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The Continuing Problem of Statutes of Limitations in Section 1983 Cases: Is the Answer out at Sea, 22 J. Marshall L. Rev. 285 (1988)

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COMMENTARY

THE CONTINUING PROBLEM OF STATUTES OF LIMITATIONS IN SECTION 1983 CASES: IS THE ANSWER OUT AT SEA?

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I. INTRODUCTION

When Congress enacted the Civil Rights Act of 1871,[1] it expected that the Act would increase significantly the federal judiciary's caseload.[2] Since one of the primary purposes[3] of the Act was to provide a federal forum for those who claimed that their civil rights had been abridged by persons acting "under color of state law,"[4] the

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1. Civil Rights Act, 17 Stat. 13, (1871) (codified as 42 U.S.C. § 1983 (1982)) [hereinafter section 1983].

2. An extensive discussion of the legislative history of section 1983 can be found in Monroe v. Pape, 365 U.S. 167 (1961). The passages cited in that case from the CONGRESSIONAL GLOBE indicate that both supporters and opponents of the Act anticipated that it would become a popular and much-used tool. In any event, since the Act was intended to provide a remedy where state laws had proved inadequate or had been unequally applied it seems likely that Congress hoped to encourage the bringing of lawsuits by suitors who had been discouraged by the state laws.

3. The three principal purposes of the Act, as articulated by its supporters, were: 1) to override certain state laws; 2) to provide a remedy where state laws were inadequate; and 3) to provide an additional remedy to supplement adequate state remedies when the implementation of such remedies proved impractical. *Monroe*, 365 U.S. at 173-74.

4. Section 1983 reads, in relevant part, as follows:

> 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.

42 U.S.C. § 1983 (1982).

Act by its very nature was designed to encourage federal litigation.

What Congress failed to foresee, however, was the chaos which would be created by its failure to include a statute of limitations for claims brought under section 1983. In attempting to divine an appropriate statute of limitations,[5] the federal courts have created a confusing patchwork of decisions, with disagreement rampant both within and among the circuits.[6]

Adding to the confusion is section 1988,[7] which has been interpreted as authorizing the "borrowing" of state law to fill in the gaps of section 1983.[8] Problematically, section 1988 does not provide guidance as to the proper approach in choosing which state laws to borrow. As a result, the Supreme Court has been required on several occasions in the past fifty years to decide a host of issues relating to the operation of section 1983. Among the issues which the Court has faced have been: (a) whether section 1983 is procedural, substantive, or both;[9] (b) whether state statutes of limitations are appropriate;[10] and (c) what criteria are to be used in determining which state stat-

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5. In dealing with the question, federal courts generally have employed one of four categories of state statutes of limitations. Some federal courts have looked to the time periods contained in the relevant state's tort claims act. *See, e.g.*, Blake v. Katter, 693 F.2d 677 (7th Cir. 1982); Kosikowski v. Bourne, 659 F.2d 105 (9th Cir. 1981); DeVargas v. New Mexico Dep't of Corrections, 97 N.M. 563, 642 P.2d 166 (1982). Other courts have looked to the statutes of limitations governing contract or surety bond actions. *See, e.g.*, Shaw v. McCorkle, 537 F.2d 1289 (5th Cir. 1976). Still other courts have been guided by statutes relating to personal injuries. *See, e.g.*, Garmon v. Foust, 668 F.2d 400 (8th Cir.), *cert. denied*, 456 U.S. 998 (1982); Hamilton v. City of Overland Park, 730 F.2d 613 (10th Cir. 1984). Finally, a few courts, such as Mismash v. Murray City, 730 F.2d 1366 (10th Cir. 1984), *cert. denied*, 471 U.S. 1052 (1985) have relied upon a state's residual statute of limitations.

6. For a thorough analysis of the treatment given to the issue by each federal circuit court through 1984, see Garcia v. Wilson, 731 F.2d 640, 643-48 (10th Cir. 1984), *aff'd*, 471 U.S. 261 (1985).

7. Section 1988 states, in pertinent part, that:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title . . . for the protection of all persons in their civil rights . . . shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable . . . 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 . . . 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 . . . .

42 U.S.C. § 1988 (1982).

8. *See* Biehler, *Limiting the Right to Sue: The Civil Rights Dilemma*, 33 DRAKE L. REV. 1, 7-8 (1983-84) (discussing the Supreme Court's early decision to borrow state statutes in O'Sullivan v. Felix, 233 U.S. 318 (1914)).

9. *See* Wilson v. Garcia, 471 U.S. 261 (1985) (section 1983 is only procedural); Monroe v. Pope, 365 U.S. 167 (1961) (section 1983 is both procedural and substantive).

10. *Cf.* Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

ute of limitation is best suited to the case at hand.[11]

Finally, in 1985 the Supreme Court seized the opportunity to put an end to the "uncertainty and time-consuming litigation that is foreign to the central purposes of section 1983."[12] In *Wilson v. Garcia*,[13] the Court, affirming a decision of the Court of Appeals for the Tenth Circuit,[14] decided that henceforth all section 1983 claims are to be characterized as personal injury actions for statute of limitations purposes, regardless of the underlying cause of action.[15]

Although the Supreme Court's decision resolved the obvious problem of choosing the appropriate statute of limitations when a particular set of facts implicates more than one legal theory, it failed to address at least four other serious problems. One such problem stems from the diverse nature of section 1983 claims, as the Court itself recognized.[16] Another problem stems from the fact that most personal injury actions have relatively short statutes of limitations.[17] There also is the problem that, unlike the former scheme in which section 1983 claims were brought within the statute of limitations of the most analogous state cause of action,[18] the new rule announced

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11. *See generally* Comment, *Choice of Law Under Section 1983*, 37 U. CHI. L. REV. 494 (1970).

12. *Wilson*, 471 U.S. at 272.

13. *Id.* at 261.

14. *Id.* at 280.

15. *Id.* at 278. The Court's holding has generated much discussion. *See, e.g.*, Kibble-Smith, *Statutes of Limitation and Section 1983: Implications for Illinois Civil Rights Law*, 20 J. MARSHALL L. REV. 415 (1987); Pagan, *Virginia's Statute of Limitations for Section 1983 Claims after* Wilson v. Garcia, 19 U. RICH. L. REV. 257 (1985); Note, Wilson v. Garcia *and Statutes of Limitations in Section 1983 Actions: Retroactive or Prospective Application?*, 55 FORDHAM L. REV. 363 (1985); Note, *Statutes of Limitations in Civil RICO Actions after* Wilson v. Garcia, 55 FORDHAM L. REV. 529 (1987); Note, *The Retroactive Effect of* Wilson v. Garcia, 20 IND. L. REV. 795 (1987); Comment, *Civil Rights - Statutes of Limitations for Section 1983 Actions - A Definitive Answer in* Wilson v. Garcia?, 17 MEM. ST. U.L. REV. 127 (1986); Note, *Civil Rights: Determining the Appropriate Statute of Limitations for Section 1983 Claims*, 61 NOTRE DAME L. REV. 440 (1986); Note, *Civil Rights - Statute of Limitations - State Limitation Period for Personal Injury Actions Applies to All Section 1983 Claims*, 16 SETON HALL L. REV. 831 (1986); Recent Development, *All Section 1983 Actions Must Apply A Single State Statute of Limitations*, 15 STETSON L. REV. 1042 (1986); Note, *A Step Toward Simplification with 42 U.S.C. § 1983*, 18 U. TOL. L. REV. 221 (1986); Note, *Retroactive Application of* Wilson v. Garcia*: Continued Confusion to a Troubled Topic*, 44 WASH. & LEE L. REV. 135 (1987).

16. *Wilson*, 471 U.S. at 275.

17. For example, Colorado requires that actions for assault and battery or false imprisonment be brought within one year. *See* McKay v. Hammock, 730 F.2d 1367, 1369 (10th Cir. 1984) (citing COLO. REV. STAT. § 13-80-102 (1973)). In Indiana, the period for commencing an action for injuries to a person or character or personal property is two years. *See* Blake v. Katter, 693 F.2d 677, 679 (7th Cir. 1982) (citing IND. CODE § 34-1-2-2 (1976)). Of course, it is unclear that these actually would be the preferred statutes under *Wilson*. *See infra* text following note 41 for Justice O'Connor's opinion on the issue of statute of limitations periods for personal injury actions.

18. Prior to *Wilson*, two approaches had been developed for determining the

by the Supreme Court requires section 1983 claims to be squeezed into personal injury categories which never were intended by state legislatures to include civil rights claims.[19] Finally, in jurisdictions where there either are several or no limitations periods for personal injury actions, the Supreme Court's decision leaves the matter as muddled as before, if not more so.

In light of the foregoing, this essay will analyze two aspects of *Wilson*. First, it will discuss the Supreme Court's decision to apply one characterization to all section 1983 actions. Second, it will consider the Court's choice of personal injury as the singular characterization. Finally, after reviewing the *Wilson* dissent, the essay concludes by suggesting that the *Wilson* decision should be abandoned. In its place, the Court should adopt the maritime doctrine of laches in section 1983 cases. As will be shown, such a step would more fully achieve Congress' purpose in enacting section 1983.

II. History of *Wilson v. Garcia*

A. *The Decision of the District Court*

Gary Garcia instituted a section 1983 action in the United States District Court for the District of New Mexico, claiming that his constitutional rights had been violated two years and nine months earlier when he had been physically assaulted by a New Mexico state police officer.[20] He also asserted a claim against the state police chief, alleging that the chief had failed to properly train and supervise the officer.[21] In the district court, the defendants moved to dismiss on the grounds that Garcia's claim was time barred by the two-year limitations period contained in the New Mexico Tort Claims Act.[22] Denying the defendants' motion, the district court held first, that all section 1983 actions should be uni-

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most analogous state cause of action. The first approach asked which statute of limitation would have been applied had the claim been brought in state court rather than federal court. The second and more favored approach involved a two-step inquiry. First, the nature of the claim would be determined under federal law. Thereafter, the state statutes of limitation would be scrutinized to determine the most appropriate one. *See also* Shaw v. McCorkle, 537 F.2d 1289, 1292 (5th Cir. 1976).

19. *See supra* note 15 and accompanying text discussing the *Wilson* holding. As the Supreme Court has recognized in the past, statutes of limitations reflect a state's "value judgment concerning the point at which interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." Board of Regents v. Tomanio, 446 U.S. 478, 485 (1980) (quoting Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1975)).

20. Garcia v. Wilson, 731 F.2d 640, 643-48 (10th Cir. 1984), *aff'd*, 471 U.S. 261 (1985).

21. *Id.* at 642.

22. N.M. Stat. Ann. § 41-4-15 (1985).

formly characterized,[23] and second, that they should be characterized as actions based on the violation of a statute.[24] In doing so, the court found inapplicable *DeVargas v. New Mexico Dep't of Corrections*,[25] a New Mexico state case which held that the New Mexico Tort Claims Act was the most analogous to section 1983 and, therefore, the most appropriate for determining the applicable statute of limitations.[26]

B. *The Decision of the Court of Appeals*

On appeal, the Court of Appeals for the Tenth Circuit agreed that a uniform characterization of all section 1983 actions was necessary to "effectuate the purposes of both the civil rights acts and statutes of limitations."[27] It disagreed, however, with the particular characterization of section 1983 actions as violations of a statute,[28] concluding, instead, that "every section 1983 claim is in essence an action for injury to personal rights."[29] As such, the appellate court held that the New Mexico three-year statute of limitations for actions for injuries to person or reputation[30] applicable.[31]

C. *The Decision of the Supreme Court*

1. *The Majority Opinion*

The Court of Appeals' decision subsequently was affirmed by the Supreme Court.[32] The Court acknowledged that most section 1983 claims can be analogized to more than one state claim, and that therefore more than one state statute of limitations would be applicable. Thus, the Court maintained that Congress could not have intended the inconsistencies that necessarily would follow from an approach that looks to the underlying cause of action.[33] Citing an earlier Supreme Court section 1983 decision which had held that borrowing state statutes under section 1988 does not require na-

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23. *Garcia*, 731 F.2d at 650.
24. Because there was no New Mexico statute that was on point, the district court applied New Mexico's residual limitations period. *Id.* at 651.
25. 97 N.M. 563, 642 P.2d 166 (1982).
26. The court of appeals disposed of *DeVargas* by determining that the characterization of section 1983 claims was a matter of federal, rather than state, law. The Supreme Court agreed with this position. *Wilson*, 471 U.S. at 270-71.
27. *Garcia*, 731 F.2d at 649.
28. *Id.* at 651.
29. *Id.*
30. N.M. STAT. ANN. § 37-1-8 (1985).
31. *Garcia*, 731 F.2d at 651.
32. Garcia v. Wilson, 471 U.S. 261 (1985).
33. *Id.* at 273-74.

tional uniformity, the *Wilson* Court held that "uniformity [within states], certainty and the minimization of unnecessary litigation all support the conclusion that Congress favored [the single characterization] approach."[34]

In addition, the Supreme Court reviewed the Court of Appeals' decision to categorize all section 1983 claims as personal injury actions. Placing the Civil Rights Act in its historical context, the Court considered the climate of the South during the Reconstruction and the harms Congress sought to remedy. In the course of its analysis, the Court alternated between construing what Congress had intended in 1871 and what it would do if it were in session in 1985. This analytic technique enabled the Court to find that in 1871 the "atrocities that concerned Congress . . . plainly sounded in tort,"[35] while, at the same time, to consider claims that Congress probably did not foresee, such as the mistreatment of school children[36] and the challenge to differing age limitations for the sale of beer to men and women.[37] In conclusion, the Court held that "[h]ad the 42nd Congress expressly focused on the issue today, . . . it would have characterized section 1983 as conferring a general remedy for injuries to personal rights."[38]

2. *The Dissent*

Justice O'Connor penned a vehement dissent in which she disagreed with the majority's decision to place all section 1983 claims under one banner.[39] The grounds of her dissent were many. Justice O'Connor claimed that the decision flew in the face of well-established precedent, violated the spirit of section 1988, overstepped judicial boundaries in an effort to legislate what the legislature had failed to, and trespassed on states' rights.[40] As to the specific choice of personal injury as the singular category, Justice O'Connor agreed that the choice was appealing, but concluded that such a choice was clearly erroneous.[41]

Most importantly, Justice O'Connor pointed out that the majority's opinion in fact did not solve anything, since the lower courts still would have to locate the particular state statutes of limitations that deal with personal injuries. Since some states, such as Colorado,

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34. *Id.* at 275.
35. *Id.* at 277.
36. *Id.* at 273 (citing Ingraham v. Wright, 430 U.S. 651 (1977)).
37. *Wilson*, 471 U.S. at 273 n.31.
38. *Id.* at 278.
39. *Id.* at 280.
40. *Id.* at 280-86.
41. *Id.* at 284. Under the majority's logic, virtually any claim brought on behalf of an individual is for a personal injury.

do not have statutes that are closely analogous, federal courts sitting in such states would need to apply a residuary statute.[42] By trying to impose uniformity when "diversity is the natural order,"[43] the majority, in the opinion of Justice O'Connor, chose a "poor substitute for the careful selection of the appropriate state law analogy."[44]

III. The Laches Alternative

Recognizing that limitations on the time in which claims may be brought are necessary, and that "even wrongdoers are entitled to assume that their sins may be forgotten,"[45] the question remains whether statutes of limitations are the best or only method available to prevent the bringing of stale claims. In searching for an alternative, one is struck by admiralty law which, in the absence of a congressionally-specified statute of limitations,[46] employs the doctrine of laches.[47]

Under the admiralty doctrine of laches, the court decides whether a claim is stale by determining whether the plaintiff has slept on his rights and whether the defendant would be prejudiced (such as by the inability to obtain documents or locate witnesses) if the action were allowed to proceed. In determining whether the delay is unreasonable, the court looks to the federal or state statute of

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42. *Id.* at 286-87 (discussing McKay v. Hammock, 730 F.2d 1367) (10th Cir. 1984).

43. *Id.* at 286.

44. *Id.* Justice O'Connor's lone dissent is particularly noteworthy in light of the fact that the actual issue before the Court was the narrow one of which the New Mexico statute was pertinent. Several years later, however, Justice O'Connor found herself authoring the majority decision in Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 107 S. Ct. 2759 (1987). In that case, the Court held that the appropriate statute of limitations in actions brought under the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964 (1982) was the four year period specified in the civil enforcement section of the Clayton Act, 15 U.S.C. § 15 (1982). *Agency Holding Corp.*, 10 at 2767. While claiming to recognize that her position in *Wilson* had been rejected by "a clear majority of the Court," Justice O'Connor nevertheless used her dissent in *Wilson* as the basis on which to hold that civil RICO suits should be analogized to violations of the Clayton Act. *Id.* at 2765.

45. *Wilson*, 471 U.S. at 271.

46. In a number of instances, Congress has enacted a specific statute of limitation for maritime cases. Thus, for example, personal injury and death actions arising out of maritime torts are subject to a three year statute of limitations. 46 U.S.C. § 763a (1982). Jones Act suits also have a three year of statute of limitations. 45 U.S.C. § 56 (1982). Salvage claims have a two year statute. 46 U.S.C. § 730 (1982). There is also a two year statute for actions instituted under the Suits in Admiralty Act. 46 U.S.C. § 745 (1982). Cargo claims brought pursuant to the Carriage of Goods by Sea Act have a one year statute. 46 U.S.C. § 1303(6) (1982). Finally, a six month statute applies to the filing of a suit to limit liability under the Limitation Act. 46 U.S.C. § 185 (1982).

47. Laches constitutes an affirmative defense and as such must be raised by the defendant in the initial pleadings. *See* Fed. R. Civ. P. 8(c).

limitations which is most analogous. If the plaintiff's claim has been filed after the running of the analogous statute, the plaintiff is given an opportunity to prove that the delay was reasonable and that the defendant will not be prejudiced by a decision to allow the suit to proceed.[48] On the other hand, if the plaintiff's claim has been filed prior to the running of the prescribed period, then the defendant is given an opportunity to demonstrate why the plaintiff's suit should be dismissed because of undue delay or prejudice, or both.[49]

Over time, the maritime laches doctrine has shown itself to be an invaluable tool.[50] Rather than following a hard-and-fast rule, laches commits to the trial court sufficient discretion to decide each case on its own unique facts.[51] In this way, both plaintiffs and defendants have the opportunity to inform the court of any circumstances which they believe justify a deviation from the usual standard.

No other area of federal law seems more in need of this flexible doctrine than that of civil rights.[52] Rather than spending extraordinary amounts of time choosing appropriate state statutes of limitations, a system that both the majority and dissent in *Wilson* agree is greatly flawed,[53] a federal judge could hear arguments from both

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48. *See, e.g.*, Gutierrez v. Waterman S.S. Co., 373 U.S. 206 (1963) (in personal injury action by longshoreman, defendant did not suffer any prejudice by plaintiff's delay in bringing suit). The leading case of who bears the burden of proof in laches litigation is Larios v. Victory Carriers, Inc., 316 F.2d 63 (2d Cir. 1963).

49. *See, e.g.*, Trivizas v. Tanjong Shipping Co., 1982 Am. Mar. Cas. 2520 (S.D.N.Y. 1982) (master of a ship who waited seventy days to bring personal injury action against new owners of a vessel held barred by laches due to prejudice which would be suffered by new owners having to defend such a suit).

50. *See generally* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 9-81, 774 (1975); T. SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 4-17, at 156 (1987).

51. The range of discretion enjoyed by trial judges in applying laches in modern maritime cases was set out by the Supreme Court in Gardner v. Panama Railroad Co., 342 U.S. 29 (1951). In that case the Court wrote:

> Though the existence of laches is a question primarily addressed to the discretion of the trial court, the matter should not be determined merely by a reference to and a mechanical application of the statute of limitation. The equities of the parties must be considered as well. Where there has been no inexcusable delay in seeking a remedy and where no prejudice to the defendant has ensued from the mere passage of time, there should be no bar to relief.

Id. at 30-31. *See also* Czaplicki v. S.S. Hoegh Silvercloud, 351 U.S. 525 (1956); Albertson v. T.J. Stevenson & Co., 749 F.2d 223 (5th Cir. 1984); Akers v. State Marine Lines, Inc., 344 F.2d 217 (5th Cir. 1965); Le Gate v. Panamolga, 221 F.2d 689 (2d Cir. 1955).

52. *See* Comment, *supra* note 11, at 497 n.18 (citing Pritchard v. Smith, 289 F.2d 153 (8th Cir. 1961) (suggesting that admiralty jurisdiction can serve as a basis for fashioning a federal rule of limitations for section 1983 suits)). Like civil rights law, the law of admiralty is grounded in the Constitution. *See* U.S. CONST. art. III, § 2.

53. District court judges are spending inordinate amounts of time trying to select the appropriate statute of limitations because of the *Wilson* case, despite the fact that the decision is not even five years old. *See* M. SCHWARTZ & J. KIRKLIN, SECTION 1983 LITIGATION: CLAIMS, DEFENSES AND FEES 223 (1986 & 1988 Cum. Supp.).

sides as to why the claim is or is not stale, why it was not brought sooner, and why the defendant is prejudiced by the delay.

IV. CONCLUSION

Although much has changed since the enactment of section 1983 more than a century ago, in some ways, almost nothing has changed. Sadly, the need for this remedy is very much with us. Yet, rather than expanding the remedy to fit our times, the Supreme Court in *Wilson* curtailed a claimant's ability to pursue its constitutional rights by restricting the time for bringing a section 1983 action to that period provided for personal injury actions by the states. Unless and until Congress successfully legislates a solution,[54] courts should apply the flexible, workable, and proven doctrine of laches. In order to be able to do so, the Supreme Court should abandon *Wilson* and adopt the maritime doctrine of laches at the earliest opportunity.

54. The likelihood of Congress being able to reach a legislative solution, however, seems remote. A recent commentator pointed out that Congress has failed to enact bills designed to provide section 1983 with a specific limitations period on two separate occasions. *See* Note, *Amending a Statute of Limitations for 42 U.S.C. § 1983: More Than "A Half Measure of Uniformity"*, 73 MINN. L. REV. 85, 119 (1988). Despite this dismal history, the author of the Note closes by proposing what is described as a "Model Amendment" containing a three year limitations period. *Id.* at 115. The author argues that this model amendment is viable because, unlike previous proposals, it only deals with the limitations question, and avoids the more politically charged "remedial" aspects of section 1983. *Id.* at 119. In making this statement, however, the author fails to appreciate the basic truth that even if it were possible to separate the statute of limitations from the "remedial" aspects of the law, nothing proposed to a political body can remain apolitical. Because every legislative proposal will affect entrenched polity in some manner and to some degree, all legislative proposals are, from their birth, inherently political. Thus, the laches solution proposed by this essay is a more realistic solution because it can be put into operation without first having to endure a political firestorm.