statute in Reconstruction Civil Rights Acts Claims: The Tenth Circuit's Resolution*, 15 N.M.L. REV. 11, 18 (1985) (failure of federal courts to achieve consensus on statutory selection results from disagreement over appropriate analytical method to employ).

37. *Id.* In *Nathan Rodgers Const. & Realty Corp. v. City of Saraland*, the United States Court of Appeals for the Fifth Circuit held that characterizing the essential nature of an action is more particularized than considering the claim to be a statutory cause of action or a § 1983 action. 670 F.2d 16, 17 n.4. (5th Cir. 1982). The Fifth Circuit held that the essential nature of the claim is found in the gravamen of each individual claim. *Id.*

38. *See, e.g.*, Ingram v. Steven Robert Corp., 547 F.2d 1260, 1261 (5th Cir. 1977); Bell v. Aerodex Inc., 473 F.2d 869, 871 (5th Cir. 1973); Franklin v. City of Marks, 439 F.2d 665, 669 (5th Cir. 1971); McGuire v. Baker, 421 F.2d 895, 898 (5th Cir. 1970), *cert. denied*, 400 U.S. 820 (1970).

the action.[39] The distinction between the two methods is that, under the essential nature method, a court characterizes a section 1983 claim utilizing federal law, while under the state characterization method, a court characterizes a section 1983 claim based almost entirely on state law.[40] The distinction between the two methods apparently is more theoretical than actual. In *Shaw v. McCorkle*,[41] for example, the United States Court of Appeals for the Fifth Circuit held that both methods of characterizing section 1983 claims substantially depend on state law.[42]

The facts of *Wilson v. Garcia* are typical of a section 1983 action for excessive use of force by police during an arrest. Plaintiff Garcia claimed that defendant Wilson, a New Mexico State Police officer, beat Garcia, sprayed him with tear gas, and unlawfully arrested him.[43] Garcia further alleged that defendant Vigil, Chief of the New Mexico State Police, had notice of Wilson's violent propensities and that Vigil had failed to reprimand Wilson on other occasions when Wilson had committed unprovoked attacks.[44] Finally, Garcia alleged that Vigil's training and supervision of Wilson was deficient.[45]

On January 28, 1982, two years and nine months after the claim arose, Garcia brought a section 1983 action against Wilson and Vigil in the United States District Court for the District of New Mexico seeking money damages for deprivations of his fourth, fifth, and fourteenth amendment rights and for personal injury suffered as a result of acts committed by the defendants under color of state law.[46] Wilson and Vigil moved to dismiss the action on the ground that a two year statute of limitations governed the action.[47] In moving to dismiss on statute of limitations grounds, Wilson and Vigil relied on the New Mexico Supreme Court's holding in *DeVargas v. New Mexico*.[48] In *DeVargas*, the New Mexico Supreme Court held that the Tort Claims Act, which governs tort actions against governmental entities and public employees in New Mexico, provided the state cause of action most

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39. Franks v. Bowman Transp. Co., 495 F.2d 398, 405 (5th Cir. 1974); Knowles v. Carson, 419 F.2d 369, 370 (5th Cir. 1969).

40. Shaw v. McCorkle, 537 F.2d 1289, 1292 (5th Cir. 1976).

41. 537 F.2d 1289 (5th Cir. 1976).

42. *Id.* at 1293; *see also Ingram*, 547 F.2d at 1261 (mechanical application of state law generally subordinates federal interests).

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

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* In *Wilson v. Garcia*, defendants Wilson and Vigil sought to dismiss plaintiff Garcia's claim under § 41-4-15(A) of the New Mexico Tort Claims Act. *Id.* Section 41-4-15(A) provides that:

> 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. . . .

N.M. STAT. ANN. § 41-4-15(A) (1978).

48. 97 N.M. 563, 642 P.2d 166 (1982).

closely analogous to section 1983 claims.[49] The New Mexico Supreme Court, therefore, concluded that the statute of limitations for section 1983 actions brought in New Mexico was the two year statute of limitations provided by the Tort Claims Act.[50]

The district court in *Garcia* concluded that the New Mexico Supreme Court's decision in *DeVargas* was not controlling because the rights protected by section 1983 are a matter of federal, rather than state, law.[51] The district court concluded that section 1983 actions are best characterized as actions based on statute and, therefore, the New Mexico Tort Claims Act does not govern section 1983 claims.[52] The district court denied Wilson and Virgil's motion to dismiss and certified an interlocutory appeal.[53]

The United States Court of Appeals for the Tenth Circuit granted the interlocutory appeal.[54] After the parties argued before a three judge panel and reargued before the entire Court of Appeals, the Tenth Circuit unanimously affirmed the district court's denial of Wilson and Vigil's motion to dismiss.[55] The Tenth Circuit reviewed the circuit courts' varying approaches for characterizing section 1983 claims for limitations purposes and found that no uniform characterization of section 1983 for statute of limitations purposes had evolved.[56] The Tenth Circuit concluded that a uniform characterization of section 1983 actions furthers the federal values at issue in selecting a limitations period for section 1983 claims.[57] The Tenth Circuit, therefore, held that all section 1983 claims are actions for personal injuries.[58] The Supreme Court granted certiorari in *Wilson*, noting that the conflict and confusion surrounding section 1983 statute of limitations questions provided compelling reasons for hearing the case.[59]

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49. 97 N.M. at , 642 P.2d at 167.

50. *Id.*; *see* N.M. STAT. ANN. § 41-4-15(A) (1978) (plaintiff must initiate action against government entity or public employee within two years after injury occurs).

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

52. *Id.* The Supreme Court in *Wilson* noted that, because New Mexico does not have a limitations period for actions based on a statute, the district court applied New Mexico's residual statute of limitations to Garcia's § 1983 claim. *Id.* Section 37-1-4 of the New Mexico Code provides that "all other actions not herein otherwise provided for and specified [must be brought] within four years." N.M. STAT. ANN. § 37-1-4 (1978).

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

54. *Id.*

55. *Id.*

56. *Id.*; *see supra* note 4 (discussing approaches followed by circuit courts in determining § 1983 limitations periods).

57. *Wilson*, 105 S. Ct. at 1941; *see infra* notes 65 & 66 and accompanying text (discussing federal values at issue in selecting limitations period for § 1983 claims).

58. *See Wilson*, 105 S. Ct. at 1941. The Tenth Circuit in *Garcia v. Wilson*, held that § 37-1-8 of the New Mexico Code governed § 1983 actions in New Mexico. Garcia v. Wilson, 731 F.2d 640, 651 (10th. Cir. 1984). Section 37-1-8 of the New Mexico Code provides that "Actions . . .for an injury to the person or reputation of any person [must be brought] within three years." N.M. STAT. ANN. § 37-1-8 (1978). The Supreme Court in *Wilson*, therefore, concluded that Garcia had filed his § 1983 claim before the running of the statute of limitations. *Wilson*, 105 S. Ct. at 1941.

59. *Wilson*, 105 S. Ct. at 1942.

In affirming the Tenth Circuit's decision, the Supreme Court in *Wilson v. Garcia* held that federal courts may best characterize section 1983 claims as personal injury actions.[60] The Supreme Court agreed with the Tenth Circuit's conclusion that the primary purpose of section 1988 was not to borrow the policies and purposes of the states concerning civil rights matters.[61] The Supreme Court reasoned that, if the choice of the limitations period depends on the particular facts or legal theories of a case, counsel always could argue that several statutes of limitations are applicable.[62] The Supreme Court concluded that federal interests in a uniform characterization of section 1983's statute of limitations, the litigant's interest in the certainty of limitations periods, and the public's interest in minimizing unnecessary litigation support the Court's characterization of section 1983 actions as personal injury claims.[63]

In concluding that a state's personal injury statute of limitations was the most appropriate characterization of the limitations period for section 1983 actions, the Supreme Court noted that the consistently large volume of personal injury litigation in state courts makes it unlikely that states would fix or limit personal injury statutes of limitation to discriminate against section 1983 federal claims.[64] The Supreme Court also considered the underlying purposes of section 1983 in its decision to adopt the forum state's personal injury statute of limitations as the uniform limitations period for section 1983 actions.[65] The Court recognized that section 1983 actions generate peace and justice through civil enforcement and protect the rights secured by the equal protection clause of the fourteenth amendment.[66] Finally, the Supreme Court concluded that, because the ineffectiveness of state remedies initially led Congress to enact section 1983, Congress would

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60. *Id.* at 1947.

61. *Id.* at 1943-44. In *Wilson*, the Supreme Court stated that adopting the policies and purposes of the states concerning civil rights actions is not the primary purpose of the borrowing provision of § 1988. *Id.* The Court noted that Congress would not assign to state courts and legislatures a decisive role in the formative function of defining and characterizing the elements of a federal cause of action. *Id.* at 1944.

62. *Id.* at 1946. In *Polite v. Diehl*, the United States Court of Appeals for the Third Circuit held differing statute of limitations applicable to a plaintiff's cause of action. 507 F.2d 119, 123 (3rd Cir. 1974). In *Polite*, the plaintiff alleged that police officers unlawfully arrested him, beat him, sprayed him with mace, coerced confessions from him, and towed his automobile. *Id.* at 121. The Third Circuit held that a one-year false arrest statute of limitations applied to the cause of action alleging false arrest, a two-year personal injury statute of limitations applied to the cause of action alleging assault and battery and coerced confessions, and that a six-year statute of limitations for actions seeking the recovery of goods applied to the cause of action alleging unlawful seizure of the automobile. *Id.* at 124.

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

64. *Id.* at 1949.

65. *Id.* at 1947.

66. *See id.* at 1947-49. In *Wilson*, the Supreme Court stated that the fourteenth amendment unequivocally recognizes the equal status of every person. *Id.* at 1948. The Court also noted that, because the Constitution commands due process and equal protection of the laws to all persons, a violation of that command is an injury to the individual rights of that person. *Id.*

not have characterized section 1983 as analogous to state remedies for torts committed by public officials.[67] Justice Stevens, author of the Supreme Court's opinion in *Wilson v. Garcia*, stated that it was the Court's intention to ensure that the important purposes of section 1983 receive a sweep as broad as its language.[68]

Although the Supreme Court in *Wilson* settled the issue of the proper characterization of section 1983 for statute of limitations purposes, the Court did not address whether the circuit courts should apply the *Wilson* decision retroactively. The United States Supreme Court, however, previously established a test to determine whether a federal court's decision in a civil case should receive retroactive or prospective application.[69] Although judicial decisions normally receive retroactive application,[70] the Supreme Court, in *Chevron Oil Co. v. Huson*,[71] provided a three part test to determine whether a court's holding should receive prospective application.[72] First, to receive prospective application, a decision must establish a new principle of law.[73] To establish a new principle of law, a decision must overrule clear precedent upon which litigants have relied, or decide an issue of first impression that the court's previous decisions did not foreshadow.[74] Second, a court must examine the history and the purpose of the new principle of law to determine whether retroactive application of the new principle of law will further the law's purpose.[75] Third, a court must decide whether retroactive application of the decision would be inequitable.[76]

The Supreme Court in *Chevron* did not indicate the relative importance of, or the relationship between, the factors a court must consider in

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67. *Id.* at 1949.

68. *Id.* at 1945.

69. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07 (1971).

70. *See* Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 486 n. 16 (1981) (overwhelming weight of authority supports retroactive application of court's decisions); Scott v. Local 863, Int'l Bhd. of Teamsters, 725 F.2d 226, 228 (3rd Cir. 1984) (federal courts should apply the law in effect at time court adjudicates case).

71. 404 U.S. 97 (1971).

72. *See Chevron*, 404 U.S. at 106-07. The Supreme Court set forth its retroactivity test in *Chevron Oil Co. v. Huson* as follows:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second it has been stressed that "we must. . .weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."

Id. (citations omitted).

73. *Id.* at 106.

74. *Id.*

75. *Id.* at 106-07.

76. *Id.* at 107.

determining whether a case should receive retroactive application.[77] Some federal courts examining the *Wilson* retroactivity question, however, have agreed that the first *Chevron* factor, the reliance factor, is the most important factor of the retroactivity test.[78] Although no court has addressed the importance of the second *Chevron* factor, it appears that the second factor receives minimal attention in the circuit court's decisions concerning the retroactivity of *Wilson v. Garcia*. Federal courts also have concluded that the third *Chevron* factor, the equity factor, is so intertwined with the reliance factor that it is impossible for a court's positive finding on the reliance factor to lead to a negative finding on the equity factor.[79] The

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77. Note, *Confusion in Federal Courts: Application of the Chevron Test in Retroactive -Prospective Decisions*, 1985 U. ILL. L. REV. 117, 133. Lower courts struggling to apply the *Chevron* test have developed three methods of analyzing the three factors of the *Chevron* test. *Id.* The *Chevron* test consists of the reliance factor, the purpose factor, and the equity factor. *Chevron*, 404 U.S. at 106-07. The first method of analyzing the three factors of the *Chevron* test is the balancing method. Note, *supra* at 133. Under the balancing method, a court must weigh the factors and favor the factors that most strongly decide the issue. *Id.* If two out of three *Chevron* factors favor retroactivity, the court applies the decision retroactively. *Id.*, *see* Occhino v. United States, 686 F.2d 1302, 1308-09 (8th Cir. 1982) (under *Chevron*, courts weigh factors to determine whether decision receives retroactive application); Cash v. Califano, 621 F.2d 626, 629 (4th Cir. 1980) (courts apply *Chevron* factors by analyzing how factors interact with one another). The second method of analyzing the *Chevron* factors is the threshold method. Note, *Supra* at 133. The threshold method directs courts to disregard the second and third *Chevron* factors, unless the first *Chevron* factor favors retroactive application. *Id.*, *see* Kremer v. Chemical Constr. Corp., 623 F.2d 786, 789 (2d Cir. 1980) (unless plaintiff establishes that facts satisfy first *Chevron* factor consideration of other two factors is unnecessary), *aff'd* 102 S. Ct. 1883 (1982). The third method is the comprehensive method. Note *Supra*, at 133. The comprehensive method requires courts to apply a decision retroactively unless all three *Chevron* factors favor prospective application. *Id.*; *see* Cochran v. Birkel, 651 F.2d 1219, 1223 n.8 (6th Cir. 1981) (all three *Chevron* factors must favor prospective application before court will deny retroactive effect), *cert. denied*, 454 U.S. 1152 (1982); Schaefer v. First Nat'l Bank of Lincolnwood, 509 F.2d 1287, 1294 (7th Cir. 1975) (courts apply doctrine of non-retroactivity if all three *Chevron* factors favor prospective application), *cert. denied*, 425 U.S. 943 (1976).

78. *See, e.g.*, Farmer v. Cook, 782 F.2d 780, 781 (8th Cir. 1986) (most important *Chevron* factor is whether retroactivity will disappoint reliance interest of party); Richard H. v. Clay County, 639 F. Supp. 578, 579 (D. Minn. 1986) (court should apply most important *Chevron* factor, plaintiff's reliance interest, to facts before finding that *Wilson* should receive retroactive application); Chris N. v. Burnsville, 634 F. Supp. 1402, 1406 (D. Minn. 1986) (first, and most important, *Chevron* factor requires proof that plaintiff reasonably relied on prior statute of limitations in delaying filing of § 1983 claim); John Does 1-100 v. Ninneman, 634 F. Supp. 341, 344 (D. Minn. 1986) (concluding that first *Chevron* factor is most important factor).

79. *See* Fitzgerald v. Larson, 769 F.2d 160, 164 (3d Cir. 1985) (third *Chevron* factor overlaps with first factor); Waz v. Gallagher, No. 29 c 2314 (N.D. Ill. Jan. 16, 1986) (available on Oct. 10, 1986, WESTLAW, Allfeds library, Dist file) (third and first *Chevron* factors protect same values); Winston v. Sanders, 610 F. Supp. 176, 178 (C.D. Ill. 1985) (same). The United States Court of Appeals for the Third Circuit in *Fitzgerald v. Larson* explained the relationship between the first and third *Chevron* factors. 769 F.2d 160, 164 (3d Cir. 1985). The Third Circuit, in *Fitzgerald*, observed that the equity factor would not allow retroactive application of *Wilson* when the reliance factor established that the plaintiff had relied on the established law of the circuit. *Id.*

Chevron test, therefore, revolves around the reliance factor. A court's decision concerning the reliance factor of the *Chevron* test often resolves the *Wilson* retroactivity issue.[80]

Many of the circuit courts have confronted the question of whether to apply the *Wilson* decision retroactively.[81] Most of the circuit courts confronted with the *Wilson* retroactivity issue have applied the *Chevron* test to resolve the issue. The United States Court of Appeals for the First Circuit addressed the issue of *Wilson*'s retroactive application in *Small v. Inhabitants of City of Belfast*.[82] In *Small*, the First Circuit held that the Supreme Court's decision in *Wilson* should receive retroactive application.[83] The First

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80. *See supra* notes 78-79 and accompanying text (discussing importance of first *Chevron* factor and relationship between first and third *Chevron* factors).

81. *See infra* notes 82-177 and accompanying text (discussing circuit courts' decisions regarding retroactive application of *Wilson*). To date, the First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have addressed the *Wilson* retroactivity issue. *See id.* (discussing various circuit court's decisions regarding retroactive application of *Wilson*).

The Third Circuit has extended the *Wilson* decision beyond § 1983 claims. *See* Goodman v. Lukens Steel Co., 777 F.2d 113, 117-20 (3d Cir. 1986), *cert. granted*, 107 S.Ct. 568 (1986). In *Goodman v. Lukens Steel Co.*, the Third Circuit applied the *Wilson* decision to § 1981 claims. *Id.* Section 1981 of title 42 of the United States Code provides that

> [a]ll persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981 (1982).

Prior to the Supreme Court's decision in *Wilson*, the Third Circuit treated § 1981 statute of limitations problems in the same manner as § 1983 statute of limitations problems. *Goodman*, 777 F.2d at 119. The Third Circuit stated that it was significant that § 1988 applied to both § 1983 and § 1981 for statute of limitations purposes. *Id.* The Third Circuit also observed that a substantial overlap existed in the type of claims brought under §§ 1981 and 1983. *Id.* at 120. The Third Circuit adopted Pennsylvania's two-year personal injury statute of limitations for personal injury for § 1981 claims. *Id.* The Third Circuit previously had adopted the two-year personal injury statute of limitations for § 1983 claims. *See* Smith v. City of Pittsburgh, 764 F.2d 188 (3d Cir. 1985), *cert. denied*, 106 S.Ct.349 (1985). The Third Circuit in *Goodman* agreed with the *Smith* Court's conclusion that the *Wilson* decision should receive retroactive application. *Goodman*, 777 F.2d at 120. In *Al-Khazraji v. Saint Francis College*, the Third Circuit again addressed the question of whether *Wilson* should receive retroactive application in § 1981 actions. 784 F.2d 505 (3d Cir. 1986), *cert granted in part*, 107 S.Ct. 62 (1986). After analyzing the facts, utilizing the *Chevron* test, the Third Circuit held that *Wilson* would not receive retroactive application. *Id.* at 514. The Third Circuit found that the reliance factor and the equity factor favored prospective application, while the purpose factor was neutral. *Id.*

82. 796 F.2d 544 (1st Cir. 1986).

83. *Id.* at 545-46. In *Small v. Inhabitants of City of Belfast*, the plaintiff brought a § 1983 action against the City of Belfast, Maine for deprivation of his property interest in his position as a special police officer, without due process. *Id.* at 545. The United States District Court for the District of Maine held that a Maine two-year statute of limitations applicable to defamation, assault and battery, false imprisonment, and medical malpractice was the most analogous personal injury limitations period to apply to § 1983 actions brought in Maine.

Circuit revived the plaintiff's section 1983 claim by retroactively applying the applicable statute of limitations.[84] The First Circuit, however, did not set forth its analysis of the *Chevron* test. The First Circuit merely stated, in a footnote, that it believed that its decision was consistent with *Chevron* and that permitting Small's claim furthered the federal policies embodied in section 1983.[85] The First Circuit, therefore, retroactively applied *Wilson*.

The United States Court of Appeals for the Third Circuit first addressed the *Wilson* retroactivity issue in *Smith v. City of Pittsburgh*.[86] The Third Circuit applied the *Chevron* test to analyze the *Smith* case.[87] In analyzing the first *Chevron* factor of whether *Wilson* established a new principle of law, the Third Circuit conceded that *Wilson* overturned Third Circuit precedent.[88] The Third Circuit, however, cited its previous decision in *Perez v. Dana Corp., Parish Frame Div.*[89] for the proposition that, when the precedent of an area of law is erratic, a subsequent Supreme Court decision that overrules the erratic precedent does not satisfy the first *Chevron* factor.[90]

Small v. Inhabitants of City of Belfast, 617 F. Supp. 1567, 1573 (D. Me. 1985) *rev'd* 796 F.2d 544 (1st Cir.1986); *see* ME. REV. STAT. ANN. tit. 14, § 753 (1964) (prescribing two-year limitations period for actions for assault and battery, false imprisonment, slander, libel, and medical malpractice). The district court in *Small* adopted the intentional personal injury statute of limitations because it reasoned that intentional torts directly infringe on personal rights. *Small*, 617 F. Supp. at 1573.

In reversing the district court, the United States Court of Appeals for the First Circuit adopted Maine's personal injury statute of limitations for all other personal injury actions, except those instituted against professionals, as the correct statute of limitations for § 1983 actions. *Id.* at 546; *see* ME. REV. STAT. ANN. tit. 14, § 752 (1964) (prescribing a six-year statute of limitations for all personal injuries not provided for in ME. REV. STAT. ANN. tit. 14, § 753 (1964). The First Circuit in *Small* based its decision on the Supreme Court's decision in *Wilson*, evaluations of Maine statutes of limitation, and analysis of other federal cases adopting personal injury statutes of limitation. *Small*, 796 F.2d at 546.

84. *Small*, 796 F.2d at 549.

85. *Id.* at 549 n.6.

86. 764 F.2d 188 (3d Cir. 1985) *cert. denied* 106 S.Ct. 349 (1985). In *Smith v. City of Pittsburgh*, the plaintiff, a garbage collector employed by the Pittsburgh Department of Environmental Services, brought a § 1983 action against the City of Pittsburgh for wrongful discharge from employment without due process. *Id.* at 189.

87. *Id.* at 194.

88. *Id.* The United States Court of Appeals for the Third Circuit in *Smith v. City of Pittsburgh*, observed that the district courts in the Third Circuit were divided on the question of which state limitations period to apply to § 1983 claims for unconstitutional termination of employment without due process, both before and during the period between Smith's termination and the filing of his § 1983 claim. *Id.* at 195. The *Smith* court observed that the Third Circuit decided the cases that established a definite statute of limitations for termination of employment without due process after Smith filed his § 1983 claim. *Id.* Because the Third Circuit decided the precedent that *Wilson v. Garcia* overturned after Smith filed his § 1983 claim, Smith could not have relied on those statute of limitations in waiting to bring his § 1983 claim. *Id.*; *see supra* notes 43-68 and accompanying text (discussing the Supreme Court's decision in *Wilson*).

89. 718 F.2d 581 (3d Cir. 1983).

90. *Id.* at 585-88; *see supra* note 88 and accompanying text (discussing Third Circuit precedent overturned by *Wilson*).

The first *Chevron* factor states that a court's decision must overrule clear precedent to permit the court's decision to receive retroactive application.[91] The Third Circuit also concluded that the first *Chevron* factor was not met because Smith could not have relied on Third Circuit precedent for a statute of limitations longer than two years. The court in *Smith* explained that the large majority of section 1983 cases decided in the Third Circuit had limitations periods between six months and two years and, therefore, Third Circuit precedent provided no basis for Smith's reliance on a statute of limitations longer than two years.[92] In analyzing the second *Chevron* factor of whether retroactive application of a subsequent decision furthers that decision's effect, the *Smith* Court, with scant discussion, concluded that the purposes of *Wilson* do not favor clearly either retroactive or prospective application.[93] In analyzing the third *Chevron* factor of whether retroactive application of a decision is equitable, the Third Circuit emphasized that Smith reasonably could not have relied on a limitations period longer than two years and that Smith had not engaged in massive discovery.[94] Although finding that equity did not support the retroactive application of the Supreme Court's *Wilson* decision in *Smith*, the Third Circuit hinted that retroactive application of *Wilson* might be inequitable after a plaintiff has incurred extensive legal expenses.[95] The Third Circuit's *Chevron* analysis in *Smith*, therefore, favored retroactive application of *Wilson v. Garcia*.[96]

In *Fitzgerald v. Larson*,[97] the Third Circuit followed the precedent established in *Smith*.[98] Fitzgerald based his section 1983 claim on wrongful discharge for exercise of first amendment rights,[99] while Smith based his

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91. *See supra* notes 73-74 and accompanying text (discussing first *Chevron* factor).

92. *See* Smith v. City of Pittsburgh, 764 F.2d 188, 195 (3d Cir. 1985) (Third Circuit found only one decision supporting application of statute of limitations period suggested by plaintiff); *see also* Yatzor v. Allen, 365 F. Supp. 875, 876 (W.D. Pa. 1973) (holding that six-year statute of limitations is appropriate for § 1983 claim for unconstitutional termination of employment without due process) *aff'd* 503 F.2d 1400 (3d Cir. 1974) *cert. denied* 420 U.S. 929 (1975).

93. *Smith*, 764 F.2d at 196.

94. *Id.* at 195-96.

95. *See id.* at 196 (noting that, although summary judgment proceedings were lengthy, plaintiff did not engage in massive discovery and, thereby incur costly legal fees); *see also* Chevron Oil Co. v. Huson, 404 U.S. 97, 108 (1971) (terminating lawsuit after lengthy and costly discovery stages would be inequitable to the plaintiff).

96. *See Smith*, 764 F.2d at 196. The Third Circuit in *Smith v, City of Pittsburgh* concluded that applying *Wilson v. Garcia* retroactively to bar plaintiff's claim would not be inequitable or harsh to Smith. *Id.*

97. 769 F.2d 160 (3d Cir. 1985).

98. *Id.* at 164; *see Smith*, 764 F.2d at 188 (holding that Supreme Court's decision in *Wilson* deserved retroactive application).

99. Fitzgerald v. Larson, 769 F.2d 160, 163 (3d Cir. 1985). In *Fitzgerald v. Larson*, the plaintiff, a nontenured employee of the Pennsylvania Department of Transportation, brought a § 1983 action against the Secretary of the Pennsylvania Department of Transportation claiming that the plaintiff's discharge from his job violated his first amendment rights. *Id.* at 161. Fitzgerald contended that his discharge from employment resulted solely from the fact that he was a member of the Democratic Party. *Id.*

section 1983 claim on wrongful discharge without procedural due process.[100] Because of the substantially different grounds for the cases, the Third Circuit found that Fitzgerald's section 1983 claim presented a somewhat different question from Smith's section 1983 claim.[101] The Third Circuit, however, concluded that the limitations period decisions for wrongful discharge for exercise of first amendment rights were as erratic and unclear as the decisions discussed in *Smith*.[102] The *Fitzgerald* court examined the second *Chevron* factor and concurred with the *Smith* court that the purpose factor does not favor clearly either retroactive or prospective application.[103] The Third Circuit concluded that no inequity would result from applying *Wilson* retroactively because the plaintiff relied on cases decided by the Third Circuit before Pennsylvania revised its statute of limitations.[104] Like its decision in *Smith*, the Third Circuit's decision in *Fitzgerald* favored retroactive application of *Wilson v. Garcia*.[105]

In *Bartholomew v. Fischl*,[106] the Third Circuit addressed an interesting twist on the facts of *Smith*. In *Bartholomew*, applying the *Wilson* decision retroactively would extend the plaintiff's limitation period, while applying *Wilson* prospectively would bar the plaintiff's claim.[107] The Third Circuit

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100. *Id.*; *see Smith*, 764 F.2d at 189 (Smith claimed he was discharged from employment by City of Pittsburgh without proper notice and opportunity to contest charges).

101. *Fitzgerald*, 769 F.2d at 163; *see infra* note 104 and accompanying text (discussing first amendment § 1983 claims brought in Pennsylvania prior to 1976 revision of Pennsylvania statutes).

102. *Fitzgerald*, 769 F.2d at 164.

103. *Id.*; *see Smith*, 764 F.2d at 196 (policies of *Wilson* do not favor clearly retroactive or prospective application).

104. *See Fitzgerald*, 769 F.2d at 163-64. Prior to 1976, the United States Court of Appeals for the Third Circuit had applied Pennsylvania's six-year residuary provision to § 1983 claims involving allegations of a failure by the state to renew employment contracts in violation of the first amendment. *Id.*; *see* 42 PA. CONS. STAT. ANN. § 5527(6) (Purdon 1981) (providing six-year limitations period for all actions not covered by another statute of limitations). The Third Circuit applied the residuary provision because Pennsylvania had no statute of limitations for wrongful interference with a contract. *Fitzgerald*, 769 F.2d at 163. When Pennsylvania revised its statutes in 1976, however, the Pennsylvania State Legislature included economic injury in the two-year limitations provision. *Id.*; *see* 42 PA. CONS. STAT. ANN. § 5524 (Purdon 1981) (providing two-year statute of limitations for personal injuries caused by wrongful act or neglect or unlawful violence or negligence of another). In *Fitzgerald*, all three cases on which the plaintiff relied were decided under Pennsylvania law prior to the 1976 revision. *Fitzgerald*, 769 F.2d at 164.

105. *Id.* at 164.

106. 782 F.2d 1148 (3d Cir. 1986). In *Bartholomew v. Fischl*, the plaintiff, acting director of the BiCity Health Bureau, brought a § 1983 action claiming that the BiCity Health Bureau terminated his employment without due process because of a disagreement concerning whether Allentown, Pennsylvania's drinking water should be fluoridated. *Id.* at 1149-50.

107. *See id.* at 1154-55. The United States Court of Appeals for the Third Circuit, in *Bartholomew v. Fischl*, analogized Bartholomew's § 1983 claim to a defamation claim brought under state law. *Id.* at 1155. Pennsylvania has a one-year statute of limitations for defamation actions. *Id.* at 1154; 42 PA. CONS. STAT. ANN. § 5523(1) (Purdon 1981). Under *Wilson v. Garcia*, Pennsylvania's two-year statute of limitations for personal injury governs Bartholo-

concluded that, prior to *Wilson*, no clear limitations period precedent existed upon which the defendants could have relied to bar the plaintiff's section 1983 claim.[108] The *Bartholomew* court, therefore, found that the first *Chevron* factor favored retroactive application of *Wilson*.[109] In examining the second *Chevron* factor, the Third Circuit held that the purposes of *Wilson* are best served by retroactive application.[110] The Third Circuit concluded that retroactive application of *Wilson* was not inequitable because the defendants did not raise their statute of limitations argument until two years after the plaintiff filed his section 1983 claim.[111] The Third Circuit reasoned that, after two years, the defendant's claim that he relied upon a one-year statute of limitations was unreasonable.[112] Ironically, the Third Circuit's decision in *Bartholomew* applied *Wilson* retroactively to preserve, rather than destroy, the plaintiff's cause of action.[113]

The United States Court of Appeals for the Fifth Circuit apparently addressed the *Wilson* retroactivity issue in *Gates v. Spinks*.[114] After deciding which of Mississippi's two statutes of limitations for personal injury was applicable to section 1983 claims, the Fifth Circuit concluded that the applicable personal injury statute of limitations governs all section 1983 actions brought in Mississippi.[115] The Fifth Circuit did not mention the

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mew's § 1983 claim. *Bartholomew*, 782 F.2d at 1155-56. Bartholomew filed his § 1983 action one year and nine months after his cause of action accrued. *Id.* at 1150-51. If *Wilson* received retroactive application, Bartholomew's action was timely under the two-year personal injury statute of limitations. *Id.* at 1155. If, however, the court applied *Wilson* prospectively, Bartholomew's action would be time-barred by the one-year defamation statute of limitations. *Id.*

108. *See Bartholomew*, 782 F.2d at 1155-56. In *Bartholomew v. Fischl*, the Third Circuit held that no clear precedent existed justifying the defendant's reliance on the one-year defamation statute of limitations, rather than the two-year personal injury statute of limitations. *Id.* at 1155. The Third Circuit stated that, even if precedent established the one-year defamation provision as the appropriate limitations period, Bartholomew alternatively claimed that the BiCity Health Bureau violated his first amendment rights. *Id.* In *Fitzgerald v. Larson*, the Third Circuit established that Pennsylvania's six-year residual statute of limitations was applicable to § 1983 actions based on the first amendment. Fitzgerald v. Larson, 741 F.2d 32, 36 (3d Cir. 1984) *vacated* 471 U.S. 1051 (1985). Thus, even if the Third Circuit denied retroactive application of *Wilson*, Fitzgerald's action was not time-barred. *Bartholomew*, 782 F.2d at 1155-56.

109. *Bartholomew*, 782 F.2d at 1155-56.

110. *Id.* at 1156.

111. *Id.*

112. *Id.*

113. *See id.* (retroactive application of *Wilson* to Bartholomew's § 1983 action saves action because Bartholomew initiated action within two-year personal injury statute of limitations established by *Wilson*).

114. 771 F.2d 916 (5th Cir. 1985) *cert. denied* 106 S.Ct. 1378 (1986).

115. *Id.* at 920. In *Gates v. Spinks*, the plaintiff, a public school teacher, brought a § 1983 action claiming wrongful termination of employment in retribution for the exercising of her first amendment rights. *Id.* at 917. In *Gates*, the United States Court of Appeals for the Fifth Circuit concluded that Mississippi's one-year statute of limitations for most common law intentional torts, rather than Mississippi's six- year residual statute of limitations for most unintentional torts, was the appropriate personal injury statute of limitations for § 1983 purposes. *Id.* at 919-20.

concept of retroactivity or the *Chevron* test in the *Gates* decision. Despite the absence of discussion concerning the issue of retroactivity, the Fifth Circuit intended *Gates* to apply to all section 1983 claims, regardless of when the claim accrued.[116]

The sole decision of the United States Court of Appeals for the Sixth Circuit regarding the *Wilson* retroactivity issue is *Mulligan v. Hazard*.[117] In examining the question of retroactivity in *Mulligan*, the Sixth Circuit approached the issue in a manner different from other circuit courts considering the *Wilson* retroactivity issue. The Sixth Circuit concluded that the Supreme Court in *Wilson* did not address expressly the issue of retroactivity, but that the Supreme Court merely implied that the *Wilson* decision applies retroactively.[118] The Sixth Circuit reasoned that the Supreme Court was applying retroactively its decision affirming the United States Court of Appeals for the Tenth Circuit's decision in *Garcia* that the appropriate statute of limitations for all section 1983 actions is the forum state's personal injury limitations period.[119] In reaching this conclusion, the Sixth Circuit relied on the similarity between the Supreme Court's decisions in *Wilson* and *DelCostello v. International Brotherhood of Teamsters*.[120] The Sixth Circuit previously had concluded that the Supreme Court implied that the

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116. *Id.* at 920. In *Young v. Biggers*, the United States District Court for the Northern District of Mississippi applied the *Chevron* test to the Fifth Circuit's decision in *Gates v. Spinks* and concluded that the decision in *Gates* met all the *Chevron* factors necessary for retroactive application. 630 F. Supp. 590, 591-92 (N.D. Miss. 1986). The district court in *Young* held that retroactive application of *Gates* is equivalent to retroactive application of *Wilson*. *Id.* at 591-92.

117. 777 F.2d 340 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 2903 (1986). In *Mulligan v. Hazard*, the plaintiff, a University of Ohio professor, brought a § 1983 action claiming that the University of Ohio unconstitutionally restricted her tenure rights in violation of the fourteenth amendment's due process clause and the first and fifth amendments by altering University of Ohio tenure requirements. *Id.* at 341.

118. *Id.* at 343-44; *see* Wilson v. Garcia, 105 S. Ct. 1938 (1985) (holding that forum state's personal injury statute of limitations best characterizes § 1983 actions for statute of limitations purposes).

119. *Mulligan*, 777 F.2d at 343.

120. 462 U.S. 151 (1983). The United States Supreme Court in *DelCostello v. International Brotherhood of Teamsters* held that a six-month statute of limitations period applied to suits brought by an employee against his employer and his union for breach of a collective bargaining agreement. *Id.* at 169. The Court held that the six-month limitations period accommodates the national interests in stable bargaining relationships and finality of private settlements, as well as an employee's interest in setting aside an unjust settlement under the collective bargaining system. *Id.* at 171 (quoting United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56, 70-71 (1981)). The United States Court of Appeals for the Sixth Circuit in *Smith v. General Motors Corp.* concluded that the Supreme Court in *DelCostello* implied that the statute of limitations rule that the Court established in *DelCostello* should receive retroactive application. Smith v. General Motors Corp., 747 F.2d 372, 375 (6th Cir. 1984); *see DelCostello*, 462 U.S. 169 (holding that six-month limitations period applied to claim by employee against employer and union). The Sixth Circuit in *Mulligan v. Hazard* held that the *Wilson* and *DelCostello* decisions are analogous because both decisions imply that the appropriate statute of limitations that the Supreme Court chose in *Wilson* and *DelCostello* should receive retroactive application. Mulligan v. Hazard, 777 F.2d 340, 344 (6th Cir. 1985).

Court's holding in *DelCostello* regarding the statute of limitations should receive retroactive application.[121] The *Mulligan* court failed to mention the *Chevron* test or the reason for not mentioning the test. The Sixth Circuit reaffirmed *Mulligan* in two subsequent decisions.[122]

The United States Court of Appeals for the Seventh Circuit, in *Anton v. Lehpamer*,[123] first addressed the *Wilson* retroactivity question. The *Anton* Court employed the *Chevron* test to determine the issue of retroactivity.[124] Prior to *Wilson*, the Seventh Circuit uniformly applied the Illinois' residuary statute of limitations to all section 1983 claims brought in Illinois.[125] *Wilson* overruled clear precedent in the Seventh Circuit and, therefore, satisfied the first *Chevron* factor.[126] In analyzing the second *Chevron* factor, the Seventh Circuit concluded that prospective application of *Wilson* would not frustrate the interests of uniformity and minimization of litigation and that retroactive application of *Wilson* would frustrate the federal interest of safeguarding litigants' rights.[127] The Seventh Circuit concluded that retroactive application of *Wilson* would serve no legitimate purpose and would impose a hardship on plaintiffs who innocently had pursued their section 1983 claims.[128] The

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121. Smith v. General Motors Corp. 747 F.2d 372, 373-75 (6th Cir. 1984); *see DelCostello*, 462 U.S. at 169 (holding that six-month limitations period applied to claim by employee against employer and union). The Sixth Circuit in *Smith v. General Motors Corp.* held that the Supreme Court in *DelCostello* could have reserved the issue of retroactivity, or could have applied the statute of limitation prospectively, if the Court had not intended to retroactively apply *Delcostello*. *Smith*, 747 F.2d at 375. *But see* Winston v. Sanders, 610 F. Supp. 176, 179 (C.D. Ill. 1985). The United States District Court for the Central District of Illinois in *Winston v. Sanders* held that *DelCostello* was not a break with precedent, but was merely a clarification of existing statutory law. *Winston*, 610 F. Supp. at 179. The district court in *Winston* also noted that the Supreme Court had foreshadowed the result in *DelCostello* in previous cases. *Id.*; *see* United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56, 60-64 (1981) (foreshadowing Supreme Court's holding in *DelCostello*).

122. *See* Jones v. Shankland, No. 84-3623, (6th Cir. Sept. 2, 1986) (available Oct. 10, 1986, WESTLAW, Allfeds library) (holding that *Mulligan v. Hazard* is authority in Sixth Circuit for proposition that *Wilson v. Garcia* applies retroactively); Vodila v. Cleeland, No. 85-3641, (6th Cir. Aug. 1, 1986) (available Oct. 10, 1986, WESTLAW, Allfeds library) (one-year limitations period established by *Mulligan v. Hazard* for § 1983 actions brought in Ohio applies whether or not plaintiff brought action before Supreme Court's decision in *Wilson*).

123. 787 F.2d 1141 (7th Cir. 1986). In *Anton v. Lehpamer*, the plaintiff brought a § 1983 claim against police officers for using excessive force during plaintiff's arrest. *Id.* at 1141-42.

124. *Id.* at 1143. The United States Court of Appeals for the Seventh Circuit in *Anton v. Lehpamer* held that, in evaluating the *Chevron* test, a circuit court should examine only the precedent of the circuit in which the case arose, rather than the precedent in all circuits. *Id.*

125. *See* Beard v. Robinson, 563 F.2d 331, 336 (7th Cir. 1977) (holding that Illinois residuary statute of limitations applies to all § 1983 actions brought in Illinois), *cert. denied*, Mitchell v. Beard, 438 U.S. 907 (1978); *see also Anton*, 787 F.2d at 1144 (discussing *Beard v. Robinson*'s application to § 1983 claims brought in Illinois).

126. *Anton*, 787 F.2d at 1144.

127. *Id.* at 1145.

128. *Id.* at 1146. In *Carpenter v. City of Fort Wayne, Ind.*,the United States District Court for the Northern District of Indiana refused to apply the *Wilson* decision prospectively. 637 F. Supp. 889, 897 (N.D. Ind. 1986). In *Carpenter*, the district court performed an

Seventh Circuit, however, was conscious of the mandate of the Supreme Court in *Wilson*.[129] The Seventh Circuit held that, to implement the *Wilson* decision as quickly as justice permits, an Illinois plaintiff whose section 1983 claim accrued before the *Wilson* decision must bring his action within the shorter period of either five years from the date his action accrued or two years after the Supreme Court's decision in *Wilson*.[130] By refusing to apply the *Wilson* holding because the *Chevron* test counselled against retroactive application, but also implementing the *Wilson* holding as quickly as possible, the Seventh Circuit in *Anton* was as faithful to the Supreme Court's *Wilson* holding as equity would allow.[131]

At first glance, the United States Court of Appeals for the Eighth Circuit has inconsistently answered the question of whether *Wilson* should receive retroactive application. In *Wycoff v. Menke*[132] and *Farmer v. Cook*,[133] the Eighth Circuit concluded that *Wilson* should receive retroactive application.[134] In *Ridgway v. Wapello County*,[135] however, the Eighth Circuit held that *Wilson* should receive prospective application.[136] A closer exami-

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independent *Chevron* analysis and concluded that *Wilson* should receive retroactive application. *Id.* The district court analyzed the *Chevron* test and determined that the first and third *Chevron* factors favored retroactive application, while the second *Chevron* factor favored prospective application. *Id.* at 896-897. The district court concluded that prospective application of *Wilson v. Garcia* would be inappropriate because two of the three *Chevron* factors favored retroactive application. *Id.* at 897.

129. *See* Wilson v. Garcia, 105 S. Ct. 1938, 1949 (1985) (directing federal courts to apply state personal injury statutes of limitation to § 1983 claims).

130. *Anton*, 787 F.2d at 1146. The Seventh Circuit's holding in *Anton v. Lehpamer* applies only to plaintiffs who initiate a § 1983 action in Illinois. *Id.* The *Anton* court's holding is a combination of the pre- *Wilson* statute of limitations and the post- *Wilson* statute of limitations. *Id.* A plaintiff who initiates a § 1983 action in Illinois, therefore, may bring a § 1983 action if the plaintiff brings the action within the old five-year statute of limitations established in *Beard v. Robinson* or within the new two-year limitations period established in *Anton*. *Id.*; *see* Beard v. Robinson, 563 F.2d 331, 336 (7th Cir. 1977) (five-year statute of limitations is applicable to § 1983 actions brought in Illinois). The *Anton* court determined that a plaintiff must bring his § 1983 action within the shorter period of the pre- *Wilson* five-year statute of limitations or the post- *Wilson* two-year limitations period. *Anton*, 787 F.2d at 1146.

131. *See Anton*, 787 F.2d at 1146 (discussing importance of implementing Supreme Court's *Wilson* decision as quickly as justice permits).

132. 773 F.2d 983 (8th Cir. 1985) *cert. denied* 106 S.Ct. 1230 (1986). In *Wycoff v. Menke*, the plaintiff, an inmate at the Iowa State Penitentiary, brought a § 1983 action claiming that a prison official violated the plaintiff's fourteenth amendment right to due process by failing to provide Wycoff with adequate procedural safeguards during his detention. *Id.* at 984.

133. 782 F.2d 780 (8th Cir. 1986). In *Farmer v. Cook*, the plaintiff brought a § 1983 action against the Independence, Missouri police department and individual police officers. *Id.* at 984.

134. *See Farmer*, 782 F.2d at 781 (holding that *Wilson* should receive retroactive application); *Wycoff*, 773 F.2d at 987 (same).

135. 795 F.2d 646 (8th Cir. 1986). In *Ridgway v. Wapello County*, the plaintiff, a mental patient, brought a § 1983 action against county employees for unlawful search and seizure, illegal confinement, and invasion of privacy. *Id.* at 647.

136. *Id.*

nation of these cases, however, reveals that the difference in the Eighth Circuit's holdings arises from facts particular to each case, rather than from inconsistent analyses of the *Wilson* retroactivity question.

In *Wycoff*, the Eighth Circuit employed the *Chevron* test to answer the retroactivity question.[137] In considering the first *Chevron* factor, the Eighth Circuit concluded that no definitive standard existed upon which Wycoff could have relied in waiting more than two years to file his section 1983 claim.[138] The Eighth Circuit held that the purposes underlying the Supreme Court's decision in *Wilson* favored retroactive application, because retroactive application would result in uniformity and certainty of section 1983 statute of limitations in future section 1983 claims and pending section 1983 claims sharing the same limitations period.[139] The Eighth Circuit also found that retroactive application of *Wilson* would not be harsh or unjust because Wycoff could not have relied on a limitations period longer than two years in filing his claim.[140] The Eighth Circuit in *Wycoff*, therefore, held that the *Chevron* test favors retroactive application of *Wilson*.[141]

In *Farmer v. Cook*, the Eighth Circuit cited *Wycoff* with approval.[142] In *Farmer*, however, *Wilson*'s retroactive application revived, rather than destroyed, the plaintiff's section 1983 claim.[143] Farmer's section 1983 action was revived because the statute of limitations relied on by the defendant in *Farmer* was shorter than the personal injury statute of limitations established by the Supreme Court in *Wilson*.[144] Retroactive application of *Wilson* enables the plaintiff to take advantage of the longer personal injury statute of limitations; therefore, his action is not time barred.

The Eighth Circuit's decision in *Ridgway*, holding in favor of prospective application of *Wilson*, is distinguishable from *Wycoff* and *Farmer*, despite *Ridgway*'s facial inconsistency with Eighth Circuit precedent. In *Ridgway*, the plaintiff filed a section 1983 action after the Eighth Circuit's decision in *Garmon v. Foust*,[145] which uniformly characterized all section 1983 actions

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137. *Wycoff*, 773 F.2d at 986.

138. *Id.* at 984-86. Prior to the Supreme Court's decision in *Wilson*, the United States Court of Appeals for the Eighth Circuit, in *Garmon v. Foust*, decided that the forum state's general residuary statute of limitations governed all § 1983 claims brought in the Eighth Circuit. *Id.* at 984; *see* Garmon v. Foust, 668 F.2d 400, 406 (8th Cir. 1982) (holding that state's general catch-all statute of limitations, rather than state's personal injury statute of limitations, governed § 1983 actions), *cert. denied*, 456 U.S. 998 (1982). The Eighth Circuit in *Wycoff* concluded that Wycoff could not have relied on *Garmon* because he filed his § 1983 claim before the Eighth Circuit's decision in *Garmon*. *Wycoff*, 773 F.2d at 984.

139. *Wycoff*, 773 F.2d at 986-87.

140. *Id.* at 987.

141. *Id.*

142. Farmer v. Cook, 782 F.2d 780, 780-81 (8th Cir. 1986).

143. *See id.* at 781 (retroactive application of *Wilson* revives otherwise time-barred action).

144. *Id.*

145. 668 F.2d 400 (8th Cir. 1982) *cert. denied* 456 U.S. 998 (1982). The United States Court of Appeals for the Eighth Circuit decided *Garmon v. Foust* on January 5, 1982. *Id.* at 400. In *Ridgway v. Wapello County*, the plaintiff filed her § 1983 claim in August of 1983. 795 F.2d 646, 647 (8th Cir. 1986).

as falling under the state's general residuary statute of limitations.[146] Ridgway reasonably could have relied on the five year residuary statute of limitations established by *Garmon*, while Wycoff and Farmer, who filed their actions prior to *Garmon*, could not.[147] Ridgway's reliance on the five-year statute of limitations established in *Garmon* satisfied the first *Chevron* factor.[148] In *Ridgway*, the Eighth Circuit held that the *Chevron* test's purpose factor marginally favors retroactive application of *Wilson* because retroactive application minimally contributes to the nationwide uniformity envisioned by the Supreme Court in *Wilson*.[149] The Eighth Circuit concluded that *Chevron*'s equity factor favors prospective application of *Wilson* because Ridgway reasonably relied on the five year statute of limitations established by the Eighth Circuit in *Garmon*.[150] The Eighth Circuit, therefore, applied *Wilson* prospectively to save Ridgway's section 1983 claim.[151] *Ridgway*'s facial inconsistency with *Wycoff* and *Farmer* results from different factual situations, rather than an inconsistent analysis of the *Wilson* retroactivity issue.

The approach of the United States Court of Appeals for the Ninth Circuit to the *Wilson* retroactivity issue is both original and faithful to the purposes of the Supreme Court's decision in *Wilson v. Garcia*. In *Gibson v. United States*,[152] the Ninth Circuit held that a court should apply *Wilson* retroactively when retroactive application will lengthen, rather than shorten, the limitations period.[153] The Ninth Circuit in *Gibson* further held that, when retroactive application will shorten the limitations period, *Wilson* merits only prospective application.[154] The Ninth Circuit reasoned that retroactive application inequitably would bar a plaintiff's right to his day in court if the plaintiff timely filed his section 1983 action under the law in effect at the time his section 1983 action commenced.[155] The Ninth Circuit relied upon its earlier *Wilson* retroactivity decision in *Rivera v. Green*[156] for

146. *Garmon*, 668 F.2d at 406; *see supra* note 138 and accompanying text (discussing Eighth Circuit's holding in *Garmon*).

147. *Ridgway*, 795 F.2d at 648.

148. *Id.*

149. *Id.*; *see* Wilson v. Garcia, 105 S.Ct. 1938, 1947 (1985) (discussing need for national uniformity of § 1983 statute of limitations).

150. *Ridgway*, 795 F.2d at 648.

151. *Id.*

152. 781 F.2d 1334 (9th Cir. 1986). In *Gibson v. United States*, the plaintiff brought a § 1983 action claiming that the federal government, the City of Los Angeles, the Federal Bureau of Investigation, and the Los Angeles Police Department conspired to violate her civil rights. *Id.* at 1337.

153. *Id.* at 1339.

154. *Id.*

155. *See id.* (Ninth and Tenth Circuits reject retroactive application of *Wilson* if retroactive application time bars plaintiff's claim).

156. 775 F.2d 1381 (9th Cir. 1985) *cert. denied* 106 S.Ct. 1656 (1986). In *Rivera v. Green*, the plaintiff brought a § 1983 action claiming that the Maricopa County, California Sheriff's Department violated his civil rights by illegally searching his home and arresting him. *Id.* at 1382.

this proposition.[157] The Ninth Circuit in *Rivera* held that, in the absence of substantial inequity to the defendants, the interests of section 1983 are best served by retroactively applying *Wilson* to extend the statute of limitations time period.[158] The Ninth Circuit, however, limited *Rivera*'s holding to situations in which retroactive application of *Wilson* would advance a litigant's ability to pursue his section 1983 claim.[159] The Ninth Circuit's holdings in *Gibson* and *Rivera* are unique because the Ninth Circuit not only applied the *Chevron* test, but also supported the spirit of the *Wilson* decision by protecting the rights of federal civil rights litigants.

The United States Court of Appeals for the Tenth Circuit had an advantage over other circuit courts in answering the *Wilson* retroactivity question. By addressing the issue of retroactive application of *Garcia v. Wilson* prior to the Supreme Court's decision in *Wilson v. Garcia*, the Tenth Circuit was in a unique position to establish the standard to which other circuits could refer.[160] The Tenth Circuit has not decided any cases regarding the retroactivity issue since the Supreme Court's decision in *Wilson*. Because the Tenth Circuit, in *Garcia v. Wilson*, created the doctrine of characterizing all section 1983 claims as personal injury claims for statute of limitations purposes,[161] other circuit courts may find significant the fact that the Tenth Circuit also determined that retroactive application of *Garcia* was inappropriate.

In *Jackson v. City of Bloomfield*[162] the Tenth Circuit applied the *Chevron* test to decide whether to retroactively apply its decision in *Garcia*.[163] The Tenth Circuit concluded that the first *Chevron* factor favored prospective application because *Garcia* was a clear break with Tenth Circuit precedent.[164] Concerning the second *Chevron* factor, the Tenth Circuit held that retroactive application of *Garcia* would not promote or hinder the purposes of *Garcia*.[165] The Tenth Circuit concluded that the third factor of the *Chevron* test favored prospective application of *Garcia* because retro-

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157. Gibson v. United States, 781 F.2d 1334, 1339 (9th Cir. 1986); *see* Rivera v. Green, 775 F.2d 1381, 1384 (9th Cir. 1985) (retroactive application of *Wilson* best serves interests of § 1983).

158. *Rivera*, 775 F.2d at 1384.

159. *Id.*; *see supra* note 158 and accompanying text (discussing *Rivera*'s limited holding).

160. *See* Jackson v. City of Bloomfield, 731 F.2d 652, 652 (10th Cir. 1984). The Tenth Circuit decided *Garcia v. Wilson* on March 30, 1984. 731 F.2d 640 (10th Cir. 1984). On the same date, the Tenth Circuit decided not to apply retroactively the *Garcia* holding in two other cases. *See* Abbitt v. Franklin, 731 F.2d 661, 661 (10th Cir. 1984) (decided March 30, 1984); *Jackson*, 731 F.2d at 652 (same).

161. *Garcia*, 731 F.2d at 651.

162. 731 F.2d 652 (10th Cir. 1984). In *Jackson v. City of Bloomfield*, the plaintiff brought a § 1983 action claiming that the City of Bloomfield wrongfully terminated the plaintiff's employment for exercising her first amendment rights. *Id.* at 652-53.

163. *Id.* at 654-55.

164. *Id.*; *see Garcia*, 731 F.2d at 651 (overruling prior § 1983 statute of limitations decisions that are inconsistent with Tenth Circuit's holding in *Garcia*).

165. *Jackson*, 731 F.2d at 655.

active application would cause substantial inequity to a plaintiff whose section 1983 actions accrued before the Tenth Circuit's decision in *Garcia*.[166] The Tenth Circuit stated that, even if the first two *Chevron* factors favored retroactive application, the inequity factor greatly outweighed the other two factors and, therefore, the Tenth Circuit refused to apply retroactively its decision in *Garcia*.[167]

In *Jones v. Preuit & Mauldin*,[168] the United States Court of Appeals for the Eleventh Circuit first addressed the *Wilson* retroactivity issue. The Eleventh Circuit concluded in a footnote that the Supreme Court's decision in *Wilson* should receive retroactive application.[169] The Eleventh Circuit's footnote merely stated that each of the *Chevron* factors favored retroactive application.[170] In *Williams v. City of Atlanta*,[171] however, the Eleventh Circuit set forth a comprehensive examination of whether the *Chevron* test indicates that *Wilson* should receive retroactive application.[172] In *Williams*, the Eleventh Circuit held that the first *Chevron* factor favored retroactive application because the plaintiff could not cite a single Eleventh Circuit precedent that delineated a limitations period analogous to the plaintiff's claim.[173] The Eleventh Circuit also found that the second *Chevron* factor favored retroactive application of *Wilson* because prospective application would contravene the *Wilson* Court's holding that circuit courts should apply the forum state's personal injury statute of limitations to all section 1983 claims.[174] The Eleventh Circuit reasoned that prospective application of *Wilson* would continue the practice of characterizing section 1983 claims according to differing analogous statute of limitations schemes, a practice that the Supreme Court in *Wilson* expressly rejected.[175] In considering the third *Chevron* factor, the Eleventh Circuit held that, despite the fact that retroactive application would defeat the plaintiff's section 1983 claim, retroactive application of *Wilson* would not be substantially inequitable to the plaintiff because no Eleventh Circuit precedent gave the plaintiff reason

166. *See id.* (holding that barring plaintiff's action because statute of limitations changed after plaintiff filed action is inequitable).

167. *Id.* The Tenth Circuit decided *Abbitt v. Franklin* on the same day it decided *Jackson*. Abbitt v. Franklin, 731 F.2d 661, 661 (10th Cir. 1984). The Tenth Circuit in *Abbitt* restated its position in *Jackson* and offered no new insight on the retroactivity issue. *Id.* at 662-64.

168. 763 F.2d 1250 (11th Cir. 1985) *cert. denied* 106 S.Ct 893 (1986). In *Jones v. Preuit & Mauldin*, the plaintiff brought a § 1983 action claiming that the defendant obtained three International Harvester cotton pickers through attachment proceedings that violated the plaintiff's due process rights. *Id.* at 1252.

169. *Id.* at 1253 n.2.

170. *See id.* (facts of *Jones* favor retroactive application of *Wilson* under *Chevron* test).

171. 794 F.2d 624 (11th Cir. 1986). In *Williams v. City of Atlanta*, the plaintiff brought a § 1983 action claiming that local and federal law enforcement officials unconstitutionally searched the plaintiff's home. *Id.* at 625.

172. *See id.* at 626-28 (applying *Chevron* test to facts of *Williams*).

173. *Id.* at 627.

174. *Id.* at 628.

175. *Id.* at 627-28; *see* Wilson v. Garcia, 105 S. Ct. 1938, 1949 (1985) (§ 1983 claims are best characterized as personal injury actions).

to wait longer than two years to bring his section 1983 action.[176] In its conclusion, the Eleventh Circuit observed that the majority of circuits considering the retroactivity issue have applied *Wilson v. Garcia* retroactively.[177]

Justice White, dissenting from the Supreme Court's decision denying certiorari to review the Sixth Circuit's decision in *Mulligan v. Hazard*, observed that the differences between the circuit courts' retroactivity decisions are unlikely to disappear without guidance from the Supreme Court.[178] Justice White is correct in his assessment of the future of the *Wilson* retroactivity issue. Based on the preceding survey of circuit court decisions, the gap separating the circuit courts will not close by itself. The width of the gap ranges from a presumption of retroactivity in the Fifth and Sixth Circuits to a presumption in the Ninth Circuit that the plaintiff is entitled to the longest limitations period that equity will permit. Faced with this disparity, only action by the Supreme Court can effectively bring uniformity to the *Wilson* retroactivity issue.

The Supreme Court has two options concerning the *Wilson* retroactivity issue. First, the Court could grant certiorari to an appropriate case and expressly decide the retroactivity issue. Alternatively, the Court could ignore the retroactivity issue because the retroactivity question eventually will become moot as section 1983 claims accrue after the Supreme Court's decision in *Wilson v. Garcia*.

The circuit courts follow three different methods for analyzing the *Wilson* retroactivity issue. The first method is the "implied retroactivity" method of the Fifth and Sixth Circuits.[179] The "implied retroactivity" method presumes that the *Wilson* decision should receive retroactive application. The "implied retroactivity" method seems ill advised. The existence of the *Chevron* test indicates that the presumption of retroactivity that accompanies judicial decisions is not automatic or absolute.[180]

The second method for analyzing the *Wilson* retroactivity issue is the strict *Chevron* analysis method embraced by the First, Third, Seventh, Eighth, Tenth, and Eleventh Circuits.[181] The strict *Chevron* analysis method requires a court to review prior circuit cases to determine whether clear

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176. *See Williams*, 794 F.2d at 628 (noting that no precedent existed on which plaintiff could rely in waiting longer than two years to file § 1983 claim).

177. *Id.*

178. Mulligan v. Hazard, 106 S. Ct. 2903, 2903 (1986) (White, J., dissenting from denial of certiorari); *see supra* notes 117-22 and accompanying text (discussing Sixth Circuit's decision in *Mulligan*).

179. *See supra* notes 114-22 and accompanying text (discussing implied retroactivity method).

180. *See* Chevron Oil Co. v. Huson, 404 U.S. 97, 106-08 (1971) (discussing Supreme Court's test for determining whether courts should retroactively apply federal courts' civil decisions).

181. *See supra* notes 82-113, 123-51 & 162-77 and accompanying text (discussing strict *Chevron* analysis).

precedent exists on which the litigant detrimentally relied.[182] The strict *Chevron* analysis method is superior to the "implied retroactivity" method of the Fifth and Sixth Circuits because the strict *Chevron* analysis method considers the plaintiff's reliance on pre- *Wilson* statute of limitations, the purpose of the court's decision, and whether retroactive application works a substantial inequity on the plaintiff.

The third method is the "equitable retroactivity" method created by the Ninth Circuit.[183] The "equitable retroactivity" method requires courts to apply *Wilson* retroactively only if retroactivity would lengthen the statute of limitations.[184] The "equitable retroactivity" method incorporates the *Chevron* factors while concurrently considering the equitable nature of section 1983. While the strict *Chevron* method is superior to the "implied retroactivity" method because it takes equity into account, the "equitable retroactivity" method is superior to both the "implied retroactivity" method and the strict *Chevron* method. The "equitable retroactivity" method is superior because it provides further protection for the section 1983 plaintiff. The further protection is provided by forcing many defendants of section 1983 actions to defend the action on its merits, rather than relying on the disfavored statute of limitations defense. If an expired statute of limitations bars a plaintiff from federal court, the plaintiff loses his only recourse to an impartial forum when bringing an action against a state. The "equitable retroactivity" method also safeguards the right of the defendant to rely on preexisting limitations periods. The Ninth Circuit applies the "equitable retroactivity" method only when it is not substantially inequitable to the defendant.[185] The "equitable retroactivity" method better promotes the equitable purposes of section 1983 and the *Wilson v. Garcia* decision than either the "implied retroactivity" method or the strict *Chevron* method adopted by the other circuit courts.

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182. *Id.*

183. *See supra* notes 152-59 and accompanying text (discussing equitable retroactivity method).

184. *Id.*

185. *See supra* note 158 and accompanying text (noting that equitable retroactivity method safeguards defendant's right to rely on statutes of limitation).