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Statutes of Limitations in Civil Rico Actions After Wilson v. Garcia

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NOTES

STATUTES OF LIMITATIONS IN CIVIL RICO ACTIONS

AFTER WILSON v. GARCIA

INTRODUCTION

The Racketeer Influenced and Corrupt Organizations Act\(^1\) (RICO), Title IX of the Organized Crime Control Act\(^2\) (OCCA), was enacted to provide the federal government with a more effective statutory mechanism to combat organized crime.\(^3\) RICO authorizes severe criminal sanctions\(^4\) against persons found guilty of violating its provisions.\(^5\) Additionally, RICO provides civil remedies available to the government\(^6\) and

4. Section 1963(a) provides in pertinent part:
   (a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States . . . (1) any interest the person has acquired or maintained in violation of section 1962; (2) any—(A) interest in; (B) security of; (C) claim against; or (D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962. See generally 18 U.S.C. § 1963 (1982 & Supp. III 1985).
5. Section 1962(a) prohibits a "person," see 18 U.S.C. § 1961(3) (defining person), who has received any income derived through the commission of two or more predicate acts constituting a "pattern," see § 1961(5) (defining pattern), of "racketeering activity," see § 1961(1) (defining racketeering), or through the collection of "unlawful debt," see § 1961(6) (defining unlawful debt), from investing in an "enterprise," see § 1961(4) (defining enterprise), the activities of which affect interstate commerce. See 18 U.S.C. § 1962(a) (1982). Section 1962(b) prohibits the acquisition or maintenance of an interest in an enterprise through a pattern of racketeering activity. See 18 U.S.C. § 1962(b). Section 1962(c) prohibits the conduct of or participation in the conduct of the affairs of an enterprise through a pattern of racketeering activity. See 18 U.S.C. § 1962(c). Section 1962(d) makes it a substantive offense "for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section." 18 U.S.C. § 1962(d).
6. These remedies enable the government to prevent and restrain violations of § 1962 and include divestiture of any interest in any enterprise, restrictions on future activities or investments, and dissolution or reorganization of any enterprise. See 18 U.S.C. § 1964(a) (1982).
a private civil cause of action for treble damages, costs and attorneys' fees for persons injured in their business or property by reason of the statute's violation. The enforcement of civil RICO serves both public and private ends by encouraging the injured party to bring suit, thereby deterring criminal activity.

7. Section 1964(c) provides:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.


8. See id.


11. By enacting the private treble damage action, Congress was also concerned with "creating civil remedies for the honest businessman who has been damaged by ... the racketeer businessman." 115 Cong. Rec. 6992, 6993 (1969) (statement of Sen. Hruska upon introduction of S. 1623 (Criminal Activities Profits Act, S. 1623, 91st Cong., 1st Sess., 115 Cong. Rec. 6995-96 (1969)), RICO's predecessor); see also Blakey & Gettings, supra note 3, at 1042 (RICO is concerned "with compensating victims and making them whole"); cf. Vold, Are Threefold Damages Under the Anti-Trust Act Penal or Compensatory?, 28 Ky. L.J. 117 (1940) (trebling the damages provides compensation for the accumulative indeterminate harm to the injured party).

12. Generally, the prospect of treble damages spurs private plaintiffs to bring suit and, thus, helps deter wrongdoers. See Areeda, Antitrust Violations Without Damage Recoveries, 89 Harv. L. Rev. 1127, 1127 (1976).

13. See Cullen v. Margiotta, No. 86-7066, slip op. 6901, 6937 (2d Cir. Feb. 2, 1987) (civil RICO treble damages designed to deter would-be wrongdoers); Electronic Relays (India) Pvt. Ltd. v. Pascente, 610 F. Supp. 648, 651 (N.D. Ill. 1985) ("treble damages ... provide the incentive ... to ... private citizens to assist ... in eradicating organized crime").

The treble damage remedy deters organized criminal activity by attacking the financial basis of racketeering activity. See Blakey & Gettings, supra note 3, at 1042. As Representative Poff, a manager of the Bill in the House, stated: "[T]itle IX ... will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat to the economic well-being of the Nation. In short, an attack must be made on their source of economic power itself ... ." 116 Cong. Rec. 35,193 (1970); see also Organized Crime Control: Hearings on S. 30 and Related Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 2d Sess. 518-20 (1970) [hereinafter Hearings] (statement of Rep. Steiger) (the treble damage action was proposed partly to "enhance the effectiveness of [RICO's] prohibitions").

Although civil RICO was intended to act partly as a deterrent to organized crime, it has not actually evolved into such a mechanism. Few organized crime figures have ever been named as civil RICO defendants. See Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3287 n.16 (1985) (of the 270 pre-1985 district court civil RICO decisions, 40% involved securities fraud, 37% common law fraud in a commercial or business setting, and only 9% "allegations of criminal activity of a type generally associated with professional criminals." (citing Report of the Ad Hoc Civil RICO Task Force, 1985 A.B.A. Sec. Corp. Banking & Bus. L. Rep. 55-56)).

The Supreme Court observed, however, that "Congress wanted to reach both 'legitimate' and 'illegitimate' enterprises. The former enjoy neither an inherent incapacity for
Civil RICO does not contain an express statute of limitations. When a federal statute creates a cause of action but does not specify a limitations period, the Supreme Court has recognized that it is settled practice to adopt an analogous time limitation from the forum state as federal law, unless it would be inconsistent with federal law or policy to do so.

criminal activity nor immunity from its consequences." 14477; see also Blakey, RICO is Pro-Victim—Not Anti-Business, Wall St. J., Feb. 4, 1986, at 50, col. 5 ("Criminal conduct . . . is present in suites, not just streets."). It would thus appear that broad application of civil RICO comports with Congressional purposes.

For a discussion of the breadth of civil RICO and the problems involved in its statutory interpretation, see Abrams, The Place of Procedural Control in Determining Who May Sue or Be Sued: Lessons in Statutory Interpretation From Civil RICO and Sedima, 38 Vand. L. Rev. 1477 (1985).


The only temporal aspect of RICO is that the pattern of racketeering activity through which a criminal violation is committed, see 18 U.S.C. § 1962 (1982), requires at least two acts of racketeering activity, at least one of which occurred after Oct. 15, 1970 and the last of which occurred within ten years after the commission of a prior act of racketeering activity. See 18 U.S.C. § 1961(5).


The timeliness of claims arising under these acts is not subject to a general statute of limitations. See Special Project, Time Bars in Specialized Federal Common Law: Federal Rights of Action and State Statutes of Limitation, 65 Cornell L. Rev. 1011, 1023 (1980); Note, Federal Statutes Without Limitations Provisions, 53 Colum. L. Rev. 68, 68 (1953); Note, Limitation Borrowing in Federal Courts, 77 Mich. L. Rev. 1127, 1127 (1979) [hereinafter Limitation Borrowing]. Although 28 U.S.C. § 2462 (1982) (originally enacted as Act of March 2, 1799, ch. 22, § 89, 1 Stat. 627, 695-96, providing a three year statute of limitations) provides a five year statute of limitations governing suits or prosecution for any penalty or forfeiture, the Supreme Court has construed the Statute narrowly, rendering it inapplicable to most civil actions. See Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 397 (1906) (statute does not apply to civil actions because of the term "penalty." (citing Brady v. Daly, 175 U.S. 148, 155-56 (1899); Huntington v. Attrill, 146 U.S. 657, 668 (1898)); see also Meeker v. Lehigh Valley R.R., 236 U.S. 412, 423 (1915) (limiting "penalty or forfeiture" to punitive recoveries for infractions of public laws, as opposed to liability imposed to redress private injuries).

so. In *Wilson v. Garcia*, the Supreme Court examined 42 U.S.C. § 1983 to determine the appropriate statute of limitations to apply to claims arising under it. In doing so, the Court set forth a general approach for federal courts to follow to decide the appropriate statute of limitations governing a federal cause of action containing no limitations period.

Federal courts have held that the Supreme Court's approach to section 1983 is applicable to civil RICO. Courts nevertheless are divided concerning the correct limitations period to apply to civil RICO. This Note clarifies the existing confusion over application of the *Wilson* analysis. Part I discusses *Wilson* and its approach to borrowing analogous statutes of limitations. Part II applies the *Wilson* analysis to civil RICO in search of the most appropriate statute of limitations. This Note con-


21. *See id.* at 268. Although the Court applied this test only in the context of § 1983, it appears that the Court intended to set forth a general approach to all cases involving federal actions without a statute of limitations. See *Malley-Duff & Assocs. v. Crown Life Ins.*, 792 F.2d 341, 345 n.9 (3d Cir.), *cert. granted*, 107 S. Ct. 569 (1986). This approach takes the form of a four-part inquiry. *See infra* notes 28-33 and accompanying text.


Courts borrowing state statutes of limitations are divided concerning whether a uniform statute of limitations in each state should govern all civil RICO claims or whether the statute of limitations should be calculated on a case-by-case basis. Compare *Malley-Duff*, 792 F.2d at 346-49 (uniform) *with* *Silverberg v. Thomson McKinnon Secs.*, 787 F.2d 1079, 1083 (6th Cir. 1986) (case-by-case). *See infra* text accompanying notes 80-81.

cludes with the selection of the most appropriate statute of limitations to be applied to civil RICO in each state.

I. Wilson v. Garcia

In determining the appropriate statute of limitations for section 1983 actions, the Supreme Court, in Wilson v. Garcia, set forth an approach to decide the limitations period that governs a federal cause of action when no limitations period is provided by federal law.

This approach takes the form of a four-part inquiry. A court first must determine whether to follow the practice of borrowing a statute of limitations from a state cause of action or to look to federal law for a limitations period. Assuming it has decided to borrow a state time period, the court must determine whether state law or federal law governs the characterization of the federal claim for the purpose of borrowing a state statute of limitations. Characterization is the process of classifying a federal statute as a particular type of claim that can be analogized to a state statute. If federal law governs the characterization, the court must determine whether all such federal claims should be uniformly characterized, or should instead be characterized on a case-by-case basis. Finally, the court must characterize the federal claim in the pending case and select the most analogous or most appropriate state statute of limitations given this characterization.

II. Application of the Wilson v. Garcia Analysis to Civil RICO

A. Borrowing a Statute of Limitations

The first step in applying the Wilson v. Garcia inquiry to civil RICO is to determine whether to follow the traditional practice of borrowing a statute of limitations from an analogous state cause of action or to look to federal law for the appropriate analogy.

25. 471 U.S. at 262.
27. See supra note 21 and accompanying text.
28. See infra notes 29-33 and accompanying text.
30. See id. at 268.
31. For example, the Court in Wilson characterized all section 1983 actions "as involving claims for personal injuries," 471 U.S. at 279, and applied the state statute of limitations governing actions "for an injury to the person or reputation of any person." Id. at 280 (quoting N.M. Stat. Ann. § 37-1-8 (1978)).
33. See id.
35. See supra note 16 and accompanying text.
36. See supra note 17 and accompanying text.
The Supreme Court has held that congressional silence concerning a limitations period for a federal statute indicates Congress' approval of the judicial practice of borrowing a local limitations period. The Court has noted that when Congress has disagreed with such an interpretation, it has foreclosed this judicial practice by amending the statute.

During the legislative debates on RICO, Congress specifically considered and rejected the enactment of a limitations period for civil RICO. After the passage of RICO, amendments were introduced to provide a time bar for the civil treble damage action. These amendments, however, failed to clear the House Committee on the Judiciary.

38. See Holmberg v. Armbrecht, 327 U.S. 392, 395 (1946) ("The implied absorption of State statutes of limitation within the interstices of the federal enactments is a phase of fashioning remedial details where Congress has not spoken but left matters for judicial determination within the general framework of familiar legal principles."); cf. State Farm Fire & Casualty v. Estate of Caton, 540 F. Supp. 673, 684 (N.D. Ind. 1982) (court noted that Congress had failed to enact a statute of limitations when it enacted RICO and thus concluded that Congress intended the courts to apply state law). But see UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 709 (1966) (White, J., dissenting) ("the silence of Congress is not to be read as automatically putting an imprimatur on state law"); Note, Civil RICO: Searching for the Appropriate Statute of Limitations in Actions Under Section 1964(c), 14 Loy. U. Chi. L.J. 765, 791-94 (1983) (arguing that the congressional intent of RICO is not necessarily in accord with this rationale).


40. The House of Representatives had two opportunities to include a statute of limitations. RICO was passed by the Senate as Title IX of the OCCA (S. 30) without a treble damage remedy. See 116 Cong. Rec. 972 (1970). It was then referred to the House Judiciary Committee, see 116 Cong. Rec. 1103 (1970), where in hearings before the Committee, two amendments were proposed, recommending the adoption of a private treble damage action. One proposal recommended that a five year statute of limitations be included with the adoption of the private treble damage remedy. See Hearings, supra note 13, at 520-21 (amendment proposed by Rep. Steiger). The other proposal recommended the adoption of a private treble damage action without any time limitation for bringing suit. See Hearings, supra note 13, at 543-44 (statement of Edward L. Wright, President-elect of the American Bar Association). The House Judiciary Committee, in favorably reporting on S. 30, adopted the latter proposal. See H.R. Rep. No. 1549, 91st Cong., 2d Sess. 58, reprinted in 1970 U.S. Code Cong. & Admin. News 4007, 4034. For a thorough discussion of the House Judiciary Committee hearings on S. 30, see Blakey, supra note 3, at 271-77 (1982) and Blakey & Gettings, supra note 3, at 1019-20.

Prior to the vote on S. 30 by the full House, an amendment was proposed to insert a five year statute of limitations for private treble damage actions. See 116 Cong. Rec. 35,346 (1970) (floor amendment proposed by Rep. Steiger). The amendment was withdrawn. See 116 Cong. Rec. 35,347 (1970).


42. The Senate passed one such amendment in 1972, see S. 16, 92d Cong., 2d Sess. § 102(h), 118 Cong. Rec. 29,368, 29,379 (1972), and another in 1973, see S. 13, 93d Cong., 1st Sess. § 1(h), 119 Cong. Rec. 10,317-21 (1973).

43. These amendments were referred to the House Committee on the Judiciary, see 119 Cong. Rec. 10,592 (1973) (S. 13); 118 Cong. Rec. 29,615 (1972) (S. 16), where they both died. See Blakey & Gettings, supra note 3, at 1020 n.67 (description of evolution and death of these amendments).
therefore, has implicitly approved of the application of the traditional borrowing procedure to civil RICO actions. A significant number of courts deciding the appropriate statute of limitations to apply to civil RICO actions have followed this practice.

Only one court has looked to federal law to provide an analogous statute of limitations. In Bartels v. Clayton Brokerage Co., the district court concluded that a single nationwide limitations period was necessary to effectuate Congress' goal of attacking organized crime on a national scale. It is indeed appropriate to turn away from the traditional

44. See State Farm Fire & Casualty v. Estate of Caton, 540 F. Supp. 673, 684 (N.D. Ind. 1982) (since Congress was aware of the practice of looking to state law, one can only conclude that Congress intended the courts to apply state law to civil RICO); Buffone, Statutes of Limitations in Civil RICO Actions, 1 RICO Litigation Reporter 424, 425 (1984) ("The legislative history [of RICO] . . . supports the presumption that Congress intended the courts to look to state law."); see also supra note 38 and accompanying text.


The Court of Appeals for the Second Circuit has held that courts are required to look to state law for the most appropriate limitations period for civil RICO claims. See Cullen v. Margiotta, No. 86-7066, slip op. 6901, 6935 (2d Cir. Feb. 2, 1987); Durante Bros. & Sons v. Flushing Nat'l Bank, 755 F.2d 239, 248 (2d Cir.), cert. denied, 105 S. Ct. 3530 (1985). While Margiotta did not explicitly overrule Bartels, the results seem rather inconsistent.


48. Id. at 449. The court was concerned that borrowing a state statute of limitations would lead to forum shopping. However, forum shopping is not a concern compelling enough to cause courts to turn to federal law. See Special Project, supra note 15, at 1076 n.304 (forum shopping for limitations law is not a unique problem).
practice of borrowing from state law, and look to federal law to provide a statute of limitations, if the application of a state statute of limitations undermines or frustrates the policies behind the federal statute. The Supreme Court, however, has held that even when Congress contemplates a nationwide solution to a given problem, the mere lack of a national limitations period does not sufficiently frustrate federal policy to mandate use of a federal limitations period. The need to effectuate a nationwide policy under RICO, therefore, does not justify an exception to the settled practice of borrowing a state statute of limitations.

B. Characterization of Civil RICO

Once a court decides to borrow a state limitations period, the second stage of the Wilson analysis requires a court to decide whether state or federal law governs the characterization of the federal statute for the purpose of borrowing a state statute of limitations. The Supreme Court has recognized that when a statute is enacted to effectuate federal policies, its characterization is generally a matter of federal law; state law is applied only because it supplements and fulfills federal policy. As one commentator has stated, "federal courts have come to rely upon increasingly less explicit legislative policies against using state law, [and] the specific reasons for rejecting state law have tended to become both obscure and unrelated to the issue in dispute. An example of this lack of clarity is the frequent appeal to uniformity as a reason for rejecting state decisional rules." Note, Rules of Decision in Nondiversity Suits, 69 Yale L.J. 1428, 1438 (1960) (footnote omitted).


In Wilson v. Garcia, the Court decided that federal law governs the characterization of section 1983 for the purpose of borrowing a state statute of limitations. This decision recognized that the statute was enacted to provide a uniquely federal remedy against a deprivation of constitutional or federal rights under color of state law. Although a section 1983 claim may encompass a state common law tort, violation of section 1983 rests on different elements involving proof of different facts. The common law violation only gives rise to the section 1983 claim.

RICO was also enacted to effectuate a federal policy. Congress envisioned organized crime as a national problem requiring a national solution. Although a RICO violation requires the commission of two or

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57. Id. at 268-70.
58. See id. at 268-72; accord Mitchum v. Foster, 407 U.S. 225, 239 (1972) (“Section 1983 . . . [provides] a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.” (footnote omitted)).
59. See Wilson, 471 U.S. at 277 (“[T]he § 1983 remedy encompasses a broad range of potential tort analogies, from injuries to property to infringements of individual liberty.”).
60. See Smith v. Cremins, 308 F.2d 187, 190 (9th Cir. 1962) (the deprivation of rights secured by the Constitution or federal law that is required to make out a section 1983 claim is not required to make out a common law tort claim); accord Beard v. Robinson, 563 F.2d 331, 337 (7th Cir. 1977), cert. denied, 438 U.S. 907 (1978).
61. Garcia v. Wilson, 731 F.2d 640, 649 (10th Cir. 1984) (“[T]he evidence necessary to support a section 1983 claim is so often significantly distinct from the facts at issue in an arguably analogous state cause of action that the differences cannot be dismissed as unimportant.”), aff’d, 471 U.S. 261 (1985).

To establish a claim under section 1983, a plaintiff must prove action under color of state law resulting in the deprivation of constitutional or federal rights. Id. “[A] deprivation of a constitutional right is significantly different from and more serious than a violation of a state right . . . even though the same act may constitute both a state tort and the deprivation of a constitutional right.” Monroe v. Pape, 365 U.S. 167, 196 (1961) (Harlan, J., concurring), overruled on other grounds, Monell v. Department of Social Servs. of New York, 436 U.S. 658, 663 (1978).

62. The common law violation is the action under color of state law that deprives a person of rights secured by the Constitution or federal law. See Garcia v. Wilson, 731 F.2d 640, 650-51 (10th Cir. 1984), aff’d, 471 U.S. 261 (1985).
64. See supra note 3 and accompanying text.

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America’s economy by unlawful conduct and the illegal use of force, fraud, and corruption; . . . (3) this money . . . [is] increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation’s economic system . . . .

It is the purpose of this Act to seek the eradication of organized crime in the United States . . . .
more predicate acts,\textsuperscript{66} which may be defined by reference to state law,\textsuperscript{67} the underlying acts are only incorporated for definitional purposes.\textsuperscript{68} RICO does not punish these offenses,\textsuperscript{69} rather it punishes investment,\textsuperscript{70} maintenance of an interest,\textsuperscript{71} or participation\textsuperscript{72} in an enterprise\textsuperscript{73} engaged in or affecting interstate commerce\textsuperscript{74} through a pattern of racketeering activity.\textsuperscript{75}

Because RICO effectuates a national policy\textsuperscript{76} through the regulation of activity that is within the Constitution's grant of federal authority,\textsuperscript{77} its characterization should be a matter of federal law.\textsuperscript{78} Indeed, all courts of

\textit{Id.; see also United States v. Turkette, 452 U.S. 576, 586 (1981) (OCCA was enacted to address a problem of national dimensions that existing state and federal law could not).}


67. Section 1961 provides in pertinent part:

\begin{itemize}
\item (1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year . . .
\end{itemize}


68. See United States v. Malatesta, 583 F.2d 748, 757 (5th Cir. 1978) ("The enumeration of . . . state offenses . . . is solely for definitional purposes."), aff'd on rehearing, 590 F.2d 1379 (5th Cir.) (en banc), cert. denied, 440 U.S. 962 (1979); United States v. Forsythe, 560 F.2d 1127, 1135 (3d Cir. 1977) (Congress intended that predicate acts that violate state law be incorporated for definitional purposes).

69. See United States v. Forsythe, 560 F.2d 1127, 1135 (3d Cir. 1977) ("RICO was not designed to punish state law violations").


75. A " 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5) (1982); see Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3285 n.14 (1985) ("while two acts are necessary, they may not be sufficient").

76. See supra notes 64-65 and accompanying text.

77. Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States . . . ." U.S. Const. art. I, § 8, cl. 3. The grant of federal authority under RICO arises, therefore, through the requirement that the enterprise be engaged in or affecting interstate commerce. United States v. Malatesta, 583 F.2d 748, 754 (5th Cir. 1978), aff'd on rehearing, 590 F.2d 1379 (5th Cir.) (en banc), cert. denied, 440 U.S. 962 (1979).

78. Cf. Wilson v. Garcia, 471 U.S. 261, 269 (1985) ("Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing . . . a federal cause of action.").
appeals that apply Wilson to civil RICO and accept the borrowing of state statutes of limitations, hold that federal law governs the characterization of these actions.79

C. Uniform or Case-by-Case Characterization

The third step in applying the Wilson approach is to determine whether a single statute of limitations applies to all civil RICO actions within the forum state (uniform characterization),80 or whether the courts must select the limitations period most analogous to the facts and circumstances of the case at bar (case-by-case characterization).81

In Wilson v. Garcia,82 the Supreme Court adopted a uniform characterization for section 1983 actions.83 The Court’s reasoning suggests that lower courts performing this analysis should first consider the case-by-case approach and reject it if a broader characterization better effectuates the statute’s purpose.84 In rejecting the case-by-case approach the Court noted that almost every section 1983 claim can be analogized to more than one state cause of action,85 each of which may be governed by a different statute of limitations.86 Various section 1983 claims arising in the same state would be governed by different limitations periods,87 and in many cases multiple periods of limitations would apply to the same claim.88 Because the appropriate statute of limitations would be uncertain,89 parties would argue for application of different time limitations.90 This obstructs the effective use of section 198391 because judicial resources are dissipated by unnecessary litigation on collateral matters.92

81. See id.
83. See id. at 271-75.
84. See id. (considering and rejecting the case-by-case approach).
85. See id. at 272-73.
86. See id. at 273.
87. See id. at 274.
88. See id.
89. See id. at 271-75.
90. See id. at 274.
91. See id. at 275.
92. See id. Under the case-by-case approach judicial resources necessarily are expended to determine the appropriate statute of limitations. The uniform approach obviates such collateral litigation. See supra notes 85-91 and accompanying text and infra notes 93-94 and accompanying text; see also UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 713 (1966) (White, J., dissenting) (borrowing the appropriate state law has caused “litigation-creating complexities”). Furthermore, the case-by-case approach encourages appeals by both plaintiffs and defendants in the hope that the appellate court will analogize their claims differently. See Special Project, supra note 15, at 1075; Note, Statutes of Limitations in Federal Civil Rights Litigation, 1976 Ariz. St. L.J. 97, 120.
The Court concluded that a uniform characterization best effectuates the purposes of section 1983, as it provides certainty and minimizes unnecessary litigation. In a civil RICO action, many different types of conduct can serve as predicate acts, and each act may be subject to a separate statute of limitations. If a case-by-case approach is used, courts must decide which predicate act predominates in the civil RICO claim, and choose the statute of limitations associated with that predicate act. Inconsistent limitations periods, therefore, could be applied to civil RICO claims.

The case-by-case approach also results in unnecessary litigation of col-

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93. See 471 U.S. at 275.
94. See id.
99. See Electronic Relays (India) Pvt. Ltd. v. Pascente, 610 F. Supp. 648, 650 (N.D. Ill. 1985); see also supra notes 95-96 and accompanying text. This is exactly what occurred in § 1983 actions prior to Wilson when courts evaluated these claims on a case-by-case basis. See supra note 87 and accompanying text.

lateral matters.\textsuperscript{100} Counsel for each party argues for a favorable statute of limitations,\textsuperscript{101} delaying adjudication of the underlying civil RICO claim,\textsuperscript{102} and thereby obstructing the intended function of civil RICO as an effective deterrent to organized crime.\textsuperscript{103} Furthermore, the statute's remedial purposes\textsuperscript{104} are defeated because private plaintiffs do not know how quickly they must enforce their rights,\textsuperscript{105} possibly resulting in late filing and barring of their claims. The case-by-case approach, therefore, should not be followed under the \textit{Wilson} analysis.

Because the same limitations period governs all civil RICO actions brought in federal courts sitting within a given state,\textsuperscript{106} a uniform federal characterization offers stability and certainty to litigants.\textsuperscript{107} A uniform


\textsuperscript{101} See \textit{Electronic Relays (India) Pvt. Ltd. v. Pascente}, 610 F. Supp. 648, 650 (N.D. Ill. 1985); see, e.g., \textit{Burns v. Ersek}, 591 F. Supp. 837, 843 (D. Minn. 1984) (defendant argued for six year statute of limitations; plaintiff argued for three year securities fraud statute of limitations); \textit{Kirschner v. Cable/Tel Corp.}, 576 F. Supp. 234, 241 (E.D. Pa. 1983) (plaintiff argued for six year statute of limitations for common law fraud; defendant argued for two year statute of limitations for common law fraud, securities fraud, civil penalties or forfeitures, or injuries to property); \textit{D'Iorio v. Adonizio}, 554 F. Supp. 222, 231-32 (M.D. Pa. 1982) (plaintiff argued for six year statute of limitations for fraud; defendant argued for one year statute of limitations for statutory penalty or forfeiture, or, in the alternative, for two year statute of limitations for "initiation of a prosecution for corrupt organization").

\textsuperscript{102} \textit{See supra} note 100.

\textsuperscript{103} \textit{See Malley-Duff & Assocs. v. Crown Life Ins.}, 792 F.2d 341, 349 (3d Cir.) (use of civil RICO as supplement to criminal prosecution undermined by litigation of collateral issues), \textit{cert. granted}, 107 S. Ct. 569 (1986); \textit{see also supra} notes 10-13 and accompanying text.

\textsuperscript{104} \textit{See 115 Cong. Rec.} 6992, 6993 (1969) (statement of Sen. Hruska upon introduction of S. 1623, RICO's predecessor) (In authorizing a victim treble damage action, Congress was concerned with "create[ing] civil remedies for the honest businessman who has been damaged by... the racketeer businessman."); \textit{see also Sedima, S.P.R.L. v. Imrex Co.}, 105 S. Ct. 3275, 3286 (1985) ("The statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity."); \textit{Blakey & Gettings, supra} note 3, at 1042 (RICO is "concerned with compensating victims and making them whole").

\textsuperscript{105} \textit{See Ingram v. Steven Robert Corp.}, 547 F.2d 1260, 1263 (5th Cir. 1977) ("uncertainty about which limitations provision applies affords inadequate notice to potential plaintiffs"); \textit{Special Project}, \textit{supra} note 15, at 1065 ("unpredictability... impairs the ability of federal litigants to know what state time period the court will apply... [thus] contraven[ing]... the remedial... function of time bars").

\textsuperscript{106} \textit{See supra} text accompanying note 80.

\textsuperscript{107} One of the purposes of a statute of limitations is "to provide stability to potential
period within the state notifies the potential litigants of the limitations period applicable to their claims, and does not frustrate civil RICO's purposes by spawning unnecessary litigation over collateral issues. A majority of the courts of appeals applying the Wilson analysis to civil RICO have adopted the uniform characterization approach.

D. Applicable Statute of Limitations

The final step of the Wilson analysis is to characterize the essence of the cause of action and select the most appropriate state statute of limitations given this characterization. In Wilson v. Garcia, the Supreme Court based its characterization of section 1983 on its unique statutory nature and broad remedial purposes, concluding that all section 1983 defendants and to society in general. See Limitation Borrowing, supra note 15, at 1128. Temporal limitations provide “certainty and finality in the administration of our affairs.” See Gates Rubber Co. v. USM Corp., 508 F.2d 603, 611 (7th Cir. 1975). By setting a deadline within which valid claims must be brought against potential defendants, statutes of limitations allow these defendants to maintain stability in their daily affairs. See Limitation Borrowing, supra note 15, at 1128-29. This assures fairness to defendants “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.” Order of R.R. Tels. v. Railway Express Agency, 321 U.S. 342, 348-49 (1944); see Burnett v. New York Cent. R.R., 380 U.S. 424, 428 (1965); Gates Rubber Co. v. USM Corp., 508 F.2d 603, 611 (7th Cir. 1975).

Statutes of limitations also ensure the smooth administration of commercial intercourse. Unsettled claims may have a disruptive effect on commercial affairs, especially where people have an interest in the economic status of a potential defendant and such economic status may be adversely affected by the defendant’s uncertain legal status. See Developments in the Law—Statutes of Limitations, 63 Harv. L. Rev. 1177, 1185 (1950) (“the public policy of limitations lies in avoiding the disrupting effect that unsettled claims have on commercial intercourse”); see also Allen v. United States, 542 F.2d 176, 179 (3d Cir. 1976) (limitations “serve to strike a balance between the need for certainty and predictability in legal relationships and the role of the courts in resolving private disputes”); Gates Rubber Co., 508 F.2d at 611 (society possesses an interest in ending contingent liabilities).

108. This consistency fosters predictability, thereby providing federal litigants with reasonable knowledge of the claim’s viability. See Note, supra note 92, at 123-26.

109. Under the uniform approach the statute of limitations for civil RICO actions in federal courts sitting within a given state is determined prior to the pending case, so that the court immediately can judge the viability of the RICO claim. For a determination of the statute of limitations that would apply in each state under this approach, see infra notes 161-67 and accompanying text.

110. See Tellis v. United States Fidelity & Guar. Co., 805 F.2d 741, 744-45 (7th Cir. 1986); Malley-Duff & Assoc. v. Crown Life Ins., 792 F.2d 341, 346-49 (3d Cir.), cert. granted, 107 S. Ct. 569 (1986); see also Hunt v. American Bank & Trust Co., 783 F.2d 1011, 1014 n.4 (11th Cir. 1986) (in dictum the court noted that the case-by-case method may be foreclosed by Wilson and stated that “the key lesson of Wilson seems to be that there should be applied ‘in each State . . . the one most appropriate statute of limitations’ for all RICO actions.” (citation omitted) (quoting Wilson v. Garcia, 471 U.S. 261, 275 (1985))). But see Silverberg v. Thomson McKinnon Secs., 787 F.2d 1079, 1083 (6th Cir. 1986) (adopting case-by-case approach).

113. See id. at 271-72.
claims are most closely analogous to claims for personal injuries. 114

Congress envisioned RICO to be a unified attack on organized crime, 115 with severe criminal sanctions 116 complementing stringent civil penalties 117 to effect this purpose. 118 RICO's statutory scheme 119 thus suggests that it was intended to be viewed comprehensively. 120 Any analogy should be made in accordance with this intent. 121 Applying the Wilson analysis, three general characterizations of civil RICO have been made by federal courts. 122

1. Predicate Acts

One method of characterizing civil RICO for purposes of borrowing a state limitations period is to analogize all civil RICO actions to the predominant predicate act appearing in civil RICO claims as a whole. 123 Civil RICO, however, does not merely provide a remedy for an injury arising from commission of a predicate act. 124 By requiring proof of a pattern of racketeering, 125 enterprise 126 and an effect on interstate commerce 127 a civil RICO claim is differentiated from the two predicate acts necessary to establish a civil RICO violation. 128 Analogizing all civil RICO actions to a single predicate act falls short of capturing the multi-

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114. See id. at 279.
118. See supra notes 1-3 and accompanying text.
121. See infra notes 153-67 and accompanying text.
122. See infra notes 123-73 and accompanying text.
126. See id.
127. See id.
titude of factual bases on which a civil RICO action may be based. A characterization of civil RICO as one of its predicate acts essentially equates the comprehensive RICO action with one of its lesser parts.

Further, the same basic predicate acts must be established for a criminal RICO claim, and expiration of the statute of limitations for the predicate acts does not preclude criminal prosecution under the statute. Other factors that limit criminal prosecution of the underlying predicate acts are not viewed as restricting application of RICO. This suggests that the statute of limitations for the predicate acts should have no bearing on the viability of a civil RICO claim.

2. Treble Damages

Some courts characterize civil RICO suits as actions for treble damages and, therefore, select the state statute of limitations that is borrowed for other treble damage actions. These courts conclude that Congress viewed the treble damage provision as the most distinctive feature of civil RICO because comments during the congressional debates


130. See Malley-Duff & Assocs. v. Crown Life Ins., 792 F.2d 341, 351 (3d Cir.) ("characterizing RICO as [one of its predicate acts] would be to have the tail wag the dog"), cert. granted, 107 S. Ct. 569 (1986).


137. See Tellis v. United States Fidelity & Guar. Co., 805 F.2d 741, 745 (7th Cir. 1986).
on civil RICO focused on this remedy.\footnote{138}

Courts making this characterization emphasize the historical fact that section 4 of the Clayton Act\footnote{139} was a model for the civil RICO treble damage provision.\footnote{140} Prior to the enactment of a statute of limitations by Congress,\footnote{141} an antitrust action brought under section 4 of the Clayton Act was characterized by federal courts as an action for treble damages for the purpose of borrowing an analogous state statute of limitations.\footnote{142} Some courts, therefore, have adopted a similar characterization for civil RICO.\footnote{143} These courts reason that civil RICO is distinguished from the state law remedies for its predicate acts by the treble damage remedy alone.\footnote{144}


\footnote{140} See Tellis v. United States Fidelity & Guar. Co., 805 F.2d 741, 746 (7th Cir. 1986); Electronic Relays (India) Pvt. Ltd. v. Pascente, 610 F. Supp. 648, 651 (N.D. Ill. 1985); see also State Farm Fire & Casualty v. Estate of Caton, 540 F. Supp. 673, 680 (N.D. Ind. 1982) (noting that civil RICO was modeled after section of the Clayton Act but not characterizing it as an action for treble damages).


\textit{Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.}


\textit{Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of suit, including a reasonable attorney’s fee.}

\footnote{141} In 1955 section 4 of the Clayton Act was amended to provide a four year statute of limitations for the private treble damage action. \textit{See} 15 U.S.C. § 15b (1982).


\footnote{143} See \textit{Tellis v. United States Fidelity & Guar. Co.}, 805 F.2d 741, 746 (7th Cir. 1986); \textit{Grosser v. Commodity Exch., Inc.}, 639 F. Supp. 1293, 1304 (S.D.N.Y. 1986).

Although civil RICO and section 4 of the Clayton Act both require that a plaintiff allege injury to business or property for standing to sue, the type of conduct prohibited by each statute differs. Apparently Congress modeled the damage provision of civil RICO after section 4 of the Clayton Act because the Clayton Act's provision is effective in deterring violators of the antitrust laws.

By focusing on the remedy and not on the essence of the cause of action, the characterization of civil RICO as an action for treble damages oversimplifies the statute. Because a more appropriate analogy is available such a characterization is incorrect.


147. See supra note 140 and accompanying text.


149. See supra note 142; see also Durante Bros. & Sons v. Flushing Nat'l Bank, 755 F.2d 239, 248-49 (2d Cir.) (RICO is not merely a remedy for an injury due to commission of a predicate act), cert. denied, 105 S. Ct. 3530 (1985). RICO is much broader than merely a remedy for wrongs recognized at common law. See infra notes 153-60 and accompanying text.

150. See infra notes 153-80 and accompanying text

151. See infra notes 153-80 and accompanying text

152. The Court has directed that the most appropriate statute of limitations must be selected. See Wilson v. Garcia, 471 U.S. 261, 268 (1985). Courts characterizing civil RICO as an action for treble damages have applied the state catchall statute of limitations for statutory causes of action providing for recovery of a penalty or forfeiture. See Tellis v. United States Fidelity & Guar. Co., 805 F.2d 741, 746 (7th Cir. 1986); Overland Bond & Inv. Corp. v. Rocky, 646 F. Supp. 194, 197 (N.D. Ill. 1986); Grosser v. Commodity Exch., Inc., 639 F. Supp. 1293, 1304 (S.D.N.Y. 1986); Electronic Relays (India) Pvt. Ltd. v. Pascente, 610 F. Supp. 648, 653 (N.D. Ill. 1985). Although the selection of a catchall statute of limitations is appropriate if no substantially similar state racketeering statute exists, see infra note 166 and accompanying text, the catchall statutes chosen by these courts do not address the entire purpose of civil
3. Unique Statutory Cause of Action

The broad purposes\textsuperscript{153} and unique elements\textsuperscript{154} of RICO make it very difficult to find a closely analogous state statute of limitations.\textsuperscript{155} The RICO action was designed to provide enhanced sanctions and new remedies for fighting organized crime.\textsuperscript{156} It is not merely a federal remedy for conduct already forbidden under state law.\textsuperscript{157} RICO is directed toward activities that go beyond the mere commission of predicate offenses.\textsuperscript{158}

The declared purpose of Congress in enacting the RICO statute was to seek the eradication of organized crime in the United States.\textsuperscript{159} The statute is an explicit recognition that illegal conduct of a continuing nature presents a special threat.\textsuperscript{160} Only a similarly comprehensive statute, such as a state racketeering statute authorizing civil remedies with provisions for enhanced damages,\textsuperscript{161} provides an accurate analogue.\textsuperscript{162} Not every state, however, has enacted such a statute, and some similarly compre-
hensive statutes also lack limitations periods. Absent such an analogous statute, civil RICO should be subject to a statute of limitations based on the broadest characterization available; any more specific analogy is bound to be imperfect.

When there is no similar state racketeering statute, the most appropriate limitations period is provided by a catchall statute of limitations that applies generally to all statutory causes of action that have no express limitations period. If a state does not have such a catchall statute then

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ant to the criminal code. See N.J. Stat. Ann. § 2C: 41-1 to -6.2 (West 1982) (five years in § 2C: 1-6(g)).

One state racketeering statute, while only providing double damages, can also be borrowed because it is similar to RICO in all other ways. See Wis. Stat. Ann. §§ 946.80 to .87 (West Supp. 1986) (six years in § 946.87(1)).

Florida also has a racketeering statute providing treble damages. This statute is inapplicable, however, because it only provides such damages when the state is the plaintiff. See Fla. Stat. Ann. §§ 895.01 to .09 (West Supp. 1987) (treble damage provision in § 895.05(7)).

162. See Malley-Duff & Assocs. v. Crown Life Ins., 792 F.2d 341, 347 n.13 (3d Cir.) ("where a state has created a private cause of action substantially similar to the federal civil RICO action, the state limitations period controlling such actions might be an appropriate choice for the federal courts to borrow"), cert. granted, 107 S. Ct. 569 (1986); Delta Coal Program v. Libman, 554 F. Supp. 684, 690 n.2 (N.D. Ga. 1982) (applying five year state racketeering statute), aff'd, 743 F.2d 852 (11th Cir. 1984).


164. Only a broad characterization will encompass RICO's purposes. See supra notes 115-20 and accompanying text.


courts should apply a residual statute of limitations for actions not covered by any limitations period.167

A plurality of courts characterizing RICO under the Wilson approach is in agreement with this choice.168 This approach recognizes RICO as a unique statutory cause of action that cannot be readily analogized to a cause of action known at common law.169 Moreover, a catchall statute is unlikely to be fixed in a manner that discriminates against a particular


If a state has neither a broad catchall statute of limitations nor a residual statute of limitations then courts should apply the more limited catchall statute of limitations for statutory causes of action providing for the recovery of a penalty or forfeiture because that would be the next most appropriate statute available. See supra note 152; see, e.g., Tellis v. United States Fidelity & Guar. Co., 805 F.2d 741, 745 (7th Cir. 1986) (two year statute of limitations governing actions for statutory penalty); Overland Bond & Inv. Corp. v. Rocky, 646 F. Supp. 194, 197 (N.D. Ill. 1986) (same); Electronic Relays (India) Pvt. Ltd. v. Pascente, 610 F. Supp. 648, 652-53 (N.D. Ill. 1985) (same).


168. See supra notes 166-67 and accompanying text.


In Wilson, the Court considered, but rejected, the application of a catchall statute of limitations to section 1983 claims. See Wilson v. Garcia, 471 U.S. 261, 278 (1985). It stated that "[t]he relative scarcity of statutory claims when [section] 1983 was enacted makes it unlikely that Congress would have intended to apply the catchall periods of limitations for statutory claims that were later enacted by many States." Id. Further, the
federal claim because such statutes cover a broad spectrum of state statutory claims. Because catchall statutes of limitations are fairly long, they would give plaintiffs enough time to discover RICO violations and bring their civil claims. Thus, using a catchall statute of limitations does not conflict with the policies underlying RICO.

CONCLUSION

In borrowing a statute of limitations for civil RICO actions, courts should look to state law for the most appropriate analogy; characterize civil RICO according to federal law for borrowing purposes; make this characterization on a uniform basis so that a single statute of limitations applies in each state; and borrow a state statute of limitations in accordance with civil RICO's characterization as a broad, unique statutory cause of action. To effectuate this analysis courts should select a substantially similar state racketeering statute. If such a statute is unavailable the court should select a state catchall or residual statute of limitations. Such a choice eliminates intra-state disparities in time periods for civil RICO claims, thus minimizing the uncertainty and confusion associated with borrowing a statute of limitations, and allows courts to focus solely on the underlying policies of RICO so that its attack on organized crime is effectuated.

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