Wilson v. Garcia and Statutes of Limitations in Section 1983 Actions: Retroactive or Prospective Application

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NOTE

WILSON v. GARCIA AND STATUTES OF LIMITATIONS IN SECTION 1983 ACTIONS: RETROACTIVE OR PROSPECTIVE APPLICATION?

INTRODUCTION

The Supreme Court in Wilson v. Garcia\(^1\) held that claims brought under 42 U.S.C. § 1983 invariably should be characterized as personal injury actions for the purpose of identifying the state statute of limitations that should be borrowed pursuant to 42 U.S.C. § 1988. In establishing this ruling, however, the Court did not address the issue of whether its holding should be given retroactive effect,\(^2\) where the cause of action accrued prior to the Wilson decision and was either filed before or after Wilson was decided,\(^3\) in reliance on a specific prescriptive period. Part I of this Note examines the statute of limitations historically used in section 1983 actions, analyzes the Wilson decision, and discusses the new issues spawned by Wilson. Part II sets forth the retroactivity analysis established by the Supreme Court in Chevron Oil Co. v. Huson.\(^4\) Part III examines the lower federal court decisions since Wilson that exemplify the confusion in the application of the Chevron analysis and concludes that this confusion can be eliminated by the use of a more uniform approach to the Chevron retroactivity analysis.

2. The majority of courts have construed Wilson as silent on the retroactivity issue and, therefore, a retroactivity analysis is required. See Chris N. v. Burnsville, 634 F. Supp. 1402, 1406 n.7 (D. Minn. 1986); see, e.g., Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-766); Rivera v. Green, 775 F.2d 1381, 1383 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986); Smith v. City of Pittsburgh, 764 F.2d 188, 194 (3d Cir.), cert. denied, 106 S. Ct. 349 (1985); Cook v. City of Minneapolis, 617 F. Supp. 461, 465 (D. Minn. 1985). The Court of Appeals for the Sixth Circuit, however, has determined that no retroactivity analysis is needed. It reasoned that because the Supreme Court in Wilson upheld the Tenth Circuit's application of its new ruling on a retroactive basis, the Wilson holding implicitly mandates retroactivity. See Mulligan v. Hazard, 777 F.2d 340, 343 (6th Cir. 1985), cert. denied, 106 S. Ct. 2902 (1986). From this erroneous reading of Wilson, the Sixth Circuit has adopted a blanket rule of retroactivity. See Jones v. Shankland, 800 F.2d 77, 80 (6th Cir. 1986).

The holdings of Mulligan and its progeny are erroneous because Wilson does not implicitly mandate a holding of retroactivity. Rather, the Court left the question for another day. Moreover, the Court, in Stovall v. Denno, 388 U.S. 293, 301 (1967), and some commentators, see, e.g., Note, Prospective Overruling and Retroactive Application in the Federal Courts, 71 Yale L.J. 907, 930-33 (1962) [hereinafter Prospective Overruling], suggest that the case or controversy requirement of article III of the Constitution may prohibit prospective application of a law-changing decision to the litigants presently before the Court.

I. Statute of Limitations Historically Used In Section 1983 Actions

A. Statute of Limitations Prior to Wilson v. Garcia

Section 1 of the Civil Rights Act of 1871 provides a private individual with a civil cause of action against any person who, under color of state law, has deprived the litigant of a federal constitutional or statutory right. Congress did not expressly provide a statute of limitations period to govern claims brought under section 1983. This omission, however, is common in federal statutory law.

Section 1988, which governs section 1983 actions, provides some


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

6. See id.


The jurisdiction [by the civil and criminal Civil Rights Titles] for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause. . . .

(brackets not in original).

general guidance as to the procedural aspects of the federal Civil Rights Acts.11 While the language of section 1988 is murky,12 the Supreme Court has interpreted section 1988 as mandating a "three step process."13 First, courts are to look to the federal laws to the extent that they carry the civil and criminal civil rights statutes into effect.14 Second, if no suitable federal rule exists, courts should apply state "common law, as modified and changed by the constitution and statutes" of the forum State.15 Finally, courts are to apply state law only if it is not inconsistent with the federal Constitution and other federal laws.16 This last step asserts the supremacy of the federal interest.17 Wilson concerns the second step—"borrowing" or "adopting" a state statute of limitations as federal law.

Prior to Wilson, the Supreme Court had instructed lower federal courts to select the most "appropriate"18 or "analogous"19 state statute of limitations for section 1983 cases in accordance with the Court's interpretation of section 1988.20 The Court, however, provided the lower federal courts with little guidance to determine the "appropriate" or "analogous" statute of limitations.21 As a result, the court of appeals for each circuit developed its own method. These methods can generally be

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12. See Kreimer, supra note 10, at 613.
15. Id. at 48 (quoting 42 U.S.C. § 1988 (1982)).
16. Id.
17. Id.
categorized into two approaches: characterizing section 1983 claims in terms of the specific facts generating a particular suit, or applying a more general characterization to all section 1983 actions regardless of the discrete facts involved.

B. Wilson v. Garcia

In 1985, the Supreme Court, attempting to provide uniformity and reduce collateral litigation, held that the characterization of the section 1983 action, for the purpose of selecting a statute of limitations, is a question of federal not state law. Further, the Court held that the best approach when characterizing section 1983 is to select the one most appropriate state statute of limitations for all section 1983 claims. The Court determined that the state statute of limitations for the "tort action for the recovery of damages for personal injuries is the best alternative available."

Wilson eliminated some confusion over the appropriate statute of limitations since section 1983 plaintiffs no longer need to analogize their claims to a particular type of action or theory and hope that their analysis is, in fact, correct. Wilson has, however, spawned new uncertainty and voluminous litigation involving two issues. First, the decision calls for each state to apply its limitations period for the "tort action for the recovery of damages for personal injuries." Problems arise when a state does not clearly provide such a limitations period, or when a state has more than one personal injury statute of limitations.

25. See Garcia v. Wilson, 731 F.2d 640, 648 (10th Cir. 1984) (concluding that, prior to Wilson, there were two general approaches employed by the federal circuits for characterizing § 1983 actions), aff'd, 471 U.S. 261 (1985); Appropriate Statute of Limitations, supra note 10, at 442. See also Jarmie, supra note 23, at 26-36.

26. See infra notes 99-103 and accompanying text.

27. See infra notes 93-98 and accompanying text.


29. Id. at 275.

30. Id. at 268-71.

31. Id. at 271-75.

32. Id. at 276-79.


The second issue, on which this Note will focus, concerns whether Wilson should be given retroactive effect. \(^{37}\) This issue can be divided into two areas: first, where the cause of action accrued and was filed prior to the Wilson decision, \(^{38}\) and second, where the cause of action accrued.

Other issues created by Wilson, which are beyond the scope of this Note, are whether the decision also mandates that the personal injury statute of limitations be used in § 1981 claims, since that statute too, is subject to § 1988; and if so, whether Wilson is to be applied retroactively. The courts are split here as well. Compare Nazaire v. Trans World Airlines, 807 F.2d 1372, 1380 n.5 (7th Cir. 1986) (Wilson requires selection of the personal injury statute of limitations for all § 1983 cases but permits selection of another statute for § 1981 claims) and DiPasalgne v. Elby's Family Restaurants, Inc., 640 F. Supp. 1312, 1314 (S.D. Ohio 1986) (same) with Banks v. Chesapeake and Potomac Tel. Co., 802 F.2d 1416, 1419-20 (D.C. Cir. 1986) (no distinction made between § 1981 and § 1983 claims where the relevant statute of limitations is at issue) and Goodman v. Lukens Steel Co., 777 F.2d 113, 119 (3d Cir. 1985) (same), cert. granted, 107 S. Ct. 568 (1986) and Weaver v. Gross, 40 Fair Empl. Prac. Cas. (BNA) 1069, 1072 (D.D.C. 1986) (same). On the issue of whether Wilson is to be given retroactive effect in § 1981 cases, see Al-Khazraji v. St. Francis College, 784 F.2d 505, 505-14 (3d Cir.), cert. granted, 107 S. Ct. 62 (1986).

37. A retroactivity analysis is defined as a “process by which courts determine whether a new judge-made rule of law should be applied to events arising before the new law was promulgated.” Corr, Retroactivity: A Study in Supreme Court Doctrine “As Applied,” 61 N.C.L. Rev. 745, 745 (1983).


38. E.g., Pratt v. Thornburgh, 807 F.2d 355 (3d Cir. 1986); Loy v. Clamme, 804 F.2d 405 (7th Cir. 1986) (per curiam); Jones v. Shankland, 800 F.2d 77 (6th Cir. 1986); Small v. Inhabitants of Belfast, 796 F.2d 544 (1st Cir. 1986); Ridgway v. Wapello County, 795 F.2d 646 (8th Cir. 1986); Anton v. Lehpamer, 787 F.2d 1141 (7th Cir. 1986); Marks v. Parra, 785 F.2d 1419 (9th Cir. 1986); Farmer v. Cook, 782 F.2d 780 (8th Cir. 1986); Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-767); Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985), cert. denied, 106 S. Ct. 2902 (1986); Rivera v. Green, 775 F.2d 1381 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986); Wycoff v. Menke, 773 F.2d 983 (8th Cir. 1985), cert. denied, 106 S. Ct. 1230 (1986); Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985), cert. denied, 106 S. Ct. 1378 (1986); Fitzgerald v. Larson, 769 F.2d 160 (3d Cir. 1985); Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985), cert. denied, 106 S. Ct. 893 (1986); Bailey v. Faulkner, 765 F.2d 102 (7th Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188 (3d Cir.), cert. denied, 106 S. Ct. 349 (1985); Knoll v. Springfield Township School Dist., 763 F.2d 584 (3d Cir. 1985); Abbott v. Franklin, 731 F.2d 661 (10th Cir. 1984); Jackson v. City of Bloomfield, 731 F.2d 652 (10th Cir. 1984); Carpenter v. City of Fort
before *Wilson* but was filed after *Wilson*. The latter will be referred to as "post-filed claims." The majority of the litigation concerns the former. In both situations, the plaintiff had relied, by either acting or refraining from acting, on clear precedent as to the statute of limitations.

The problem that arises most frequently after *Wilson*, because the decision often mandates a shorter statute of limitations than that formerly used, is that a plaintiff who had a timely claim before the decision is now time-barred. For example, suppose a plaintiff relied on a five-year statute of limitations. Suppose further that the new period mandated by *Wilson* is two years. The plaintiff filed her claim in timely fashion, three years after her cause of action accrued and before the *Wilson* decision was announced. Should the new rule be applied retroactively, or should it be given prospective effect? It is plain that retroactive application would bar the plaintiff even though she may have filed long before

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40. *Compare supra* note 38 with *supra* note 39.

41. *See infra* note 141. It is also possible that the new statute of limitations mandated by *Wilson* is longer than that previously used. For example, where the old statute of limitations was one year and the new statute of limitations is two years, the plaintiff is often given the longer period in which to file suit. *See infra* notes 184-86 and accompanying text. A seemingly "stale" cause of action may be revived if a court gives the plaintiff a longer statute of limitations. *See infra* note 187 and accompanying text.

42. *See infra* notes 142-43.

43. *See supra* note 38 and accompanying text. The problem also arises in post-filed claims. *See supra* note 39, and *infra* notes 159-89 and accompanying text.
Wilson was decided. The Supreme Court has set forth the test for determining whether a rule should be applied prospectively in Chevron Oil Co. v. Huson, which is discussed in Part II.

II. RETROACTIVITY ANALYSIS

A. Chevron Oil Co. v. Huson

The Supreme Court has recognized that "a legal system based on precedent has a built-in presumption of retroactivity." Thus, the general rule is that judicial decisions apply retroactively. The Court, however, as well as the lower federal courts, have carved out exceptions to the general rule. These exceptions evolved, in part, due to the injustice of applying the new rule to litigants who acted or refrained from acting in


46. See, e.g., Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 87-88 (1982) (holding that the bankruptcy courts created by the Bankruptcy Act of 1978 were unconstitutional, was to be given prospective effect); Chevron Oil Co. v. Huson, 404 U.S. 97, 106-09 (1971) (giving prospective effect to a prior holding that off-shore personal injury cases were to be governed by the state statute of limitations of the contiguous state); Stovall v. Denno, 388 U.S. 293, 297 (1967) (giving "line-up" reform cases prospective effect); Linkletter v. Walker, 381 U.S. 618, 639-40 (1965) (giving prospective effect to the exclusionary rule as it applied to warrantless searches by state officers in violation of the fourth amendment); Barina v. Gulf Trading and Transp. Co., 726 F.2d 560, 563-64 (9th Cir. 1984) (declining retroactive application of Supreme Court holding that claims under 29 U.S.C. § 185 were to be governed by a six-month statute of limitations); Edwards v. Teamsters Local Union No. 36, 719 F.2d 1036, 1040-41 (9th Cir. 1983) (same), cert. denied, 465 U.S. 1102 (1984); Stretton v. Penrod Drilling Co., 701 F.2d 441, 444-46 (5th Cir. 1983) (prospectively applying the new rule of Supreme Court recognizing claims for loss of society).


47. The other reason for the evolution of the doctrine of prospectivity was the desire to maintain stability in past transactions that a judicially pronounced change in the law would otherwise undermine. See Beytagh, supra note 37, at 1560; Fairchild, Limitation of New Judge-Made Law to Prospective Effect Only: "Prospective Overruling" of "Sunbursting," 51 Marq. L. Rev. 254, 254-55 (1967).
reliance on the old rule. Litigants should not be subjected to a new law that could not have been known or anticipated when their claims arose. In such cases, the party opposing retroactivity bears the burden of demonstrating that the decision should be given prospective effect.

The Supreme Court in *Chevron Oil Co. v. Huson* set forth three considerations for deciding whether to give a new rule prospective effect in a federal civil case. First, the federal court must determine whether the decision establishes "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, the court 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 retro[active] operation will further or retard its operation." Third, the court must determine whether retroactive application could produce "substantial inequitable results" such that prospective application is necessary to avoid "injustice or hardship." These three prongs of the *Chevron* test are sometimes referred to, respectively, as the reliance, purpose and inequity factors.


52. *Chevron*, 404 U.S. at 106 (citations omitted).

53. Id. at 106-07 (citation omitted).

54. Id. at 107 (citation omitted).

55. *Ridgway v. Wapello County*, 795 F.2d 646, 647 (8th Cir. 1986) (citing *Confusion in Federal Courts, supra* note 37, at 123); see also *Corr, supra* note 37, at 747 (factors labelled as purpose, reliance and effect factors).
B. Application of Chevron

The Supreme Court in *Chevron* analyzed each factor independently and concluded that each favored a prospective application of the new rule. The Court did not explain whether or how to weigh each factor of the *Chevron* test. As a result, lower federal courts have developed three methods of weighing the *Chevron* factors: the balancing method, the comprehensive method, and the threshold method.

Courts that use the balancing method weigh the factors in different ways. One method is to consider the number of factors that favor prospectivity. If at least two of the three favor prospectivity, then the new rule is given such effect. Another method does not give the factors equal weight so that one factor conceivably could outweigh the other two.

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56. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-09 (1971). The Court refused to give retroactive effect to Rodrigue v. Aetna Casualty & Sur. Co., 395 U.S. 352 (1969), which overruled federal precedent of using the general principles of maritime law. See *Chevron*, 404 U.S. at 107-09. Instead, *Rodrigue* directed that off-shore personal injury cases were to be governed by the contiguous state's statute of limitations. *Rodrigue*, 395 U.S. at 355. The Court in *Chevron* was especially concerned with subjecting the plaintiff to a new rule that he did not know or could not have anticipated when he filed his suit. *Chevron*, 404 U.S. at 107-08.

Since *Chevron*, however, in only one other civil case, Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), did the Court address the question of retroactivity. In that case, the Court did not develop extensively the *Chevron* analysis. *Id.* at 87-88; see *Confusion in Federal Courts*, supra note 37, at 123-24. Rather, in a one paragraph analysis, it determined that each *Chevron* factor favored prospectivity. *Northern Pipeline*, 458 U.S. at 87-88.

In *Pembaur* v. City of Cincinnati, 106 S. Ct. 1292 (1986), although the majority did not consider the question of retroactivity, the dissent used a *Chevron* analysis. *Id.* at 1304-06 (Powell, J., dissenting). Justice Powell examined each *Chevron* factor, determined that each favored prospectivity, and thus found that retroactive application of Steagald v. United States, 451 U.S. 204 (1981), was not justified. *Pembaur*, 106 S. Ct. at 1306-07 (Powell, J., dissenting).

57. It is anticipated that when the Court decides AI-Khazraji v. St. Francis College, 784 F.2d 505 (3d Cir.) (use of *Wilson* in analogous 42 U.S.C. § 1981 action and *Chevron* analysis), cert. granted, 107 S. Ct. 62 (1986), and Goodman v. Lukens Steel Co., 777 F.2d 113 (3d Cir. 1985) (use of *Wilson* in § 1981 action), cert. granted, 107 S. Ct. 568 (1986), the lower courts will be provided with much needed direction as to the application of the *Chevron* analysis. See supra note 36. See also Corr, supra note 37, at 763-81; *Confusion in Federal Courts*, supra note 37, at 132-36.

58. See *Confusion in Federal Courts*, supra note 37, at 133-38.

59. See, e.g., Rivera v. Green, 775 F.2d 1381, 1383-84 (9th Cir. 1985) (since reliance factor favored prospectivity, and purpose and inequity factors favored retroactivity, the court applied *Wilson* retroactively), cert. denied, 106 S. Ct. 1656 (1986); Bailey v. Illinois, 622 F. Supp. 504, 509-10 (N.D. Ill. 1985) (in dicta, court stated that reliance and inequity factors favored prospectivity but did not discuss purpose factor). In Moore v. Floro, 614 F. Supp. 328 (N.D. Ill. 1985), *aff'd without opinion*, 801 F.2d 1344 (7th Cir. 1986), the court found that the reliance and inequity factors favored prospectivity but found the purpose prong inconclusive. *Id.* at 332-34. Because the *Moore* court believed the correct application of *Chevron* should be flexible, it determined that this conclusion did not prohibit a finding of prospectivity. *Id.* at 333 n.7. Thus, the court concluded that even if the purpose factor favored retroactivity, it would be greatly outweighed by the other two factors. *Id.* at 334.

60. See, e.g., Stretton v. Penrod Drilling Co., 701 F.2d 441, 446 n.14 (5th Cir. 1983)
Courts that use a comprehensive test require that all three prongs of the *Chevron* analysis favor prospectivity. It has been noted that courts may use this method because every time the Supreme Court has applied *Chevron*, it has found that each factor of the test pointed toward prospectivity.

Courts that employ a threshold method use the first, or reliance, factor as a condition precedent to prospective application. If the court finds that the reliance factor favors prospectivity, then courts either balance the second and third factors, or balance all three. Theoretically, if the threshold is not crossed, courts should not consider the second and third factors. Nevertheless, these factors are often considered, perhaps to

(noting that the purpose factor normally is given greater weight than the other two factors) (citing *S/S Helena v. United States*, 529 F.2d 744, 748 (5th Cir. 1976)); *Fernandez v. Chardon*, 681 F.2d 42, 52 (1st Cir. 1982) (although finding the reliance and purpose factors favored retroactivity, the court stated that it could still hold prospectively if there would be substantial inequitable results), *aff'd sub nom.* *Chardon v. Fumero Soto*, 462 U.S. 650 (1983); *Gamel v. City of San Francisco*, 633 F. Supp. 48, 50 (N.D. Cal. 1986) (affording retroactive application because the inequity factor, which strongly favored retroactivity, outweighed the other two factors); *Corr, supra* note 37, at 766; *Confusion in Federal Courts, supra* note 37, at 134.


62. See *Confusion in Federal Courts, supra* note 37, at 136.


64. See, e.g., *Kremer v. Chem. Constr. Corp.*, 623 F.2d 786, 789 (2d Cir. 1980) (second and third factors should be balanced after finding that first factor favors prospectivity), *aff'd*, 456 U.S. 461 (1982); *Richard H. v. Clay County*, 639 F. Supp. 578, 580-81 (D. Minn. 1986) (after determining that the first factor favored prospectivity, the court went on to consider the other factors. Balancing the second factor, which it deemed inconclusive, against the third factor, where it found that plaintiff had slept on his rights, the court held for retroactive application).


66. See, e.g., *Williams v. City of Atlanta*, 794 F.2d 624, 627-28 (11th Cir. 1986) (even though the court determined that plaintiff's reliance was unreasonable due to the lack of precedential case law, it proceeded to consider the purpose and inequity factors); *Wycoff*
provide an alternative foundation for the court's holding if the threshold
interpretation is not correct.67

The threshold test seems to have evolved from the structure of the
Chevron decision.68 Courts construing the retroactivity of Wilson often
determine that the reliance factor is the most important prong of the
test.69 However, the Supreme Court cases from which the civil retroac-
tivity theory has been largely drawn list the reliance factor second and
the purpose factor first.70 When the Supreme Court decided Chevron, it
inverted the order of the first two factors, placing reliance first.71 Thus,
some courts and commentators have inferred that the reliance factor is
the most fundamental and should be used as a threshold.72

If the main purpose of prospectivity is to prevent the injustice or hard-
ship of retroactive application of a new rule of law to a litigant who relied
on clear past precedent,73 the threshold method best furthers this goal.74
It ensures that a court will not afford prospective application unless, at a

v. Menke, 773 F.2d 983, 986-87 (8th Cir. 1985) (after determining that there was no
reliable clear past precedent, court proceeded to consider purpose and inequity factors),
cert. denied, 106 S. Ct. 1230 (1986); Smith v. City of Pittsburgh, 764 F.2d 188, 194-96 (3d
Cir.) (same), cert. denied, 106 S. Ct. 349 (1985); Snowden v. City of Carbondale, 613 F.
Supp. 1207, 1209 (S.D. Ill. 1985) (same); Braderman v. Pennsylvania Hous. Fin. Agency,

67. See Corr, supra note 37, at 765.
68. See United States v. Johnson, 457 U.S. 537, 550 n.12 (1982); Corr, supra note 37,
at 769.
69. See, e.g., Pratt v. Thornburgh, 807 F.2d 355, 357 (3d Cir. 1986) (“The first con-
sideration ... [is] the one primarily applicable here ... “); Farmer v. Cook, 782 F.2d
780, 781 (8th Cir. 1986) (the reliance interest is the most important factor); Wachovia
1980) (reliance factor is “[t]he first, and most fundamental, factor”), cert. denied, 452
(“The first Chevron factor is the most important factor.”) (citing Wycoff v. Menke, 773
F.2d 983, 985-86 (8th Cir. 1985), cert. denied, 106 S. Ct. 1230 (1986)).
70. Stovall v. Denno, 388 U.S. 293, 297 (1967) (“The criteria guiding resolution of
the question implicate (a) the purpose to be served by the new standards, (b) the extent of
the reliance by law enforcement authorities on the old standards, and (c) the effect on the
administration of justice of a retroactive application of the new standards.”); Linkletter v.
Walker, 381 U.S. 618, 629, 637 (1965) (the Court speaks first of the purposes of the
overruling decision, then of the reliance by the litigants).
71. See Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07 (1971); Corr, supra note 37,
at 763-69. See supra notes 51-53 and accompanying text.
72. See supra notes 63-65 & 69 and accompanying text; Corr, supra note 37, at 769;
Confusion in Federal Courts, supra note 37, at 136-38.
discipline of [prospectivity] is the protection of litigants and lawyers, who have justifiably
relied on an old rule, from the unfair burden of an unexpected change in the law.”), aff’d
without opinion, 801 F.2d 1344 (7th Cir. 1986). Prospective application of a change in
the law is regarded as balancing the reliance of litigants against the necessity of responding to
changing values and needs of society. Note, A New Federal Statute of Limitations for
Section 301/Fair Representation Claims: Should It Have Retroactive Application?, 12
Fordham Urb. L.J. 591, 601 n.53 (1984). See also sources cited supra note 37 and infra
note 184.
74. Confusion in Federal Courts, supra note 37, at 137.
minimum, clear and reliable past precedent was overruled.\textsuperscript{75}

This Note endorses a type of threshold approach and, thus, supplies analysis only for situations where there is clear past precedent. Where there is no clear past precedent, there cannot be justifiable reliance and the first factor favors retroactivity.\textsuperscript{76} Since there is no justifiable reliance, there is no hardship to the litigant if the general presumption of retroactivity is followed.\textsuperscript{77} Although the threshold analysis ends here, even if the other factors are considered, when the first factor favors retroactivity, the other factors most often favor retroactivity as well.\textsuperscript{78}

III. THE CHEVRON RETROACTIVITY ANALYSIS APPLIED TO WILSON

A. The First Chevron Prong: The Reliance Factor

The first Chevron factor, often construed as the most important,\textsuperscript{79} requires a court to determine whether a new principle of law overrules clear past precedent on which litigants could have relied or addresses an "issue of first impression whose resolution was not clearly foreshadowed."\textsuperscript{80} Although Chevron provides two alternatives, since the issue decided in Wilson was not an issue of first impression,\textsuperscript{81} the question of

\textsuperscript{75} See id.


\textsuperscript{78} This is the usual result due to the interrelationship between the reliance and inequity factors. See, e.g., Fitzgerald v. Larson, 769 F.2d 160, 164 (3d Cir. 1985) ("In practice, this consideration of the third factor overlaps with that of the first factor . . . ."); Cash v. Califano, 621 F.2d 626, 629 (4th Cir. 1980) ("[T]he final factor of 'inequitable result' is closely tied to the initial reliance factor."); Braderman v. Pennsylvania Hous. Fin. Agency, 610 F. Supp. 1069, 1072 (M.D. Pa. 1985) ("The third part of the Chevron test often involves the same factors as the first part.").

In most cases, where the cause of action accrued and was filed before the law-changing decision (i.e., Wilson) the first and third factors yield the same result. See infra note 137. Therefore, where the claim is filed before Wilson was decided and the court determines that there was no reliable past precedent, if the court applies a balancing test, two of the three Chevron factors will militate toward retroactivity. See Fitzgerald, 769 F.2d at 164 (the purpose factor militated neither in favor of nor against retroactive application, while the reliance and inequity factors favored retroactivity); Smith v. City of Pittsburgh, 764 F.2d 188, 196 (3d Cir.)(same), cert. denied, 106 S. Ct. 349 (1985); Braderman, 610 F. Supp. at 1072 (same). If a court applies a comprehensive test, the purpose factor must favor retroactivity as well. See Wycoff v. Menke, 773 F.2d 983, 986-87 (8th Cir. 1985) (court found all three factors favored retroactivity), cert. denied, 106 S. Ct. 1230 (1986); Snowden v. City of Carbondale, 613 F. Supp. 1207, 1209-10 (S.D. Ill. 1985) (same).

\textsuperscript{79} See supra note 69.

\textsuperscript{80} Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971).

\textsuperscript{81} See Carpenter v. City of Fort Wayne, 637 F. Supp. 889, 893 (N.D. Ind. 1986) ("Because there is ample pre-Wilson authority on the appropriate statute of limitations for § 1983 actions . . . the 'issue of first impression' aspect of the analysis is irrelevant.")
the retroactivity of *Wilson* concerns the first—overruling clear past precedent on which the litigants may have relied. Therefore, the first *Chevron* factor, the reliance factor, has three steps: 1) a new rule 2) that overrules clear past precedent 3) on which litigants could justifiably rely. 82

The first step in the analysis of the reliance factor is to determine whether the approach mandated by *Wilson* actually is novel. 83 For all circuits except the Fourth Circuit, which had already been applying a uniform personal injury statute of limitations, 84 *Wilson* represents a new method of determining the proper statute of limitations. 85

Second, the court must determine if and when there was clear past precedent on which the litigants could rely. Defendants frequently argue that the court should examine the precedent nationwide, rather than that within the circuit. 86 This argument is unavailing since it would vitiate the first prong of the *Chevron* test. 88 Using a nationwide examina-

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82. See *Smith v. City of Pittsburgh*, 764 F.2d 188, 194-95 (3d Cir.) (*Wilson* represented a new analytical approach, yet the old approach had produced no clear precedent on which litigants could justifiably rely. Therefore, the first factor favored retroactivity.), cert. denied, 106 S. Ct. 1230 (1986).

83. See *supra* note 82 and accompanying text; see also *Corr*, supra note 37, at 769 (*Chevron* established a novelty prerequisite).


85. Before April 17, 1985, the overwhelming majority of circuits did not use the approach mandated by *Wilson*—the selection of the personal injury statute of limitations — to determine the “analogous” or “appropriate” statute of limitations for § 1983 claims. *See supra* notes 21-27 and infra notes 93-95 and accompanying text. By mandating that a state's personal injury statute of limitations apply to § 1983 claims, *Wilson* clearly represents a new analytical approach. *See supra* note 82.


88. *Moore v. Floro*, 614 F. Supp. 328, 333 n.6 (N.D. Ill. 1985), *aff'd without opinion*, 801 F.2d 1344 (7th Cir. 1986). This argument taken to its logical extreme, would vitiate *sub silentio* the three-prong *Chevron*
tion, there could never be a finding of clear past precedent because the Supreme Court often hears a case precisely because there is an inter-circuit conflict.\footnote{Id.} Therefore, since under a nationwide approach there could never be a finding of clear past precedent, this factor would always favor retroactivity.\footnote{Id.}

Moreover, in \textit{Chevron}, the Court focused on the precedent within the Fifth Circuit directly affected by its prior holding.\footnote{Chevron Oil Co. v. Huson, 404 U.S. 97, 107 (1971). Even though the circuits were in conflict as to which approach was correct prior to Wilson, litigants in a particular circuit were entitled to rely on the law of that circuit. See Moore v. Floro, 614 F. Supp. 328, 332 n.5 (N.D. Ill. 1985), aff'd without opinion, 801 F.2d 1344 (7th Cir. 1986). Cf. United States v. Stauffer Chem. Co., 464 U.S. 165, 177-81 (1984) (White, J., concurring) (with respect to conflicts in the circuits, a decision in one circuit is not controlling on litigants in another).} The lower courts considering the retroactivity of \textit{Wilson} have also concentrated on the precedent within the circuit prior to the \textit{Wilson} decision,\footnote{Id.} and have not acceded to defendants' requests for a nationwide examination. Thus, it is clear that a determination of the precedent within the circuit is the most logical approach. To determine whether the precedent within the circuit was clear, the court must examine whether there was a uniform approach for all section 1983 actions or a tort-specific approach.

Prior to \textit{Wilson}, courts that used a uniform approach borrowed one state statute of limitations as the analogous prescriptive period mandated by section 1988 for all section 1983 actions within that state.\footnote{See supra notes 25-27 and accompanying text.} This statute of limitations was usually either a "residual" statute of limitations\footnote{Garmon v. Foust, 668 F.2d 400, 401 (8th Cir.) (affirming the district court's selection of the residual limitations period in Iowa), \textit{cert. denied}, 456 U.S. 998 (1982); Bevard v. Robinson, 563 F.2d 331, 335-36 (7th Cir. 1977) (using the statute of limitations for "actions not otherwise provided for" in Illinois), \textit{cert. denied}, 438 U.S. 907 (1978).} or a statute of limitations for "liability created or imposed by statute."\footnote{Pauk v. Board of Trustees, 634 F.2d 856, 858 (2d Cir. 1981) (applying the statute of limitations for "liability created or imposed by statute"), \textit{cert. denied}, 455 U.S. 1000 (1982); Smith v. Cremins, 308 F.2d 187, 190 (9th Cir. 1962) (applying the statute of limitations for "liability created by statute").
For these states, *Wilson* represents a new rule that overrules clear and reliable past precedent.\textsuperscript{96} Thus, the first factor favors prospectivity.\textsuperscript{97} Where there was uniform precedent, the courts look less to the actual litigants before the court, and instead infer statewide reliance by all plaintiffs who filed within the specified prescriptive period.\textsuperscript{98} By contrast, where there was no uniform approach, the litigant seeking prospective

\textsuperscript{96} For example, clear past precedent existed in California since 1962 when the Court of Appeals for the Ninth Circuit decided that the appropriate statute of limitations for § 1983 actions was the three-year limitations period for "liability created by statute." *Smith v. Cremins*, 308 F.2d 187, 190 (9th Cir. 1962); see also *Gibson v. United States*, 781 F.2d 1334, 1338-39 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676). Similarly, in the Court of Appeals for the Second Circuit, New York's precedent was clear as to the use in § 1983 actions of the three-year statute of limitations. See *Pauk v. Board of Trustees*, 654 F.2d 856, 858 (2d Cir. 1981), cert. denied, 455 U.S. 1000 (1982); see also *San- ders v. New York*, 629 F. Supp. 1067, 1068 (N.D.N.Y. 1986).

In the Court of Appeals for the Seventh Circuit, the approach used since 1977 in Illinois was to borrow the five-year statute of limitations for "actions not otherwise provided for." *Beard v. Robinson*, 563 F.2d 331, 335 (7th Cir. 1977), cert. denied, 438 U.S. 907 (1978); see also *Anton v. Lehpamer*, 787 F.2d 1141, 1142 (7th Cir. 1986).


\textsuperscript{98} See, e.g., *Gibson v. United States*, 781 F.2d 1334, 1339 (9th Cir. 1986) ("By directing courts to tie section 1983 actions to a different, shorter limitations provision, *Wilson* marks a clear break from settled circuit authority, potentially of great prejudice to litigants who relied upon the earlier rule. Consideration of the first *Chevron* factor thus militates against retroactivity."). cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676). Several district courts in California, when discussing the first *Chevron* prong, cite *Gibson*, and perform little of their own analysis as to the particular litigant's reliance. See, e.g., *Cabales v. County of Los Angeles*, 644 F. Supp. 1352, 1354 (C.D. Cal. 1986) ("As explained in *Gibson*, the first *Chevron* factor counsels against retroactive application . . ."); *Gamal v. City of San Francisco*, 633 F. Supp. 48, 50 (N.D. Cal. 1986) ("The first two factors apply in the same way to the instant case as they did in *Gibson*. Clearly *Wilson* establishes a rule different from the one previously in force in this circuit.").

There is a similar line of cases in the Seventh Circuit which puts little emphasis on the particular parties, and more emphasis on litigants in general. See *Anton v. Lehpamer*, 787 F.2d 1141, 1144 (7th Cir. 1986) ("*Wilson* explicitly mandated that a different statute of limitations is the most analogous; it overruled clear past precedent upon which litigants were entitled to rely when they filed a section 1983 action in Illinois."); see, e.g., *Walker v. Day*, No. 85-C-7520, slip op. at 2 (N.D. Ill. July 14, 1986) (applying the *Anton* formula to the facts of the case, see * infra* notes 167-83 and accompanying text, without examining whether the particular plaintiff relied on the old statute of limitations); *Photos v. Township High School Dist. No. 211*, 639 F. Supp. 1050, 1054 (N.D. Ill. 1986) (same); *Benegas v. Cardin*, No. 85-C-8492, slip op. at 2 (N.D. Ill. May 29, 1986) (same); *Alvarez v. Cardin*, No. 85-C-8492, 1986-676). Several district courts in California, when discussing the first *Chevron* prong, cite *Gibson*, and perform little of their own analysis as to the particular litigant's reliance. See, e.g., *Cabales v. County of Los Angeles*, 644 F. Supp. 1352, 1354 (C.D. Cal. 1986) ("As explained in *Gibson*, the first *Chevron* factor counsels against retroactive application . . ."); *Gamal v. City of San Francisco*, 633 F. Supp. 48, 50 (N.D. Cal. 1986) ("The first two factors apply in the same way to the instant case as they did in *Gibson*. Clearly *Wilson* establishes a rule different from the one previously in force in this circuit.").
application has a more difficult task of showing reliance.\footnote{99}

Courts that did not use the uniform approach before \textit{Wilson} generally used a "tort-specific" approach.\footnote{100} These courts characterized the action in terms of the specific facts generating the suit and borrowed the analogous state tort action's statute of limitations. The existence of clear past precedent for the purposes of the reliance factor, therefore, may depend on the particular tort alleged.\footnote{101}

A conclusion that can be drawn from a line of cases interpreting \textit{Wilson} in the Fifth Circuit\footnote{102} is that if the prior practice was a tort-specific approach, the court must consider carefully each case before it, characterize the claim involved, and then determine if the precedent for that particular state tort action was clear. Thus, compared to those situations where a uniform approach was used, it is more difficult to discern a circuit-wide rule of retroactive or prospective application of \textit{Wilson} when there was prior use of a tort-specific approach.\footnote{103}

In the final step of its analysis of the first prong, a court, having determined that there was clear past precedent as of a certain date, must consider when the cause of action accrued to determine whether the plaintiff justifiably relied on the precedent.\footnote{104} At this point in the analysis, courts

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\textsuperscript{99} See \textit{infra} notes 101-03 and accompanying text.\\
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\textsuperscript{101} For example, the Court of Appeals for the Fifth Circuit found that while \textit{Wilson} represented a new rule, \textit{Gates v. Spinks}, 771 F.2d 916, 918 (5th Cir. 1985), \textit{cert. denied}, 106 S. Ct. 1378 (1986), there was no clear past precedent for an employment discharge case. \textit{See id.} at 919. Therefore, the court applied the one-year limitations period mandated by \textit{Wilson} retroactively. \textit{See id.} at 920. The next year, the Southern District of Mississippi, in a police neglect case, \textit{Stewart v. Russell}, 628 F. Supp. 1361 (S.D. Miss. 1986), found that there was in fact an overruling of clear past precedent, \textit{id.} at 1364, as well as a clear break from the old analytical approach. \textit{Id.} at 1364-65. In \textit{Stewart}, the plaintiff justifiably relied upon precedent that called for a six-year statute of limitations for all \textsection{1983} actions against law enforcement officials. \textit{Id.} at 1364. Therefore, since the precedent was clear, the court found that this factor militated in favor of prospectivity. \textit{Id.} at 1364-65.
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\textsuperscript{102} See \textit{supra} note 101.
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\textsuperscript{103} \textit{See} \textit{Stewart v. Russell}, 628 F. Supp. 1361, 1362 (S.D. Miss. 1986) ("Utilizing a case-by-case analysis which this court deems both fair and appropriate under \textit{Chevron}," the court concluded that \textit{Wilson} should not be given retroactive application); \textit{see also} \textit{Chris N. v. Burnsville}, 634 F. Supp. 1402, 1406 (D. Minn. 1986) ("The [c]ourt concludes that rather than establishing a blanket rule of retroactivity applicable to all cases throughout the Eighth Circuit, \textit{Wycoff} and \textit{progeny} establish a more limited precedent applicable to a specific category of cases."') (quoting \textit{Wycoff v. Menke}, 773 F.2d 983 (8th Cir. 1985), \textit{cert. denied}, 106 S. Ct. 1230 (1986)).
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\textsuperscript{104} \textit{See} \textit{Richard H. v. Clay County}, 639 F. Supp. 578, 580 (D. Minn. 1986) ("In analyzing the plaintiff's reliance . . . the court should consider not only the date that his case accrued, but also the date upon which he filed his suit."); \textit{see also} \textit{Pratt v. Thornburgh}, 807 F.2d 355, 357-59 (3d Cir. 1986) (determining when the plaintiff's cause of

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often distinguish between those claims filed before Wilson and those filed after Wilson. For example, in a post-filed claim, where a plaintiff’s cause of action arose before Wilson but was filed after Wilson was decided, the plaintiff is sometimes held to the new statute of limitations period mandated by Wilson if it was possible to file a claim within the new period. Courts reason that the plaintiff should have been aware of the change of law and thus, should have filed immediately so as not to appear to be sleeping on her rights. Where it was not possible to file a claim within the new period, courts should give a reasonable period after the Wilson decision to file the claim.

Where the plaintiff’s cause of action was filed before Wilson was decided, courts are less inclined to hold the plaintiff to the new statute of limitations mandated by Wilson because the claim was filed in compliance with the applicable law at the time her cause of action accrued.

See, e.g., Cabrales v. County of Los Angeles, 644 F. Supp. 1352, 1354 (C.D. Cal. 1986) (“This case raises the open question of how Wilson should apply to claims that accrued prior to, but were filed after the date Wilson was decided.”) (footnote omitted); Richard H. v. Clay County, 639 F. Supp. 578, 581 (D. Minn. 1986) (“In the instant case, plaintiff did not file until . . . almost nine months following Wilson . . . .”); Gamel v. City of San Francisco, 633 F. Supp. 48, 49 (N.D. Cal. 1986) (court distinguished this case from previous Ninth Circuit decision that involved pre-Wilson filing). See also supra note 39 and accompanying text.

See Sockman v. City of Erie, 645 F. Supp. 52, 54-55 (W.D. Pa. 1986) (applying new statute of limitations retroactively since plaintiff had at least nine months within which to file his complaint in compliance with the new two-year period mandated by Wilson); Gamel v. City of San Francisco, 633 F. Supp. 48, 50 (N.D. Cal. 1986) (“Wilson was decided . . . almost eight months before the action would become time barred under a one year statute of limitations. . . . Gamel had ample time to file an action within the new time limit.”).


See, e.g., Anton v. Lehpamer, 787 F.2d 1141, 1145-46 (7th Cir. 1986); Cabrales v. County of Los Angeles, 644 F. Supp. 1352, 1355 (C.D. Cal. 1986); Richard H. v. Clay County, 639 F. Supp. 578, 580 (D. Minn. 1986); Chris N. v. Burnsville, 634 F. Supp. 1402, 1413 (D. Minn. 1986); Gamel v. City of San Francisco, 633 F. Supp. 48, 50 (N.D. Cal. 1986); Wegrzyn v. Illinois Dep’t of Children and Family Servs., 627 F. Supp. 636, 640-41 (C.D. Ill. 1986); Shorters v. City of Chicago, 617 F. Supp. 661, 668 (N.D. Ill. 1985). But see Williams v. City of Atlanta, 794 F.2d 624, 628 (11th Cir. 1986) (plaintiff filed two months after Wilson but was not granted reasonable grace period); Arvidson v. City of Mankato, 635 F. Supp. 112, 113 (D. Minn. 1986) (plaintiff filed three months after Wilson but was not given reasonable period). For a further discussion of the difference between cases filed before and after Wilson, see infra note 149.

See Chris N. v. Burnsville, 634 F. Supp. 1402, 1412 (D. Minn. 1986) (“The court refuses to wreak subsequently imposed requirements on plaintiffs who did all that was necessary to comply with the law applicable at the time their causes of action accrued and were filed.”); John Does 1-100 v. Ninneman, 634 F. Supp. 341, 345 (D. Minn. 1986)
By applying *Wilson* prospectively, the court avoids the “brutal absurdity of commanding a [person] today to do something yesterday.”\(^{110}\)

The ideal approach to the first prong of the *Chevron* analysis, then, involves three steps. First, the court must consider whether the approach mandated by *Wilson* is actually novel. Next, the court must determine whether there is clear past precedent either for the particular tort action alleged under section 1983, or for all section 1983 actions within the state, and when that precedent became clear. If there was no clear past precedent on which plaintiff could justifiably rely, the retroactivity analysis should end here. Finally, if there is clear past precedent, the court must determine, based on the date plaintiff filed her action, whether justifiable reliance on the clear past precedent existed.

### B. The Second Chevron Prong: The Purpose Factor

The second prong of *Chevron* requires the court to examine the history, purpose and effect of the new rule to determine if retroactive application will “further or retard” operation of the new rule.\(^{111}\) Most courts construing this factor do not give proper attention to the goals behind section 1983.\(^{112}\) Rather, they look solely to the purposes mentioned in one part of the *Wilson* decision.\(^{113}\)

#### 1. The Purposes of *Wilson v. Garcia*

*Wilson* expressly states that the decision to apply uniformly the single most appropriate statute of limitations in each state furthers federal interests in “uniformity, certainty, and the minimization of unnecessary litigation.”\(^{114}\) *Wilson*, however, was concerned with other interests as well.\(^{115}\) Indeed, the underlying reason the Court heard the case was to

\(^{110}\) L. Fuller, The Morality of Laws 59 (1964).

\(^{111}\) Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07 (1971) ("[I]t 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.'") (citation omitted).

\(^{112}\) See infra notes 123-25 and accompanying text.

\(^{113}\) Wilson v. Garcia, 471 U.S. 261, 275 (1985) (these purposes are “uniformity, certainty, and the minimization of unnecessary litigation”).

\(^{114}\) Id.

\(^{115}\) See *id.* at 272 (the Court was also concerned with the “high purposes of this unique remedy”). The Court specifically stated that “the conflict, confusion, and uncertainty concerning the appropriate statute of limitations to apply to this most important,
further the federal interest in safeguarding federal civil rights.\textsuperscript{116} The Court characterized section 1983 as involving claims for personal injuries in order to vindicate the interests protected by section 1983.\textsuperscript{117} Thus, in order to give full effect to the purposes of \textit{Wilson}, it is necessary to analyze the purposes of section 1983.

2. Purposes of Section 1983

Section 1983 provides a private individual with a civil cause of action against any person who, under color of state law, has deprived or will deprive the litigant of a federal constitutional or statutory right.\textsuperscript{118} Although this statute does not afford any substantive rights,\textsuperscript{119} it was enacted in order to provide a remedy for the deprivation of constitutional rights where state law is inadequate or "where the state remedy, though adequate in theory, [is] not available in practice."\textsuperscript{120}

Section 1983 established the role of the federal government as a guarantor of basic federal rights against state power.\textsuperscript{121} Its purpose is to prevent state agents from violating the fourteenth amendment and certain federal statutes and to compensate plaintiffs for deprivations of their federal rights.\textsuperscript{122}

3. Second Prong Applied

Most courts considering the retroactivity of \textit{Wilson} determine that the purpose factor is inconclusive.\textsuperscript{123} Often these courts give no real basis for...
this conclusion but only state: "On balance, we cannot say that retro[active] application . . . would either hamper or promote these goals" of uniformity, certainty and minimization of unnecessary litigation.124 Thus, the majority approach looks solely to the explicit interests of Wilson without proper consideration of the goals behind section 1983.125

When the purposes of section 1983 are considered, however, the purpose factor is not inconclusive.126 The opinion in Anton v. Lehpamer127 best demonstrates this proposition. In Anton, the Court of Appeals for the Seventh Circuit noted that when the Wilson interests of promoting uniformity and reducing collateral litigation are the only interests considered, retroactive application neither promotes nor hampers these interests.128 The Anton court then went beyond the interests of Wilson. It noted that the Supreme Court, in safeguarding the rights of federal civil rights litigants, expressed concern that the statutes of limitations applied in section 1983 actions "fairly serve the federal interests vindicated by [section] 1983."129

The Anton court concluded that the practical effect of using the two-year personal injury statute of limitations mandated by Wilson, rather than the five-year residual statute on which the plaintiff in Anton had relied, would be to reduce the time period within which a plaintiff may

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Wapello County, 795 F.2d 646, 648 (8th Cir. 1986). The Court of Appeals for the Eighth Circuit stated:

Wilson merely promotes nationwide uniformity in deciding which of a state's several statutes of limitations applies in section 1983 actions. It does not secure nationwide uniformity as to the actual time within which such actions may be filed, and retroactive application in the present case would not make any appreciable contribution to such uniformity.

Id. at 648. Similarly, the Court of Appeals for the Seventh Circuit stated that "Wilson simply mandates that [sic] the same type of statute of limitations . . . will apply to all section 1983 actions; it does not mandate a specific length of limitation." Anton v. Lehpamer, 787 F.2d 1141, 1145 (7th Cir. 1986). The Anton court, however, contrary to the court in Ridgway, 795 F.2d at 648, determined that consideration of the interest of uniformity alone yielded an inconclusive result. See Anton, 787 F.2d at 1145; see infra text accompanying note 128.


125. See, e.g., Williams v. City of Atlanta, 794 F.2d 624, 627-28 (11th Cir. 1986); Smith v. City of Pittsburgh, 764 F.2d 188, 196 (3d Cir.), cert. denied, 106 S. Ct. 349 (1985); see supra note 123.


127. 787 F.2d 1141 (7th Cir. 1986).

128. Id. at 1145.

129. Id. (quoting Wilson v. Garcia, 471 U.S. 261, 279 (1985)).
commence a section 1983 action. Therefore, total retroactive application of Wilson in cases such as the one before the court "would preclude some plaintiffs from vindicating constitutional rights protected by section 1983 simply because the time for filing a suit had been reduced after the cause of action accrued or . . . after the litigation had begun."\(^{131}\)

According to the Anton court, because the Wilson interests of establishing uniformity and reducing litigation are not impaired by prospective application,\(^{132}\) and "the [federal] interest of safeguarding the rights of federal civil rights litigants is retarded by retroactive application,"\(^{133}\) the purpose factor favors prospectivity.\(^{134}\)

Because the Wilson decision was based on the vindication of federal civil rights and involves more than the three interests considered by most courts,\(^{135}\) it is necessary to appraise the purposes of section 1983. Moreover, when the purposes of section 1983 are considered, the purpose factor will not yield "inconclusive" results. Rather, by adopting the method used in Anton, a court will find, as to the purpose factor, that the federal interests associated with section 1983 will be best served by prospective application of Wilson.

C. The Third Chevron Prong: The Inequity Factor

The third prong dictates that a court must weigh the inequity imposed by retroactive application.\(^{136}\) Chevron states that where a decision could produce "substantial inequitable results" to the litigants if applied retroactively, courts should avoid "injustice or hardship" by applying the decision prospectively.\(^{137}\)

\(^{130}\) Anton v. Lehpamer, 787 F.2d 1141, 1145 (7th Cir. 1986).

\(^{131}\) Id.

\(^{132}\) Id.

\(^{133}\) Id. (emphasis added).

\(^{134}\) Id.

\(^{135}\) See supra note 124 and accompanying text.


\(^{137}\) Id.

Most courts that have considered the retroactivity of Wilson have found that the reliance and inequity factors are so interrelated that they require almost the same analysis. See Ridgway v. Wapello County, 795 F.2d 646, 648 (8th Cir. 1986); Fitzgerald v. Larson, 769 F.2d 160, 164 (3d Cir. 1985); Stewart v. Russell, 628 F. Supp. 1361, 1365 (S.D. Miss. 1986); Braderman v. Pennsylvania Hous. Fin. Agency, 610 F. Supp. 1069, 1072 (M.D. Pa. 1985); Winston v. Sanders, 610 F. Supp. 176, 178 (C.D. Ill. 1985).


The reason for the interrelationship is that where a court finds that there was no clear past precedent on which plaintiff could justifiably rely, it usually follows that no substantial inequitable results will arise if the new rule is applied retroactively. Thus, in these
1. Analysis When the Limitations Period is Abbreviated by Retroactive Application of Wilson

Because the *Chevron* analysis does not specify plaintiff or defendant, the court, in applying this factor, must balance the equities between the plaintiff and the defendant. In a retroactivity analysis of *Wilson*, however, courts are concerned primarily with the inequitable results to the plaintiff because, after *Wilson*, the statute of limitations is usually abbreviated. In most cases courts look at whether it would be inequa-

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cases, where the first factor militates toward retroactivity, the third factor most often will do the same. See, e.g., Williams v. City of Atlanta, 794 F.2d 624, 627 (11th Cir. 1986); Fitzgerald v. Larson, 769 F.2d 160, 164 (3d Cir. 1985); Smith v. City of Pittsburgh, 764 F.2d 188, 194-95 (3d Cir.), cert. denied, 106 S. Ct. 349 (1985); Braderman v. Pennsylvania Hous. Fin. Agency, 610 F. Supp. 1069, 1072 (M.D. Pa. 1985).

The converse is also true: where a court finds that the plaintiff relied on clear past precedent, it usually follows that substantial inequitable results will arise if the new rule is applied retroactively. See *Chevron Oil Co. v. Huson*, 404 U.S. 97, 108 (1971); *Smith v. City of Pittsburgh*, 764 F.2d 188, 196 (3d Cir.), cert. denied, 106 S. Ct. 349 (1985); *Jackson v. City of Bloomfield*, 731 F.2d 652, 655 (10th Cir. 1984); *Stewart v. Russell*, 628 F. Supp. 1361, 1365 (S.D. Miss. 1986).

Only a few courts have found that the reliance factor favors prospectivity and that the inequity factor favors retroactivity. See *Richard H. v. Clay County*, 639 F. Supp. 578 (D. Minn. 1986); *Gamel v. City of San Francisco*, 633 F. Supp. 48 (N.D. Cal. 1986). In those cases the cause of action accrued before *Wilson* was decided but was filed after *Wilson*. These courts reasoned that the plaintiff should have filed within a reasonable period after the change in the law. Otherwise, the plaintiff would be "slumbering on her rights." See *supra* note 107. For a further discussion of post-*Wilson* filings, see infra notes 146-179 and accompanying text.

A solution that eliminates this disorganization and aids in the comprehension of the analysis by providing continuity is to consider the reliance factor first and the inequity factor second since they are inherently related, and the purpose factor last.

138. *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106 (1971) ("[T]he decision to be applied nonretroactively must establish a new principle of law ... by overruling clear past precedents on which litigants may have relied . . . .") (emphasis added).


140. See *Ridgway v. Wapello County*, 795 F.2d 646, 648 (8th Cir. 1986); *Anton v. Lehpamer*, 787 F.2d 1141, 1145-46 (7th Cir. 1986); *Gibson v. United States*, 781 F.2d 1334, 1339 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676); *Jackson v. City of Bloomfield*, 731 F.2d 652, 654-55 (10th Cir. 1984). *But see Bartholomew v. Fischl*, 782 F.2d 1148, 1155 (3d Cir. 1986) (case differs from most because the defendants, rather than the plaintiff, sought to avoid retroactive application of the *Wilson* decision); *Rivera v. Green*, 775 F.2d 1381, 1383-84 (9th Cir. 1985) (same), cert. denied, 106 S. Ct. 1656 (1986); *Jones v. Preuit & Mauldin*, 763 F.2d 1250, 1253 n.2 (11th Cir. 1985) (same), cert. denied, 106 S. Ct. 893 (1986).

141. See *Loy v. Clamme*, 804 F.2d 405, 408 (7th Cir. 1986) (per curiam) (from five years to two years); *Ridgway v. Wapello County*, 795 F.2d 646, 647 (8th Cir. 1986) (from five years to two years); *Anton v. Lehpamer*, 787 F.2d 1141, 1142 (7th Cir. 1986) (same); *Gibson v. United States*, 781 F.2d 1334, 1338-39 (9th Cir. 1986) (from three years to one year), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676); *Jackson v. City of Bloomfield*, 731 F.2d 652, 653 (10th Cir. 1984) (from four years to three years); *Thompson v. County of Rock*, 648 F. Supp. 861, 866 (W.D. Wis. 1986) (from six years to three years). *But see Small v. Inhabitants of Belfast*, 796 F.2d 544, 546-49 (1st Cir. 1986) (statute of limitations lengthened from two to six years in Maine); *Rivera v. Green*, 775 F.2d 1381, 1383 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986) (statute of limita-
able to hold that the plaintiff slept on her rights at a time when she could not have known the time limitation the law imposed upon her. Courts consider that the plaintiff is foreclosed from her day in court for having relied on past precedent, presuming, of course, that there was clear past precedent.

Although consideration of fairness to the plaintiff is quite important, it must be balanced against the consideration of fairness to the defendant. Due to the frequent abbreviation of the statute of limitations, defendants most often argue for a retroactive application of Wilson that bars plaintiff's claim.  

142. Chevron Oil Co. v. Huson, 404 U.S. 97, 108 (1971) ("It would ... produce the most 'substantial inequitable results' to hold that the respondent 'slept on his rights' at a time when he could not have known the time limitation that the law imposed upon him.") (citation omitted); Jackson v. City of Bloomfield, 731 F.2d 652, 655 (10th Cir. 1984) ("It would be most unjust to hold that plaintiffs have slept on their rights, based on a change in the law occurring after their action was filed."); Cabrales v. County of Los Angeles, 644 F. Supp. 1352, 1354 (C.D. Cal. 1986) (it would be inequitable "to preclude plaintiffs from filing their § 1983 claims by granting Wilson retroactive effect."); Gamel v. City of San Francisco, 633 F. Supp. 48, 50 (N.D. Cal. 1986) ("The result [of retroactive application] could be different if the one year period had already passed by the time Wilson was announced."); Ross v. Summers, 630 F. Supp. 1267, 1270 (N.D. Ind. 1986) ("[T]his court . . . must decline to apply Wilson v. Garcia retroactively to foreclose the prosecution of the plaintiff's claims."); Stewart v. Russell, 628 F. Supp. 1352, 1354 (N.D. Miss. 1986) ("Thus, plaintiff's attorney cannot be charged with notice that the one-year statute might be applied to bar this action and it is fundamentally unfair to hold him responsible for anticipating the clear change in § 1983 law and analysis."); Cook v. City of Minneapolis, 617 F. Supp. 461, 466 (D. Minn. 1985) ("Such a result would be unjust and would foreclose this Plaintiff from her day in court in regard to her complaint under § 1983."); Bailey v. Illinois, 622 F. Supp. 504, 509 (N.D. Ill. 1985) ("[T]o apply Wilson to the present case would essentially rob [plaintiff] of her day in court."); Cook v. City of Minneapolis, 617 F. Supp. 461, 466 (D. Minn. 1985) ("Such a result would be unjust and would foreclose this Plaintiff from her day in court in regard to her complaint under § 1983.");)

143. Jackson v. City of Bloomfield, 731 F.2d 652, 655 (10th Cir. 1984) ("We will not bar plaintiffs' right to their day in court when their action was timely under the law in effect at the time their suit was commenced."); cited with approval in, Wilson v. Garcia, 471 U.S. 261, 266 n.10 (1985); Carpenter v. City of Fort Wayne, 637 F. Supp. 889, 896 (N.D. Ind. 1986) ("The case suggests that a diligent plaintiff forced to lose his claim because of the retroactive application of Wilson is subject to the type of inequity which counsels against retroactive application."); Chris N. v. Burnsville, 634 F. Supp. 1402, 1412 (D. Minn. 1986) ("To hold that plaintiff's lawsuit is retroactively time-barred would have the effect of depriving plaintiff of any remedy whatsoever on the basis of a 'superceding legal doctrine that was quite unforeseeable.'") (citation omitted).

Although in many cases the defendant's position has not merited extended judicial discussion, the defendant's equities become more

purposes behind statutes of limitations. One such purpose is the policy of repose that limits the periods within which actions may be brought and rights may be enforced. See Special Project, *Time Bars in Specialized Federal Common Law: Federal Rights of Action and State Statutes of Limitations*, 65 Cornell L. Rev. 1011, 1016 (1980) ("While the statutory period is running, the possibility of litigation influences the activity of . . . [the] parties. Once the statute has run, there is 'repose.'") (footnotes omitted). See also *Wilson v. Garcia*, 471 U.S. 261, 271 (1985) ("In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten."); *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 349 (1944) ("[T]he right to be free of stale claims in time comes to prevail over the right to prosecute them."). Another underlying rationale for statutes of limitations is notice. Timely notice promotes fair adjudication of disputes by advising defendants of the need to conserve evidence and witnesses required to mount a defense. See, e.g., *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944). The Court in that case stated:

Statutes of limitation . . . promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation . . . .

Id. 145. See supra note 140 and accompanying text. Some courts, however, have taken the defendants' position into consideration. For example, in *Chris N. v. Burnsville*, 634 F. Supp. 1402 (D. Minn. 1986), the plaintiff had a post-filed claim and had been relying on a six-year statute of limitations. Id. at 1406-11. The plaintiff filed suit six months after *Wilson* was decided, a little over three years after the cause of action accrued. Id. at 1413. Citing *Wilson*, the defendants argued for retroactive application. Id. at 1406. In balancing the equities of the litigants, the court refused to "wreak subsequently imposed requirements" on plaintiffs who filed claims in accordance with the applicable law at the time their causes of action accrued. Id. at 1412. The court determined that "[w]hile prejudice to the defendants 'might occasionally result from the resurrection of a claim once thought dead, it is not likely to equal the prejudice to the plaintiff resulting from the unexpected death of a claim thought to be alive.'" Id. (quoting *Barina v. Gulf Trading & Transp. Co.*, 726 F.2d 560, 564 (9th Cir. 1984)).

The Ninth Circuit has also considered the defendants' position. See *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676); *Rivera v. Green*, 775 F.2d 1381 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986). In *Gibson*, the court held that "when retroactive application would shorten the statute of limitations, *Wilson* merits only prospective effect." 781 F.2d at 1339 (footnote omitted). Previously, the court of appeals had given retroactive effect to *Wilson* when it had the effect of lengthening the limitations period. *Rivera*, 775 F.2d at 1384.

These holdings are not inconsistent when examined in light of the Ninth Circuit's policy of "advancing the litigant's ability to pursue section 1983 remedies at the expense of a [disfavored] statute of limitations defense." *Gibson*, 781 F.2d at 1339 (quoting *Rivera*, 775 F.2d at 1384). In *Gibson*, it was determined that defendants were "not prejudiced by enforcing the limitations rule prevailing at the time of their alleged wrongful acts." 781 F.2d at 1339. If *Wilson* were applied retroactively there, the defendants would be given the windfall of a shorter statute of limitations and the use of the disfavored defense. See id. The court would then thwart the remedial purposes underlying section 1983. Id.; see supra notes 118-22 and accompanying text. By contrast, the retroactive application of *Wilson* in *Rivera* provided the plaintiff with more time in which to file suit. 775 F.2d at 1384; see also *Marks v. Parra*, 785 F.2d 1419, 1419-20 (9th Cir. 1986) (following *Rivera*). The court reasoned that in the absence of substantial inequity to the defendants, the interests of section 1983 were best served by retroactive application. *Rivera*, 775 F.2d at 1384.
clearly pronounced when the plaintiff has filed after *Wilson* was de-
cided.146 In these circumstances, the defendant’s argument that she
should be afforded the general rule of retroactivity, which would bar the
plaintiff, is more persuasive than where the action was filed before *Wilson*
was decided.147 In the latter, there was likely to have been at least some
time-consuming and costly litigation, and perhaps even a decision on the
merits.148 Clearly, where the cause of action was filed after *Wilson* was
decided, there was no such litigation and reliance on clear past precedent
is more difficult for plaintiff to prove.149

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147. The defendants’ argument is usually more persuasive in cases filed after *Wilson* because the plaintiff waited an unreasonably long time after *Wilson* to file suit. See, e.g., Richard H. v. Clay County, 639 F. Supp. 578, 580-81 (D. Minn. 1986); Gamel v. City of San Francisco, 633 F. Supp. 48, 50 (N.D. Cal. 1986). See also Sockman v. City of Erie, 645 F. Supp. 52, 55 (W.D. Pa. 1986) (plaintiff should have filed under the new, abbrevi-
ated statute of limitations in a timely fashion).

148. See, e.g., Loy v. Clamme, 804 F.2d 405, 406-08 (7th Cir. 1986) (per curiam) (two years of discovery, summary judgment and appeal); Anton v. Lehpamer, 787 F.2d 1141, 1145 (7th Cir. 1986) (four and one-half years of litigation including discovery and many
motions for summary judgment, one of which was ultimately granted by the district
court); Hobson v. Brennan, 625 F. Supp. 459, 469-70 (D.D.C. 1985) (nine years of litiga-
tion and a seventeen day jury trial on the merits with verdict for plaintiffs). See also
Chevron Oil Co. v. Huson, 404 U.S. 97, 108 (1971) (the Court found that it would serve
no congressional purpose “[t]o abruptly terminate [a] lawsuit that [had] proceeded
through lengthy and, no doubt, costly discovery stages for a year”). But see Smith v.
City of Pittsburgh, 764 F.2d 188, 196 (3d Cir.) (the purpose of *Wilson* “would be served
by applying the two-year statute of limitations to all plaintiffs, whether or not their
claims are already in litigation, if the other Chevron factors favor such a result”), cert. denied,

149. The reason for the difficulty in showing reliance where the plaintiff filed after *Wilson* is that courts apparently believe that filing before *Wilson*, within the time period
prevailing when the cause of action arose, is the best evidence of reliance. See, e.g., Ar-
vidson v. City of Mankato, 635 F. Supp. 112, 113 (D. Minn. 1986) (“Plaintiffs have not
shown any greater reliance interest .... They filed this action after *Wilson v. Garcia* was
decided ....”); Young v. Biggers, 630 F. Supp. 590, 592 (N.D. Miss. 1986) (if it was
reasonable for a plaintiff to delay filing suit under the established prior rule, “it would be
unjust to hold that this plaintiff has slept on his rights based on a change in the law occurring after
his action was filed. We find that there exists no such injustice here ... [because] *Wilson*
was decided before Young filed his claim ....”) (footnote omitted). If the plaintiff has a
difficult time proving reliance, she will also have a more difficult task of demonstrating
that there will be substantial inequitable results if *Wilson* is given retroactive application.
See supra note 137.

Chevron, however, can also be interpreted as expressing concerns about protecting the
reliance of litigants on an existing limitations rule when they contemplate filing suit.
Chevron Oil Co. v. Huson, 404 U.S. 97, 107 (1971). The Court stated that:

When the respondent was injured, for the next two years until he instituted his
lawsuit, and for the ensuing year of pretrial proceedings, these [past] decisions
represented the law governing his case. It cannot be assumed that he did or
could foresee that this consistent interpretation of the [law governing the case]
would be overturned. The most he could do was to rely on the law as it then
was.

Id. See also Smith v. City of Pittsburgh, 764 F.2d 188, 196 (3d Cir.) (“Where a plaintiff
could have reasonably waited to file suit under the established prior rule, it would be
inequitable to say he had slept on his rights because of a later and unforeseeable Supreme
Although defendant's equities should always be considered, in the particularly difficult situation in which retroactive application takes away a plaintiff's cause of action, the plaintiff's equities carry more weight. Statutes of limitations are premised on a plaintiff being afforded a full opportunity to her day in court. Denying the plaintiff such an opportunity is not only inconsistent with this premise, but also contrary to the purposes of section 1983. It is an inappropriate attempt to extinguish rights arbitrarily.

A better argument considers the policy of repose, on which statutes of limitations are based and as defined by the arbitrary time limits imposed by the legislature. Because the defendant knew at the time the cause of action arose which time limit applied and thus when she could rest, she is not prejudiced if that time limit is ultimately imposed.

In order to balance both litigants' equities, some courts have imposed Wilson retroactively but have also allowed a reasonable grace period after Wilson in which to file a cause of action. These courts correctly recognize that a plaintiff who justifiably relied on the old statute of limitations must be given a reasonable time following the change in the law in which

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150. See supra notes 142-43 and accompanying text.
151. See Cabrales v. County of Los Angeles, 644 F. Supp. 1352, 1354 (C.D. Cal. 1986) (court placed great emphasis on the fact that plaintiff's claims would be immediately extinguished if Wilson was applied retroactively); Carpenter v. City of Fort Wayne, 637 F. Supp. 889, 896 (N.D. Ind. 1986) ("The Anton case suggests that a diligent plaintiff forced to lose his claim because of the retroactive application of Wilson is subject to the type of inequity which counsels against retroactive application."); Gamel v. City of San Francisco, 633 F. Supp. 48, 50 (N.D. Cal. 1986) ("The result [retroactive application] could be different if the one year period had already passed by the time Wilson was announced. In that case, the Court might allow plaintiff a reasonable time to file suit after the decision."); Ross v. Summers, 630 F. Supp. 1267, 1270 (N.D. Ind. 1986) (court emphasized that plaintiff would be foreclosed if Wilson was given retroactive effect); Bailey v. Illinois, 622 F. Supp. 504, 509 (N.D. Ill. 1985) (same); Cook v. City of Minneapolis, 617 F. Supp. 461, 466 (D. Minn. 1985) (same); Winston v. Sanders, 610 F. Supp. 176, 179 (C.D. Ill. 1985) (same).
154. See supra note 122 and accompanying text.
155. Id.
156. See supra note 144.
158. See Gibson v. United States, 781 F.2d 1334, 1339 (9th Cir. 1986), cert. denied, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676) ("The defendants are not prejudiced by enforcing the limitations rule prevailing at the time of their alleged wrongful acts.").
to file suit. Legislation that has the effect of cutting off existing rights by shortening limitations periods is constitutional provided that a reasonable time is allowed to file suit. When a court changes the limitations period, this does not eliminate the requirement that a reasonable period be provided. Because this period of adjustment is neither totally retroactive nor totally prospective, and because it inherently takes both litigants' positions into account, it should be afforded to plaintiffs whose causes of action would be time-barred by retroactive application of the new rule.

Although some courts have determined that a reasonable grace period is necessary, they disagree about its length. Courts also disagree on the date from which the reasonable period after the Wilson decision should be measured—the date of the Wilson decision, or the date of a decision within the state resolving the appropriate statute of limitations as mandated by Wilson.

The approach of the Seventh Circuit in Anton provides a workable solution. The Anton court recognized the tension between the plaintiff's equity argument for prospective application, and the implementation of

160. See supra note 159.

161. "This court has often decided that [changes in] statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect." Terry v. Anderson, 95 U.S. 628, 632-33 (1877). See also Texaco, Inc. v. Short, 454 U.S. 516, 527 n.21 (citing Terry); Wilson v. Iseminger, 185 U.S. 55, 63 (1982) (same).


163. See Anton v. Lehramer, 787 F.2d 1141, 1146 (7th Cir. 1986) (partial retroactive application); Scherer v. Balkema, No. 79-C-3686, slip op. at 14 (N.D. Ill. Dec. 11, 1986) (same); Urdiales v. Kondal, No. 85-C-7691, slip op. at 4 (N.D. Ill. June 4, 1986) (same). See also Confusion in Federal Courts, supra note 37, at 127 (labeling this approach the "Prospective-Prospective Method").

164. See supra notes 159-60 and accompanying text.


166. Compare Richard H. v. Clay County, 639 F. Supp. 578, 581 (D. Minn. 1986) (the reasonable period should be measured from the date Wilson was decided) with Chris N. v. Burnsville, 634 F. Supp. 1402, 1413 n.15 (D. Minn. 1986) (the reasonable period should be measured from the point where the plaintiff is on notice that a particular statute of limitations is to be applied, i.e., from a decision specifying which statute of limitations after Wilson is appropriate).
the *Wilson* decision as quickly as justice permits. This tension led the court to formulate a rule of "partial retroactive application."

The plaintiff in *Anton* relying on the clear precedent of a five-year residual statute of limitations, filed two years and one month after his cause of action accrued. The new statute of limitations mandated by *Wilson* provided for a two-year prescriptive period. Consequently, if *Wilson* were applied retroactively, the plaintiff would be time-barred.

Although the plaintiff in *Anton* filed before *Wilson* was decided, the court formulated a rule for use in Illinois for cases filed both before and after the *Wilson* decision. The plaintiff must file suit either five years from the date her cause of action accrued or two years after the date *Wilson* was decided, whichever is shorter. In *Anton*, this approach gave the litigants and the courts two years to adjust to the new rule.

Thus, according to *Anton*, an approach now adopted for all states in the Seventh Circuit and by the District Court for the Central District of California, the new period of limitations mandated by *Wilson* becomes the maximum period for adjustment. Although the plaintiff is not afforded the old rule in its entirety when the *Anton* approach is applied, she still benefits from it to the extent that she had the time period before *Wilson* in which to file her claim, as well as a reasonable time.

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168. *Anton*, 787 F.2d at 1146.
169. *Id.* at 1145.
170. *Id.* at 1142.
171. *Id.* at 1145-46.
172. *Id.* at 1146; see also *Cabrales* v. County of Los Angeles, 644 F. Supp. 1352, 1356 (C.D. Cal. 1986) ("In reaching its decision, the [*Anton*] court also took account of the problem of pre-acrued claims [filed after *Wilson*].").
173. *Anton*, 787 F.2d at 1146 ("[I]n Illinois, a plaintiff whose section 1983 cause of action accrued before the *Wilson* decision, April 17, 1985, must file suit within the shorter period of either five years from the date his action accrued or two years after *Wilson.*") (footnote omitted).
177. Instead of employing the former three-year statute of limitations as used in *Gibson* v. United States, 781 F.2d 1334 (9th Cir. 1986), *cert. denied*, 55 U.S.L.W. 3494 (U.S. Jan. 20, 1987) (No. 86-676) (see supra note 145), the court determined that a plaintiff with a post-filed claim has the shorter period of either three years from the date his cause of action accrued or one year after *Wilson* to file suit. *Cabrales*, 644 F. Supp. at 1356.
178. *See* *Anton*, 787 F.2d at 1146; *Urdiales* v. Kondal, No. 85-C-7691, slip op. at 4 (N.D. Ill. June 3, 1986). For example, suppose that past precedent called for a five-year statute of limitations and the new period mandated by *Wilson* is two years. If the cause of action accrued on or after April 17, 1983 and until April 16, 1985, the plaintiff will have until two years post-*Wilson*, or until April 17, 1987, to file suit. *See* *Cabrales* v. County of Los Angeles, 644 F. Supp. 1352, 1356 (C.D. Cal. 1986) ("[P]laintiffs would be granted the new statutory . . . period, measured from the date of the *Wilson* decision, to file their claims.").
following Wilson, in which to adjust to the new rule. The defendant's interests are also served since the plaintiff is not afforded the old rule in its entirety through purely prospective application.

Similarly, plaintiffs whose claims were near expiration under the former statute of limitations at the time Wilson was decided would not be granted any additional time beyond that period. Accordingly, the Anton approach to the third Chevron prong is the "most just and certain method" since it balances the interests of both litigants.

Where clear past precedent induced reliance on a longer statute of limitations, the Anton approach is laudable because it provides the uniformity, certainty and reduction of collateral litigation sought by Wilson. It eliminates the difficult task of determining a reasonable period of time in which a plaintiff should file suit after Wilson was decided, a task that inherently leads to inconsistent results. The approach also serves the interests of the judicial system by creating a formula which can be applied fairly to all litigants. In the contemporary world of overloaded dockets, the courts, under the Anton approach, no longer need to decide questions of retroactivity and of reasonable periods. Rather, they can apply the formula created by the Anton court, thereby reducing burdensome collateral litigation.

2. Analysis When the Limitations Period is Lengthened by Retroactive Application of Wilson

Where there was clear past precedent but the prescriptive period is lengthened by applying the new statute of limitations retroactively, providing more time for plaintiffs to file suit, the rule developed by the Court of Appeals for the Ninth Circuit should be followed. The Ninth Cir-

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179. Id.

180. Cabrales v. County of Los Angeles, 644 F. Supp. 1352, 1356 (C.D. Cal. 1986) ("The approach taken by the Seventh Circuit and adopted by this Court serves" the purposes of Wilson). For the purposes of Wilson, see supra notes 112-35 and accompanying text.

181. See supra note 165 and accompanying text.

182. See supra notes 175-77.


184. Rivera v. Green, 775 F.2d 1381, 1384 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986); see also Marks v. Parra, 785 F.2d 1419, 1419-20 (9th Cir. 1986) (following Rivera).

The Anton formula is inapplicable where the statute of limitations is lengthened if Wilson is applied retroactively. For example, suppose the old statute gave one year to file suit and the new period mandated by Wilson is two years. If the Anton approach were to be applied, the plaintiff would have the shorter of the one-year or the two-year period in
cuit has a policy of “advancing the litigant’s ability to pursue section 1983 remedies” whenever possible.  

In a line of cases, the Ninth Circuit has developed an approach that recognizes strong equities favoring the general rule of retroactive application where the statute of limitations is lengthened. At first glance, this result seems glaringly unjust to the defendant because the plaintiff filed after the old limitations period ran, then attempted a retroactive application of Wilson to revive what was essentially a “stale” claim. It is consistent, however, with the importance of access to the courts for section 1983 litigants and the disfavored nature of the statute of limitations defense. Thus, the conclusion that can be drawn from this line of cases is that the defendant will be prejudiced less if the longer prescriptive period applies to the cause of action than the plaintiff would be prejudiced if she was only afforded the shorter statute of limitations.

3. Summary of the Inequity Factor

In order to apply the inequity factor of the Chevron analysis properly, the court must consider the equities of both the plaintiff and the defendant. These equities shift depending on when the cause of action was filed. While the defendant’s equities are more pronounced where the claim was filed after the Wilson decision, when the cause of action is lost entirely by retroactive application of the new rule, the plaintiff should be afforded a reasonable period of time after Wilson in which to file suit.

The Anton approach, using the new statute of limitations period mandated by Wilson as a period of adjustment, provides an equitable and workable formula to deal with these competing considerations. It also serves the interests of the judicial system. Where retroactive application which to file suit. Thus, in effect, she would always have the old (here one-year) period only.

One of the purposes of the Anton formula is to give a reasonable period of adjustment by the use of a partial retroactive approach. In the above hypothetical, Wilson will always be given complete prospective effect but the plaintiff will not be afforded any of the benefits of the new rule—one of the goals behind the doctrine of prospectivity. See supra note 73 and accompanying text.

185. Rivera v. Green, 775 F.2d 1381, 1384 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986); see supra note 145.
186. Rivera v. Green, 775 F.2d 1381, 1383 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986); see also Marks v. Parra, 785 F.2d 1419, 1419-20 (9th Cir. 1986) (following Rivera). See supra note 145.
187. Rivera v. Green, 775 F.2d 1381, 1382 (9th Cir. 1985), cert. denied, 106 S. Ct. 1656 (1986) (Rivera filed in federal court one and one half years after his cause of action accrued, yet the former statute of limitations was one year); see also Small v. Inhabitants of Belfast, 796 F.2d 544, 549 n.6 (1st Cir. 1986).
of Wilson would lengthen the statute of limitations, this approach is inapplicable. In this situation, retroactive application of Wilson is most appropriate.

**CONCLUSION**

In order to give similar treatment to all section 1983 litigants, a uniform analysis of the Chevron retroactivity test to the new rule set forth in Wilson v. Garcia, concerning the appropriate statute of limitations in section 1983 actions, is required. One method that eliminates some of the disorganization and provides continuity is to consider the reliance factor first and the equity factor second since they are inherently interrelated, and the purpose factor last.¹⁹⁰

Regardless of the order of examination, the ideal analysis of the reliance factor involves three steps.¹⁹¹ First, the court must consider whether the approach mandated by Wilson is actually novel. Next, the court must determine if and when there is clear past precedent concerning the appropriate statute of limitations, either for the particular tort action alleged under section 1983, or for all section 1983 actions within the state. Finally, the court must determine whether the plaintiff was justified in relying on the precedent. The ease with which this determination is made, however, also depends on whether there was uniform precedent for all section 1983 actions within the state, or whether the precedent within the state was tort-specific. If the court finds that there is no clear past precedent, the analysis should end here.

With respect to the purpose factor,¹⁹² in addition to the interests of promoting uniformity and reducing collateral litigation, courts must give proper attention to the goal of safeguarding the rights of federal civil rights litigants. When courts do so, the purpose factor will not yield inconclusive results.

When analyzing the equity factor of the Chevron test, the court must consider the equities of both the plaintiff and the defendant.¹⁹³ In order to balance these equities properly, the court must examine when the cause of action accrued and when it was filed. In most cases, courts find that the defendant's equities are more pronounced where the claim was filed after Wilson was decided. Where the cause of action is time-barred due to retroactive application of the new rule, however, the plaintiff should be afforded a reasonable time period after the Wilson decision in which to file suit.¹⁹⁴

The ideal approach laid down in Anton illustrates that the new statute of limitations mandated by Wilson becomes this reasonable time period,
allowing both the litigants and the courts to adjust to the new rule.\footnote{195}{See supra notes 167-79 and accompanying text.} Thus, Anton applies where the new statute of limitations mandated by Wilson is shorter than that formerly used. It provides an equitable and practical formula to deal with the competing considerations of safeguarding the rights of federal civil rights litigants, and implementing Wilson as quickly as justice permits. This approach is not applicable in the unusual cases where the new statute of limitations is lengthened. In these cases, Wilson should be applied retroactively, thus advancing a plaintiff's ability to pursue her section 1983 remedy.\footnote{196}{See supra notes 180-89 and accompanying text.}

\textit{Staci M. Berman}