

A New Explanation for Equitable Tolling Under § 1983 and the Prison Litigation Reform Act*

Prison-conditions lawsuits are notoriously difficult for incarcerated litigants to win. Prisoners who challenge the conditions of their confinement must overcome complex procedural barriers to secure their day in court. Among these barriers, the mandatory-exhaustion requirement of the Prison Litigation Reform Act of 1995 can be both confusing and time consuming. Prisoners often spend months pursuing administrative remedies before gaining access to federal court. Recognizing this, the Fourth Circuit decided in 2019 that prisoners who diligently pursue administrative remedies may toll the statute of limitations for 42 U.S.C. § 1983 prison-conditions suits as a matter of federal equitable law. The Fourth Circuit's decision ensures that compliance with the Prison Litigation Reform Act of 1995 does not diminish prisoners' access to judicial relief.

But the Fourth Circuit's opinion also goes further than any other exhaustion-period tolling case decided before, fixing a rule adopted for various reasons by seven other circuits in the federal common-law doctrine of equitable tolling. This Recent Development examines the incoherence of the analyses in the jurisprudence between the Fourth Circuit and other circuits. It identifies two significant complications in the Fourth Circuit's holding. First, the opinion leaves unaddressed the source of the court's power to apply federal equitable law. Second, even assuming federal equitable relief was within the court's power to provide, it is not clear that the Prison Litigation Reform Act of 1995's exhaustion mandate is the kind of circumstance that would ordinarily warrant relief under the equitable tolling doctrine. By parsing and separately examining these issues, this Recent Development illuminates the Fourth Circuit decision's strengths while identifying and buttressing its weaknesses.

INTRODUCTION

Statutes of limitations are a well-known feature of American law. These rules establish timeframes during which a litigant may file a particular kind of claim.¹ If they wait too long, the litigant can lose their chance to assert the claim altogether, even if the injury incurred was the result of a substantively illegal act.²

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1. See generally 51 AM. JUR. 2D *Limitation of Actions* §§ 1–3, Westlaw (database updated Nov. 2020) [hereinafter *Limitation of Actions*] (explaining the application of statutes of limitations).

2. See *id.* § 20.

But clear, unbending rules sometimes breed inequity. To compensate, American courts have long recognized the principle of equitable tolling.³ The equitable tolling doctrine can relieve litigants from statutes of limitations when their strict application would be grossly unjust.⁴ When equitable tolling is invoked, the requesting party must generally show that they diligently pursued their rights, but that an “extraordinary circumstance” stood in their way to prevent timely filing.⁵

Utilizing the equitable tolling doctrine, the Fourth Circuit in January 2019 held that a man imprisoned in Virginia could litigate a claim against two prison officials, despite having filed his lawsuit outside the relevant statute of limitations, because a federal law requiring him to exhaust administrative remedies prior to bringing suit was an extraordinary circumstance warranting tolling.⁶ The decision, *Battle v. Ledford*,⁷ analyzed the nexus of 42 U.S.C. § 1983—the individual federal cause of action for constitutional violations by state actors⁸—and the Prison Litigation Reform Act of 1995 (“PLRA” or “the Act”)⁹—the law that requires prisoners to utilize internal prison grievance procedures before bringing an action to challenge the conditions of their confinement under § 1983 or other federal law.¹⁰ Because the plaintiff in *Battle* showed “reasonable diligence” in pursuing PLRA-mandated administrative remedies, the Fourth Circuit held that he could extend his time to file through the exhaustion period.¹¹

The holding is remarkable for several reasons. Most broadly, the decision effectively creates a presumptive tolling rule for all prisoner-filed federal civil rights cases subject to the PLRA.¹² Yet equitable tolling has not been popular in the nation’s highest court.¹³ Even where the relief is available as a general

3. See *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014) (describing equitable tolling as “a long-established feature of American jurisprudence”).

4. See *id.* at 10–11; see also *Limitation of Actions*, *supra* note 1, § 153 (“Equitable tolling is a remedy that permits a court to allow an action to proceed when justice requires it . . .”).

5. *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755 (2016).

6. See *Battle v. Ledford*, 912 F.3d 708, 720 (4th Cir. 2019).

7. 912 F.3d 708 (4th Cir. 2019).

8. 42 U.S.C. § 1983 provides individuals with a right to sue any “person who, under color of” state law, deprives the individual of “any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983.

9. Pub. L. No. 104-134, 110 Stat. 1321-66 (codified as amended 18 U.S.C. § 3626, 28 U.S.C. § 1932).

10. *Id.* sec. 803, § 1997e(a), 110 Stat. at 1321-71 (codified as amended at 42 U.S.C. § 1997e(a)).

11. *Battle*, 912 F.3d at 718, 720.

12. See *id.* at 718–20.

13. See Ronald Mann, *Opinion Analysis: Justices Limit Tolling of Statutes of Limitations that Permits “Stacked” Class Actions*, SCOTUSBLOG (June 11, 2018, 2:53 PM), <https://www.scotusblog.com/2018/06/opinion-analysis-justices-limit-tolling-of-statutes-of-limitations-that-permits-stacked-class-actions/> [<https://perma.cc/Q2EA-D92N>] (“Let’s try a free-association game about recent topics in Supreme Court civil procedure cases. If the first topic is ‘equitable tolling of statutes of limitation,’ your answer should be something like ‘don’t bet on it.’”).

matter, it is granted infrequently.¹⁴ It is surprising, then, that the Fourth Circuit effectively held that equitable tolling should apply as a matter of course to prisoners' reasonably diligent efforts to resolve grievances with prison officials before filing federal civil rights suits.¹⁵

Battle is also the first federal appellate decision to clearly and explicitly root a PLRA-exhaustion-period tolling principle in federal equitable law.¹⁶ Although seven other circuits have suggested that the PLRA can toll statutes of limitations in appropriate circumstances, before *Battle*, none had explicitly rooted the PLRA-exhaustion-period tolling rule in the federal common-law doctrine of equitable tolling.¹⁷

The Fourth Circuit's novel and sweeping decision merits close analysis. This Recent Development accordingly examines *Battle*'s reasoning and ties to precedent, ultimately concluding that the rule tolling a prisoner's § 1983 claims during the PLRA exhaustion period is both stronger and weaker under the Fourth Circuit's logic. While *Battle* fixed a rule that seven other circuits adopted for various reasons in federal rather than state law, the court's opinion also exposed the rule to serious scrutiny based on that same, newly articulated justification. Given the modern Supreme Court's increasingly firm commitment to textualist statutory interpretation,¹⁸ and particularly in light of biases against prisoner civil rights litigation in both Congress and the courts,¹⁹ the justifications enunciated in *Battle* could jeopardize the continued existence of equitable tolling in PLRA cases.

This Recent Development proceeds in four parts. Part I introduces the facts and holding of *Battle*. Part II discusses *Battle*'s relationship to decisions

14. See *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990) (noting that equitable tolling is permitted "only sparingly"); see also, e.g., Lisa L. Bellamy, *Playing for Time: The Need for Equitable Tolling of the Habeas Corpus Statute of Limitations*, 32 AM. J. CRIM. L. 1, 24 (2005) (explaining that, although federal courts "have adopted equitable tolling" in the context of habeas petitions, relief is granted "infrequently").

15. See *Battle*, 912 F.3d at 720.

16. See *id.* at 715.

17. See *infra* Part II.

18. Consider, for instance, the scholarship of Supreme Court Justice Barrett, which explores whether reading statutes in light of "background assumptions," including equitable tolling, is consistent with textualist statutory interpretation. Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 123 (2010).

19. Congressional distaste for prisoner civil rights actions was evident in discussions over the PLRA itself. The PLRA's proponents advocated for it as a means of reducing the number of "inmate civil rights suits" filed each year, which in 1995 were estimated to cost the states \$54.5 million annually. See 141 CONG. REC. S19,113 (daily ed. Dec. 21, 1995) (statement of Sen. Jon Llewellyn Kyl). The PLRA's detractors recognized the legislation as a "far-reaching effort to strip Federal courts of the authority to remedy unconstitutional prison conditions." 142 CONG. REC. S2296 (daily ed. Mar. 19, 1996) (statement of Sen. Edward "Ted" Moore Kennedy). Cognizant of Congress's intent, the U.S. Supreme Court has frequently cited the PLRA's litigation-reducing purpose when interpreting its mandates, usually in ways that further complicate (and in turn limit) prisoner civil rights filings. See, e.g., *Woodford v. Ngo*, 548 U.S. 81, 84 (2006); *Porter v. Nussle*, 534 U.S. 516, 524–25 (2002).

with similar holdings in seven other circuit courts of appeals. The *Battle* court claims consistency with those decisions, each of which suggests that time spent complying with the PLRA's exhaustion mandate may toll the statute of limitations in federal prison-conditions lawsuits.²⁰ Yet close examination reveals that any consensus among the circuits is illusory, as the decisions are based on varying legal principles and widely disparate facts—where the courts offer any justification for their holdings at all.

Part III then examines the Fourth Circuit's other, more substantive justification for its PLRA-exhaustion-period tolling rule: the supremacy of the federal civil rights statutes and federal courts' duty to disregard "inconsistent" state laws imported for their enforcement.²¹ *Battle* is the first appellate decision about PLRA tolling to make these legal theories explicit and, if extended to its logical conclusion, might mandate tolling in federal conditions-of-confinement challenges as a matter of federal law.²² Because of the novelty and reach of that conclusion, this Recent Development carefully considers the Fourth Circuit's analysis on its merits, questioning whether federal equitable law was properly available and applied.

For organization and clarity, Part III is split into three subsections—one for each analytical step required by *Battle*'s holding. Section III.A examines the Fourth Circuit's conclusion that Virginia state tolling rules, which would ordinarily be imported for § 1983's enforcement, may properly be set aside as inconsistent with settled federal policy.²³ The court's conclusion on this point is well articulated and convincing, and this Recent Development describes but does not question it.

Section III.B considers the issues that naturally follow, but which the Fourth Circuit did not address: Once state law is repudiated, what rule fills the gap? And what is the source of the federal court's power to decide? The Fourth Circuit sidestepped these concerns in *Battle*, simply assuming the power to

20. See *Battle*, 912 F.3d at 719–20.

21. *Battle*, 912 F.3d at 715.

22. Cf. *infra* Part II (describing the bases of other circuits' PLRA-exhaustion-period tolling rules); *infra* Part III (describing the legal underpinning of *Battle*).

23. See *Battle*, 912 F.3d at 713 (noting ordinary importation of state rules); *id.* at 715–17 (explaining why importation in this case would defeat the purposes of § 1983). Both the importation of state law and the statutory basis for abandoning it are set forth in § 1983's companion provision, 42 U.S.C. § 1988, which provides:

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.

42 U.S.C. § 1988(a). Section 1988 is generally read as a choice-of-law provision for § 1983, although some scholars have suggested this is *not* § 1988's command. See Theodore Eisenberg, *State Law in Federal Civil Rights Cases: The Proper Scope of Section 1988*, 128 U. PA. L. REV. 499, 500 (1980).

“determine a proper remedy” and selecting equitable tolling—a doctrine available at common law—to fashion relief.²⁴ Federal courts must be careful about assuming common-law powers not grounded in federal statutes or the Constitution, however.²⁵ In addition, equitable tolling is usually considered “a question of statutory intent.”²⁶ The relief applied in *Battle* was thus not necessarily available merely because state laws no longer applied.

Section III.C then considers whether, even assuming federal equitable relief was available and within the *Battle* court’s power to provide, the PLRA’s mandated exhaustion period is an extraordinary circumstance under federal equitable tolling law.²⁷ That question is much closer than the Fourth Circuit’s opinion suggests.²⁸ Accordingly, Section III.C reviews empirical evidence of the PLRA’s disastrous impact on prisoner litigation, which lends support to the court’s holding. Altogether, by parsing and separately examining each of these analytical steps, this Recent Development illuminates *Battle*’s strengths while identifying and buttressing its weaknesses. Part IV offers concluding remarks.

I. THE FACTS AND HOLDING OF *BATTLE*

Battle originated as a § 1983 excessive-force case against two corrections officers in Virginia.²⁹ The suit was brought by William D. Battle, III following an “altercation” on December 6, 2013, with guards at Wallens Ridge Prison in Roanoke, Virginia.³⁰ The officers filed a disciplinary report charging that Battle “used his body to push one of the officers into a food cart.”³¹ At the time, Battle was restrained “in handcuffs and leg irons” and maintained that a pain in his ankle “caused him to trip.”³² The officers responded by subduing Battle.³³ According to their account, they “plac[ed Battle] on the ground.”³⁴ Battle insisted that the officers instead “pull[ed] his hair and slamm[ed] his head into the concrete floor,” resorting to “unnecessary violence” that caused bruising,

24. See *Battle*, 912 F.3d at 718.

25. See *Hernandez v. Mesa*, 140 S. Ct. 735, 741–42 (2020) (reasoning that the federal courts have limited judicial power and cannot create common-law remedies that are not rooted in congressionally enacted statutes); see also *Hanna v. Plumer*, 380 U.S. 460, 471 (1965) (noting, in the context of a case brought in diversity, that “neither Congress nor the federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in . . . the Constitution”); Michael T. Morley, *The Federal Equity Power*, 59 B.C. L. REV. 217, 221 (2018) (“[E]quity stems from and follows the law.”).

26. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014).

27. See *Battle*, 912 F.3d at 719.

28. See *infra* Section III.C.

29. *Battle*, 912 F.3d at 712.

30. *Id.* at 711.

31. *Id.*

32. See *id.*

33. *Id.*

34. *Id.*

lacerations, and swelling to his face.³⁵ The dispute was submitted to a prison-hearing administrator, who declined to examine video footage of the incident and found Battle guilty of an infraction based solely on the officers' reports.³⁶

Battle did not immediately turn to the courts to resolve his grievance. Instead, consistent with the requirements of the PLRA,³⁷ he first appealed the prison-hearing administrator's decision to the prison's chief warden and then to the regional corrections administrator.³⁸ On February 27, 2014—eighty-three days after the altercation—the regional administrator rejected Battle's claim and informed Battle that he had “reached the ‘last level of appeal for [his] grievance.’”³⁹

Battle then filed a § 1983 complaint in federal court on January 11, 2016.⁴⁰ By that time, more than two years had passed since the initial December 2013 altercation.⁴¹ The officer-defendants accordingly moved for summary dismissal on the theory that Battle's claim was filed outside of Virginia's two-year statute of limitations.⁴² Battle countered that the period during which he participated in the Virginia prison's grievance procedure should be tolled against the limitations period, extending his time to file until February 27, 2016.⁴³ Because the PLRA required him to exhaust these administrative remedies before bringing his lawsuit, Battle claimed that both state and federal law should permit his suit to proceed.⁴⁴ The U.S. District Court for the Western District of Virginia disagreed and granted the officers' summary judgment request.⁴⁵

The Fourth Circuit reversed in January 2019, reasoning that federal law requires courts to toll § 1983 statutes of limitations during the PLRA's mandated exhaustion period.⁴⁶ The court acknowledged that § 1983's companion provision, 42 U.S.C. § 1988, directs courts to apply state statutes of

35. *Id.*

36. *Id.*

37. The PLRA provides that “[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility, *until such administrative remedies as are available* [at the correctional facility] *are exhausted.*” Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, sec. 803, § 1997e(a), 110 Stat. 1321-66, 1321-71 (codified as amended 42 U.S.C. § 1997e(a)) (emphasis added). Neither party disputed the applicability of the PLRA's exhaustion requirement to Battle's claim. *See Battle*, 912 F.3d at 712.

38. *Battle*, 912 F.3d at 711–12.

39. *Id.* at 712.

40. *Id.*

41. The complaint was filed two years and thirty-six days following the original altercation. *Id.* The reason for this deferral was not addressed in the Fourth Circuit's opinion.

42. *Id.*; *see also* *Lewis v. Richmond City Police Dep't*, 947 F.2d 733, 735 (4th Cir. 1991) (noting that the statute of limitations for § 1983 claims brought in Virginia is two years).

43. *Battle*, 912 F.3d at 712.

44. *Id.*

45. *Battle v. Ledford*, No. 16cv00020, 2017 WL 432822, at *1 (W.D. Va. Jan. 30, 2017), *vacated and remanded*, 912 F.3d 708 (4th Cir. 2019).

46. *Battle*, 912 F.3d at 720.

limitations.⁴⁷ The decision also implicitly recognized that state tolling rules are usually applied, too.⁴⁸ Under that scheme, the court agreed that tolling was not permitted under Virginia law.⁴⁹ Virginia not only lacked a statute that would affirmatively allow tolling while litigants exhausted administrative remedies; the state had adopted a “general rule” prohibiting “any non-statutory basis for tolling.”⁵⁰ This “no-tolling rule” meant that Virginia state law—the authority that federal courts in Virginia are commanded to follow when adjudicating § 1983 claims—seemed to foreclose Battle’s tolling claim, just as the lower court had found.⁵¹

But the Fourth Circuit reversed anyway, Virginia law notwithstanding. Applying § 1988, which requires federal courts to use state statutes of limitations and tolling rules only insofar as they are “not inconsistent with the Constitution and laws of the United States,”⁵² the court held that Virginia’s no-tolling rule frustrated the goals of § 1983 and so should be set aside.⁵³ Then, with the troubling no-tolling rule repudiated, the court applied federal equitable principles instead.⁵⁴ Under the newly substituted federal equitable framework, the Fourth Circuit held that Battle’s claim was timely because he filed his lawsuit within two years of the date he exhausted his administrative appeals.⁵⁵

The court further justified its holding as placing the Fourth Circuit in “consensus” with “seven other circuits,” including circuits perceived as both liberal and conservative.⁵⁶ “[E]very circuit that has confronted a state no-tolling rule and reached this question,” the court maintained, “has applied federal law to equitably toll § 1983 limitations during the PLRA exhaustion period.”⁵⁷ The following part considers this claim.

47. *See id.* at 712–13.

48. *See id.* at 713. For additional information about § 1988, see *supra* note 23.

49. *See Battle*, 912 F.3d at 713–14.

50. *Id.* (citing *City of Bedford v. James Leffel & Co.*, 558 F. 2d 216, 217 (4th Cir. 1977)). By comparison, laws in several other states, including North Carolina, toll statutes of limitations when commencement of an action is prohibited by statute. *See* N.C. GEN. STAT. § 1-23 (LEXIS through Sess. Laws 2020-97 of the 2020 Reg. Sess. of the Gen. Assemb.); *see also, e.g.*, 735 ILL. COMP. STAT. ANN. 5/13-216 (Westlaw through P.A. 101-651); WIS. STAT. § 893.23 (2021).

51. *See Battle*, 912 F.3d at 715.

52. *See id.* at 712–13 n.3 (quoting 42 U.S.C. § 1988(a)). For an overview of the relevant text of § 1988(a), see *supra* note 23.

53. *Battle*, 912 F.3d at 715; *see also id.* at 714 (“[I]t is the ‘duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies.’”) (quoting *Occidental Life Ins. Co. of Cal. v. EEOC*, 432 U.S. 355, 367 (1977)).

54. *See id.* at 718–20.

55. *See id.* at 720 (“In sum, Battle’s § 1983 complaint is timely; it was filed within two years of the date he exhausted administrative remedies required by the PLRA.”).

56. *See id.* The Fourth Circuit claimed “consensus” with the Second, Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits. *See id.* at 719–20.

57. *Id.* at 719.

II. THE INCOHERENCE OF EXISTING CIRCUIT PRECEDENT

The Fourth Circuit's insistence on conformity with other circuits is clearly foundational to its holding. The court dedicated nearly a tenth of its total opinion to citing a litany of appellate decisions announcing similar PLRA-exhaustion-period tolling rules.⁵⁸ But despite the claim of consistency, *Battle*'s analytical uniformity with other federal circuits is overstated. It is true that the Second, Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits have each suggested that § 1983 statutes of limitations may be tolled for prisoners exhausting administrative remedies.⁵⁹ But they have done so under very different facts and legal theories, undermining the Fourth Circuit's self-proclaimed conformity with other federal precedent.⁶⁰

The court's citation to Seventh Circuit case law is the clearest example of its conflict with existing decisional authority. The *Battle* court cited the Seventh Circuit's decision *Johnson v. Rivera*,⁶¹ which relied on state law to toll the statute of limitations period for a prisoner's § 1983 claim while he exhausted administrative remedies pursuant to the PLRA.⁶² The case was brought in a federal district court in Illinois, where the court looked to Illinois state law to determine the applicable statute of limitations.⁶³ Significantly, an Illinois state statute relevant in *Johnson* made clear that any time limitation for "commencement of [an] action" should be tolled when it is "stayed by . . . statutory prohibition."⁶⁴ Because the PLRA is a statutory prohibition against filing suit, *Johnson* held that Illinois law required tolling of the PLRA exhaustion period.⁶⁵

58. See *Battle v. Ledford*, No. 17-6287, slip op. at 19–20 (4th Cir. Jan. 8, 2019). At twenty-two pages total with a two-page caption, this recital represents about one tenth of the opinion.

59. *Battle*, 912 F.3d at 719–20.

60. The fact that a result could be properly reached does not indicate that *how* the result reached is irrelevant. Cf. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915 (2020) (reversing an agency's decision to eliminate the Deferred Action for Childhood Arrivals program because the decision was reached in an arbitrary and capricious manner, although it was within the agency's power to eliminate the program through other lawful means). Furthermore, candor about the limits of precedent is essential to the judicial process. See David L. Shapiro, *In Defense of Judicial Candor*, 100 HARV. L. REV. 731, 737 (1987) (discussing various schools of thought regarding precedent and "judicial candor").

61. 272 F.3d 519 (7th Cir. 2001). The Fourth Circuit explained that *Johnson* "agree[s] with other circuits that 'federal courts should toll state statutes of limitations while inmates exhaust their administrative remedies under § 1997e' while applying [a] state tolling provision." *Battle*, 912 F.3d at 719 (quoting *Johnson*, 272 F.3d at 521).

62. *Johnson*, 272 F.3d at 521.

63. *Id.* at 521; see also 42 U.S.C. § 1988(a) (requiring the importation of state law where § 1988 is "deficient in the provisions necessary to furnish suitable remedies").

64. See *Johnson*, 272 F.3d at 521 (citing 735 ILL. COMP. STAT. 5/13-216 (Westlaw through P.A. 101-651)) (alterations omitted).

65. *Id.* at 519.

By contrast, the Fourth Circuit explicitly decided *Battle* on federal equitable principles.⁶⁶ The state laws relevant in *Battle* made clear that tolling was not available under any Virginia statute or decisional authority—the opposite of Illinois law.⁶⁷ The Fourth Circuit had to reason around Virginia’s clear no-tolling rule, and *Battle* is important precisely because it holds that federal equitable principles apply notwithstanding state laws to the contrary. *Johnson* thus reaches a similar result, permitting prisoners to toll the exhaustion period when calculating the § 1983 statute of limitations, via a path plainly unavailable in *Battle*. The Seventh Circuit case does not itself support the Fourth Circuit’s analysis or holding.⁶⁸

Other circuit court opinions cited by the *Battle* court are similarly inapposite. The Eleventh Circuit case *Napier v. Preslicka*,⁶⁹ for instance, was not primarily a tolling case at all. The issue on appeal in *Napier* was whether a prisoner’s § 1983 suit alleging constitutional violations during a previous arrest, unrelated to the prisoner’s current incarceration, fell under the PLRA’s prohibition on suits brought for emotional injury “suffered while in custody.”⁷⁰ The Eleventh Circuit’s sole treatment of tolling and the statute of limitations is in a footnote to the main opinion.⁷¹ The court there “proffer[ed], but [did] not hold,” that equitable tolling may “mitigate” any unfortunate consequences of its primary holding, which required the plaintiff to exhaust administrative remedies under the PLRA.⁷² The Eleventh Circuit’s footnote references but does not explain the relevance of opinions of “other circuits,” further stretching the Fourth Circuit’s reliance.⁷³

The *Battle* court’s reliance on *Clifford v. Gibbs*,⁷⁴ decided by the Fifth Circuit, is similarly unpersuasive. *Clifford* addressed whether it was equitable to toll the § 1983 statute of limitations after a Louisiana prisoner prematurely filed a federal suit without first exhausting the requisite administrative remedies.⁷⁵ Because the Fifth Circuit determined that the PLRA applied to the claim and that exhaustion was therefore required, it dismissed the premature lawsuit without prejudice.⁷⁶ While the Fifth Circuit considered the case, however,

66. See *Battle*, 912 F.3d at 714 (“With no Virginia rule available to toll the limitations period, we must determine whether refusal to do so during a prisoner’s mandatory exhaustion period is ‘consistent with federal law and policy.’”).

67. See *id.* at 713–14; see also *supra* notes 47–51 and accompanying text.

68. As noted above, that a result *can* be reached does not mean that *how* it is reached is irrelevant. See *supra* note 60.

69. 314 F.3d 528 (11th Cir. 2002).

70. *Id.* at 531–32.

71. See *id.* at 534 n.3.

72. See *id.*

73. *Id.*

74. 298 F.3d 328 (5th Cir. 2002).

75. *Id.* at 332–33.

76. *Id.*

Louisiana's one-year statute of limitations had run.⁷⁷ The dismissal without prejudice would therefore operate as a dismissal *with* prejudice, barring the plaintiff from returning to court after complying with the court's order.⁷⁸ To avoid that injustice, the court permitted the prisoner to toll the statute of limitations on his § 1983 claim both during the "pendency of [the premature federal action] and during any additional state administrative proceedings" required under its opinion.⁷⁹ Thus, while *Clifford* cited general principles of equity and Fifth Circuit precedent to toll the limitations period for administrative exhaustion, it did so merely as an appended consideration: The court's reasoning and citations were exclusively related to the injustice of a dismissal without prejudice acting as a bar to refiling suit, not the burdens of satisfying the PLRA's administrative exhaustion requirements.⁸⁰ Tolling was warranted because the law did not clearly indicate that the PLRA applied at all, and the Fifth Circuit did not want to punish the plaintiff for finding out that the PLRA applied only after the statute of limitations had run.⁸¹

Other circuit decisions cited by *Battle* state baldly that PLRA-mandated exhaustion efforts should toll the limitations period for prisoners' federal civil rights claims but do not articulate why this is or should be the rule. The Third Circuit's *Thompson v. Pitkins*,⁸² for example, primarily concerned a lower court's decision dismissing the case for failure to state a claim.⁸³ Tolling and the statute of limitations were not directly before the court, but because a magistrate judge raised the issue in his report and recommendation, the Third Circuit offered as dicta its opinion that the statute of limitations "may be tolled" during the PLRA's mandated exhaustion period.⁸⁴ The *Thompson* court did not explain why equitable tolling should apply aside from citing other opinions discussed in this Recent Development.⁸⁵

77. *Id.*

78. *Id.* at 333.

79. *Id.*

80. *See id.*

81. *Id.*

82. 514 F. App'x 88 (3d Cir. 2013).

83. *Id.* at 88–89.

84. *Id.* at 90. That conclusion is almost certainly dicta, and the decision was not selected for publication. *See id.* at 88–89 (noting the decision is "primarily for the parties"). *Thompson* is therefore not precedential authority even within the Third Circuit. *See* INTERNAL OPERATING PROCEDURES OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT § 5.7 (2018) ("The court by tradition does not cite to its not precedential opinions as authority. Such opinions are not regarded as precedents that bind the court because they do not circulate to the full court before filing.").

85. *See Thompson*, 514 F. App'x at 90 (first citing *Brown v. Valoff*, 422 F.3d 926, 942–43 (9th Cir. 2005); then citing *Johnson v. Rivera*, 272 F.3d 519, 522 (7th Cir. 2001); and then citing *Brown v. Morgan*, 209 F.3d 595, 596 (6th Cir. 2000)).

Two other cases cited by the Fourth Circuit, *Gonzalez v. Hasty*⁸⁶ and *Brown v. Morgan*,⁸⁷ also rely solely on decisions of their sister circuits to justify the application of equitable tolling to § 1983 statutes of limitations where the plaintiffs must also exhaust administrative remedies under the PLRA.⁸⁸ *Gonzalez* relies on other cases discussed in this Recent Development, each either decided on inconsistent legal grounds, under dissimilar facts, or themselves circularly justified on other circuit precedents.⁸⁹ *Brown*, the earliest decided of the cases cited by the Fourth Circuit, also relies solely on precedent from other circuits and does not explain why those decisions should dictate the outcome there.⁹⁰

Altogether, these circular citations, divergent legal theories, and sharply contrasting factual situations undermine the Fourth Circuit's claim of "conformity" with existing federal precedent. In fact, a close reading of the cases cited in *Battle* suggests there may be *no* consensus among the circuits regarding equitable tolling of § 1983 claims subject to the PLRA at all. Even if other circuits reached similar results, it is a questionable practice for courts to rely on precedent that may be both inapplicable and internally inconsistent. Rather than conforming to existing authority, then, *Battle* calls into question the basis for a uniform PLRA-exhaustion-period tolling rule altogether.⁹¹

III. THE CASE FOR FEDERAL EQUITABLE TOLLING UNDER § 1983 AND THE PLRA

With questionable roots in conformity, the Fourth Circuit's substantive legal reasoning in *Battle* is all the more important. Indeed, *Battle*'s true contribution to PLRA and § 1983 jurisprudence is not its articulation of a PLRA-exhaustion-period tolling rule, which has been stated and restated by other circuits,⁹² but its unique analysis of the appropriateness and applicability of federal equitable tolling in § 1983 prison-conditions litigation. Rather than merely repeating other circuits' holdings, *Battle* conveys why a tolling rule is required under the goals and policies of § 1983 as a matter of federal law and why state statutes of limitations and tolling rules imported for § 1983's

86. 651 F.3d 318 (2d Cir. 2011).

87. 209 F.3d 595 (6th Cir. 2000).

88. *Gonzalez*, 651 F.3d at 322.

89. *See id.* (first citing *Brown v. Valoff*, 422 F.3d 926, 942–43 (9th Cir. 2005); then citing *Clifford v. Gibbs*, 298 F.3d 328, 332 (5th Cir. 2002); then citing *Johnson v. Rivera*, 272 F.3d 519, 522 (7th Cir. 2001); and then citing *Brown*, 209 F.3d at 596).

90. *See Brown*, 209 F.3d at 596 (first citing *Harris v. Hegmann*, 198 F.3d 153, 157–59 (5th Cir. 1999) (per curiam); and then citing *Cooper v. Nielson*, No. 99-15074, 1999 WL 719514, at *1 (9th Cir. Sept. 15, 1999) (unpublished table decision)).

91. This incoherence would not affect decisions like *Johnson*, which was decided on a straightforward application of state law under § 1988(a). *See Johnson v. Rivera*, 272 F.3d 519, 521 (7th Cir. 2001).

92. *See supra* Part II.

enforcement will never absolutely control in prisoner-filed federal civil rights cases.

Yet despite this contribution, *Battle*'s novel legal analysis is also its greatest weakness. No other circuit has engaged in a comparably measured examination of the application of federal equitable tolling principles to § 1983 and the PLRA.⁹³ While the decision roots the equitable tolling rule for PLRA exhaustion in the language of the civil rights statutes and Supreme Court precedent, it does not clearly articulate or resolve every issue necessary to reach its conclusion. As written, the Fourth Circuit's expansive equitable tolling rule is exposed to the scrutiny of other courts, including an en banc panel of the Fourth Circuit or the Supreme Court itself, without the fully developed analysis that might insulate it from limitation, revision, or outright reversal.

The *Battle* decision's weakness lies in the second and third steps of a three-part analysis. *Battle* compellingly satisfies the first step, describing why a state no-tolling rule is inconsistent with federal law and need not control the outcome of a § 1983 case subject to the PLRA. But the opinion does not adequately address the questions that naturally follow: Why do federal equitable principles fill the vacuum created by setting state law aside, and what gives the Fourth Circuit the power to decide when or how they apply? Additionally, even if the federal common-law doctrine of equitable tolling is available to § 1983 litigants as a general matter, it does not necessarily follow that the PLRA's exhaustion mandate is the sort of extraordinary circumstance that would trigger application of the equitable tolling rule in any individual case. The three subsections below examine each of these issues—all necessary steps in reaching *Battle*'s ultimate conclusion.

A. *State Tolling Rules Inconsistent with Federal Law Are Properly Set Aside*

A major issue for the *Battle* court was Congress's decision not to provide a fixed statute of limitations or equitable tolling rule in § 1983.⁹⁴ The statute's companion provision instead directs federal courts to look to "the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction" of the § 1983 case, "so far as the same is not inconsistent with the Constitution and laws of the United States."⁹⁵ Ordinarily, this means that the length of the statute of limitations and "closely related

93. Unlike other circuits to address this issue, the *Battle* court was forced to confront state law directly in conflict with equitable tolling. *See supra* Part II. The court's methodical five-page analysis justifying the equitable tolling rule is no doubt a result of this peculiar posture.

94. Congress has positively provided limitations periods in other federal statutes. *See, e.g.*, U.S. Dep't of Just., Crim. Res. Manual §650 (2020), <https://www.justice.gov/archives/jm/criminal-resource-manual-650-length-limitations-period> [<https://perma.cc/27GQ-WP8Z>] (listing statutes of limitations for various criminal offenses); 28 U.S.C. § 2263(b) (providing a statute of limitations for habeas corpus petitions).

95. 42 U.S.C. § 1988(a); *see also supra* note 23 (replicating text of § 1988(a)).

questions of tolling” for § 1983 claims are governed by state law.⁹⁶ Because Virginia law did not permit Battle to toll the statute of limitations for his § 1983 case while he exhausted his PLRA-mandated administrative remedies,⁹⁷ the Fourth Circuit accordingly considered whether application of Virginia’s no-tolling rule was “consistent with federal law and policy.”⁹⁸ The court ultimately concluded that Virginia’s tolling bar “defeat[ed] . . . § 1983’s chief goals of compensation and deterrence [and] its subsidiary goals of uniformity and federalism” and so should be set aside.⁹⁹

The *Battle* court’s analysis on this point is detailed and well articulated;¹⁰⁰ there is little reason to replicate the analysis in exacting detail here. In short, the court first noted that the application of Virginia’s no-tolling rule would limit compensation for victims of civil rights violations because disallowing tolling would give victims who are incarcerated “less time to vindicate § 1983 claims than all other litigants.”¹⁰¹ The state’s no-tolling rule would also thwart § 1983’s deterrence goals by enabling state officials to “shrink a prisoner’s filing window” by complicating or slowing the exhaustion process, thereby limiting the prisoner’s “opportunity to bring a claim.”¹⁰² Rather than deter civil rights deprivations, the no-tolling rule would therefore encourage state actors to complicate procedural bars to bringing suit and so “limit government officials’ legal exposure” even while civil rights violations continue.¹⁰³

The court was similarly unconvinced that Virginia’s no-tolling rule would advance uniform application of § 1983, one of § 1983’s subsidiary goals.¹⁰⁴ Admitting that an across-the-board prohibition on tolling absent an explicit state statute to the contrary is “formalistic[ally]” uniform, the court concluded that its substitute rule permitting equitable tolling “is just as ‘firmly defined’ and ‘easily applied.’”¹⁰⁵ Making equitable tolling available would moreover erase the “disparity between those who are incarcerated and those who are not.”¹⁰⁶ Its equitable tolling rule, therefore, was at least equally uniform to the no-tolling rule.¹⁰⁷

96. *Wilson v. Garcia*, 471 U.S. 261, 269 (1985).

97. *See supra* notes 49–51 and accompanying text.

98. *Battle v. Ledford*, 912 F.3d 708, 714 (4th Cir. 2019) (citing *Owens v. Okure*, 488 U.S. 235, 239 (1989)).

99. *See id.* at 714–15.

100. *See id.* at 714–17.

101. *Id.* at 716.

102. *Id.*

103. *Id.*

104. *See id.*; *see also id.* at 714 (describing uniformity as a “subsidiary” goal).

105. *Id.* at 716.

106. *Id.*

107. Of course, under a federal statutory scheme that requires federal courts to apply varying state laws, the statutes of limitations applicable to § 1983 claims will always be nonuniform to some extent. *Cf.* 42 U.S.C. § 1988(a). For further discussion on the complexity of determining when state laws are

Nor did the rejection of Virginia's no-tolling rule offend principles of federalism. Because "the Commonwealth itself has adopted two statutes . . . that toll prisoner exhaustion periods" for state law claims, the *Battle* court concluded that Virginia had a general policy of "tolling limitations while prison administrators review inmate claims."¹⁰⁸ The Fourth Circuit would not compromise Virginia's general no-tolling rule by permitting Virginia prisoners to toll the statute of limitations on federal claims, therefore, as tolling was already available to prisoners bringing state law causes of action.¹⁰⁹ Moreover, the no-tolling rule was meant to "protect defendants from 'unscrupulous plaintiffs,'" not from plaintiffs who diligently utilized every option available to resolve their grievances.¹¹⁰

The Fourth Circuit also considered and rejected the officer-defendants' theory that the PLRA itself made a no-tolling rule consistent with federal law.¹¹¹ Reviewing the text and legislative history of the Act,¹¹² the court concluded that the PLRA's exhaustion mandate was not meant to modify the civil rights enforcement statutes' "express command that borrowed provisions of state law must be consistent with important, long-recognized federal policies."¹¹³ Although one of the aims of the PLRA was to "reduce the quantity" of prisoner lawsuits—a goal unquestionably served by disallowing equitable tolling—the PLRA's primary purpose was to "improve the quality" of those suits and permit officials the "opportunity to take 'corrective action' and ideally 'obviate' the need for litigation" altogether.¹¹⁴ These goals, the court concluded, were ultimately consistent with permitting prisoners to toll the statute of limitations during the PLRA-mandated exhaustion period.¹¹⁵ Tolling would permit prisoners to fully utilize informal administrative remedies available prior to filing suit, giving prison officials the opportunity to correct problems before the courts intervene, producing a factual record that expedites judicial review,

actually "inconsistent" with federal law, particularly when federal law directs courts to use state law, see Eisenberg, *supra* note 23, at 507–21.

108. *Battle*, 912 F.3d at 716 (citing VA. CODE ANN. §§ 8.01-195.7, 8.01-243.2 (LEXIS through the 2020 Spec. Sess. I of the Gen. Assemb.)).

109. *See id.*

110. *Id.*

111. *Id.* at 717.

112. Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66 (codified as amended 18 U.S.C. § 3626, 28 U.S.C. § 1932).

113. *Battle*, 912 F.3d at 717; *see also* sec. 803, § 1997e, 110 Stat. at 1321-71 (codified as amended at 42 U.S.C. § 1997e) (discussing the parameters of the PLRA's exhaustion mandate).

114. *Battle*, 912 F.3d at 717 (quoting *Porter v. Nussle*, 534 U.S. 516, 524–25 (2002) ("The purpose of the PLRA was not . . . to impose indiscriminate restrictions on prisoners' access to the federal courts." (citing *McLean v. United States*, 566 F.3d 391, 397 (4th Cir. 2009))); *see also* sec. 803, § 1997e(a), 110 Stat. at 1321-71.

115. *Battle*, 912 F.3d at 717–18.

winnowing meritless claims, and generally reducing the burden on the courts posed by multitudinous prisoner litigation.¹¹⁶

For these reasons, the Fourth Circuit held that Virginia’s no-tolling rule was “inconsistent with federal law and policy” and so inapplicable to Battle’s claim.¹¹⁷ Although there is some precedent to the contrary,¹¹⁸ the court’s analysis is compelling, full-bodied, and consistent with the general judicial practice of construing § 1983 to best provide plaintiffs with meaningful federal remedies for state violations of constitutional rights.

B. *Do Federal Equitable Principles Fill in when State Tolling Rules Are Set Aside?*

Determining that Virginia’s no-tolling rule is inconsistent with § 1983 does not necessarily mean federal equitable tolling rules should apply instead. The Fourth Circuit did not seriously consider whether the federal civil rights statute provides for equitable tolling in the absence of a positive state tolling rule.¹¹⁹ Section 1988 does not command that federal common law should fill the vacuum when an inconsistent state rule is avoided.¹²⁰ In fact, at first blush, quite the opposite appears true: the federal court is directed to look to state law under § 1988 only when federal law is “deficient in the provisions necessary” to apply § 1983 in particular cases—meaning the court examined state law only because, as a threshold matter, the court found federal law lacking in the rules necessary to decide the issue.¹²¹ Why should the statute command importation of state law at all if a court may simply avoid state law where its application is unsavory and create its own, newly minted federal rule instead?¹²²

Battle also leaves unanswered important questions about the federal courts’ power to fill in gaps created by repudiating state law under § 1988’s command.

116. *See id.*

117. *Id.* at 717.

118. *See Hardin v. Straub*, 490 U.S. 536, 544 (1989) (noting that “many prisoners are willing and able to file § 1983 suits while in custody” and that a state may therefore “reasonably” determine that “there is no need to enact a tolling statute applicable to such suits”); *see also id.* at 544 n.14.

119. The court’s entire treatment of the subject appears in one short paragraph:

Because we hold that Virginia’s no-tolling rule is inconsistent with § 1983, we must determine a proper remedy. Battle asks that we apply federal equitable tolling principles to account for the time lost during his 83-day mandatory exhaustion period. We agree with Battle (and our sister circuits) that those principles apply during this period.

Battle, 912 F.3d at 718. This is not analysis, but conclusion.

120. *See* 42 U.S.C. § 1988(a); *see also supra* note 23 (replicating text of § 1988(a)).

121. § 1988(a).

122. In fairness to the Fourth Circuit, it appears that courts have been avoiding this question for at least the last forty years. *See Eisenberg, supra* note 23, at 507 (noting in his 1980 article that courts “dealing with section 1988 seem preoccupied with the result it produces and do not pause to give opinion readers the benefit of the intermediate analytical steps” necessary to fully explain their conclusions).

The Fourth Circuit's decision does not make clear whether it is exercising a federal judicial power to make common law and, if so, from where that power originates.¹²³ The power may be inherent in the equitable nature of the request; equitable tolling is derived from "the old chancery rule" and is not strictly a matter of positive law.¹²⁴ Yet at least one scholar has suggested that "equity stems from and follows the law," meaning courts' equitable powers can be limited by Congress and should be evident to the court under traditional constitutional or statutory interpretation before being invoked.¹²⁵ If correct, in situations where a federal law seems to require an alternative remedial scheme, it is not necessarily clear that federal equitable principles may be inferred and applied.¹²⁶ Confusing the matter further, § 1983 permits suits "in equity," but the same title of the U.S. Code explicitly directs courts, under § 1988, to fill in important details with state rather than federal law.¹²⁷ The PLRA meanwhile is silent on this point.

The confusion does not end there. Even assuming the courts have broad powers to craft common-law rules best suited to § 1983's purposes, a court must confront precedent that makes equitable tolling "fundamentally a question of statutory intent."¹²⁸ In other cases where equitable tolling has been made available by federal courts, the relief is typically understood to exist as part of the "background of common-law adjudicatory principles" that Congress is assumed to legislate against.¹²⁹ As a matter of statutory interpretation, therefore, courts will generally read equitable tolling into a federal statute that includes a statute of limitations absent an indication in the statute to the contrary.¹³⁰ This is because, in a circular but realistic line of reasoning, the court assumes that Congress assumed the court would do so.¹³¹ But in the context of § 1983 and § 1988, Congress left both the statute of limitations "and closely

123. See *Hernandez v. Mesa*, 140 S. Ct. 735, 741–42 (2020) (reasoning that the federal courts have limited judicial power and cannot create common-law remedies not rooted in congressionally enacted statutes). Compare *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) ("There is no federal general common law . . . And no clause in the Constitution purports to confer such a power upon the federal courts."), and *id.* at 79 ("[L]aw in the sense in which courts speak of it today does not exist without some definite authority behind it."), with *Holmberg v. Armbrrecht*, 327 U.S. 392, 395 (1946) ("When Congress leaves to the federal courts the formation of remedial details, it can hardly expect them to break with historic principles of equity in the enforcement of federally-created equitable rights.").

124. *Armbrrecht*, 327 U.S. at 397.

125. See *Morley*, *supra* note 25, at 221.

126. See *id.*

127. 42 U.S.C. §§ 1983, 1988(a).

128. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014).

129. *Id.*

130. *Id.* at 10–11; see also *Barrett*, *supra* note 18, at 123 (describing textualist statutory-interpretation principles, including the tendency to read statutes in light of "background assumptions" such as equitable tolling).

131. See *Lozano*, 572 U.S. at 10–11; see also *Barrett*, *supra* note 18.

related questions of tolling” to be defined by state law.¹³² It is not at all clear that a court may properly presume background federal common-law principles apply in such a case.

These are decidedly difficult questions. Rather than confront them, *Battle* avoids the issue, moving directly from whether Virginia’s no-tolling rule is inconsistent with federal law to whether *Battle* can make the showings necessary for equitable relief.¹³³ The court did not assess whether the relief should be available, in other words, only whether the relief was properly applied.¹³⁴ The resulting analytical gap weakens the Fourth Circuit’s decision and leaves it vulnerable to attack in later litigation.

Although its reasoning is unarticulated, the *Battle* court was likely correct to assume the availability of federal common-law relief. Once the Virginia no-tolling rule is set aside under § 1988(a), the Fourth Circuit’s power to articulate a substitute federal equitable tolling rule likely also springs from § 1988 itself. Section 1988’s repudiation provision—which permits the federal courts to set aside state law “inconsistent with the Constitution and laws of the United States”—may reasonably imply a related remedial power to articulate rules for § 1983’s enforcement where a state’s laws prove deficient or harmful.¹³⁵ That reading is supported by some decisional authority. In the 1970s, for instance, the Fifth Circuit expressed no concern in substituting a rule grounded in “federal common law” after it determined that a Louisiana survivorship statute, imported under § 1988,¹³⁶ undermined the purposes of § 1983.¹³⁷ The decision was ultimately reversed by the Supreme Court, but on the theory that the Louisiana survivorship statute was consistent with § 1983—not because the substitution of a federal common-law rule was beyond the Fifth Circuit’s judicial power.¹³⁸ The Supreme Court itself has never been shy about crafting common-law solutions to further the purposes of § 1983.¹³⁹ Still, *Battle* is silent on these questions, and their answers are far from clear.

132. See 42 U.S.C. §§ 1983, 1988(a); *Wilson v. Garcia*, 471 U.S. 261, 269 (1985).

133. See *Battle v. Ledford*, 912 F.3d 708, 717–18 (4th Cir. 2019); see also *supra* note 119 (reproducing the entire one-paragraph analysis on this point).

134. See *Battle*, 912 F.3d at 717–18; *supra* note 119.

135. See § 1988(a); see also *Battle*, 912 F.3d at 718. More radically, this complex quandary could mean that the late Professor Theodore Eisenberg was correct in suggesting that § 1988 is not meant to be a general choice-of-law provision at all. See Eisenberg, *supra* note 23, at 500.

136. *Shaw v. Garrison*, 545 F.2d 980, 982–83 (5th Cir. 1977) (discussing LA. CIV. CODE ANN. art. 2315 (Westlaw through the 2020 2d Extraordinary Sess.)), *rev’d sub nom.* *Robertson v. Wegmann*, 436 U.S. 584 (1978).

137. *Id.* at 984.

138. See *Robertson v. Wegmann*, 436 U.S. 584, 592–93 (1978).

139. See, e.g., *Carey v. Piphus*, 435 U.S. 247, 258–59 (1978) (directing courts to adapt common-law rules of compensation for injuries to determine damages in cases alleging violations of constitutional rights); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239–40 (1969) (permitting courts to choose among federal and state damages rules).

C. *Were the Conditions for Equitable Tolling Met?*

The Fourth Circuit paid more attention to a third issue in *Battle*: why, assuming the court properly exercised its power to fashion federal equitable relief, the PLRA's exhaustion mandate is the kind of "extraordinary circumstance" that satisfies the federal equitable tolling rule.¹⁴⁰ Usually, equitable tolling applies only when a party diligently pursued their rights, but an extraordinary circumstance stood in the way of timely filing.¹⁴¹ *Battle* holds that the PLRA itself creates such an extraordinary circumstance, so that equitable tolling will be available as a matter of course whenever a prisoner demonstrates "reasonable diligence" in pursuing their administrative remedies.¹⁴² The court's analysis on this point is truncated and not wholly convincing, further weakening *Battle*'s otherwise sweeping and consequential decision.

Close examination of the Fourth Circuit's two explanations for the extraordinary circumstance created by the PLRA exposes the problem. One justification offered is that other circuit courts have considered the PLRA's exhaustion requirement alone to be sufficient to warrant tolling.¹⁴³ But as examined in detail above, those courts did not *need* to consider anything beyond the PLRA's exhaustion requirement because their holdings were not based on federal equitable tolling law.¹⁴⁴

The Fourth Circuit's other explanation is premised on the PLRA's status as the only federal statute "in which a mandatory exhaustion requirement could erode a litigant's limitations period."¹⁴⁵ But an unfortunate circumstance is not the same as an extraordinary one,¹⁴⁶ as cases exploring equitable tolling make clear. Extraordinary circumstances usually involve "inadequate notice," the courts' own delay, or "affirmative misconduct on the part of a defendant" that "lulled the plaintiff into inaction."¹⁴⁷ By contrast, "[p]rocedural requirements

140. *See Battle*, 912 F.3d at 718–19.

141. *Menominee Indian Tribe of Wis. v. United States*, 136 S. Ct. 750, 755 (2016) (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010)).

142. *Battle*, 912 F.3d at 718–19.

143. *Id.* at 719–20 (reasoning that other circuits have not required "additional extraordinary circumstances beyond the exhaustion requirement" before they provide relief from § 1983 statutes of limitation).

144. *See supra* Part II.

145. *Battle*, 912 F.3d at 719 & n.7.

146. *Cf.* THE FEDERALIST NO. 83 (Alexander Hamilton) ("The great and primary use of a court of equity is to give relief in extraordinary cases, which are exceptions to general rules."); GARY L. MCDOWELL, EQUITY AND THE CONSTITUTION: THE SUPREME COURT, EQUITABLE RELIEF, AND PUBLIC POLICY 5 (1982) ("Equity is the power to dispense with the harsh rigor of general laws in particular cases. But equity is always to be understood as the exception rather than the rule.").

147. *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984) (per curiam).

established by Congress for gaining access to the federal courts” are not usually the sort of circumstance warranting equitable relief.¹⁴⁸

The stark distinction between truly extraordinary situations and the routine unfairness of complex procedural schemes is best illustrated by the Supreme Court’s decision in *Lawrence v. Florida*.¹⁴⁹ The case involved the statute of limitations and tolling provisions of the federal habeas corpus statutes, which require persons seeking federal habeas relief to file their request within one year and also provide for tolling of the statute of limitations while state post-conviction proceedings are pending.¹⁵⁰ The *Lawrence* petitioner had been convicted of a Florida felony and requested state post-conviction relief 364 days after his conviction became final.¹⁵¹ That action tolled the federal habeas statute of limitations, leaving just one day to file.¹⁵² Ultimately, the Florida Supreme Court affirmed the plaintiff’s conviction, and he subsequently requested direct review by the U.S. Supreme Court.¹⁵³ Lawrence filed his habeas corpus request while he waited on the U.S. Supreme Court’s response.¹⁵⁴ The Court denied certiorari on his post-conviction relief appeal four months later.¹⁵⁵

Unfortunately for Lawrence, the literal wording of the habeas tolling statute also meant his habeas petition was untimely.¹⁵⁶ Although filed before the Supreme Court denied certiorari on his state post-conviction case, the habeas tolling provision applied only to the state courts’ review, not his appeal to the U.S. Supreme Court.¹⁵⁷ With just one day remaining in the federal habeas statute of limitations, he should have filed his habeas petition as soon as the Florida Supreme Court denied him relief.¹⁵⁸

Without adequate relief under the statutory tolling provision, Lawrence asked the U.S. Supreme Court to consider equitable tolling instead.¹⁵⁹ The Court assumed without deciding that equitable relief was available in principle and admitted there were conceivable circumstances where equitable relief might be appropriate under the federal habeas statute.¹⁶⁰ But the Supreme Court held that only an “exceedingly rare inequity that Congress almost certainly was not

148. *Id.* at 152.

149. 549 U.S. 327 (2007).

150. *Id.* at 329 (citing 28 U.S.C. § 2244). *Lawrence* is even more notable when considered in light of *Battle*’s insistence that the habeas statutes’ tolling scheme is evidence that the PLRA is an extraordinary circumstance. *See Battle*, 912 F.3d at 719 n.7.

151. *Lawrence*, 549 U.S. at 329–30.

152. *Id.* at 330.

153. *Id.*

154. *Id.*

155. *See id.*

156. *See id.* at 330–31.

157. *Id.*

158. *See id.* at 330–32.

159. *Id.* at 336.

160. *See id.* at 335–37.

contemplating” would be properly “cured by equitable tolling.”¹⁶¹ A circumstance like Lawrence’s, which was written into law by Congress, did not warrant common-law equitable relief.¹⁶²

Under the framework of *Lawrence*, the PLRA is the sort of circumstance that should not warrant equitable tolling. By passing the Act, Congress not only contemplated but specifically required prisoners to exhaust administrative remedies prior to bringing suit.¹⁶³ The law has been on the books for a quarter-century and is routinely applied by federal courts.¹⁶⁴ Far from an “exceedingly rare inequity,” the PLRA’s exhaustion mandate is the precise scheme contemplated and passed into law by Congress.

Still, empirical evidence of the PLRA’s impact on prisoner civil rights suits should justify the PLRA’s status as an extraordinary circumstance under the federal equitable tolling rules. As the *Battle* court implicitly recognized,¹⁶⁵ the exhaustion procedures mandated by the PLRA are typically unhurried, protracted affairs. Each state is additionally permitted to define its own system of administrative remedies, further complicating the process.¹⁶⁶ The state of Virginia, where *Battle* was incarcerated, has selected an “elaborate administrative grievance process for prisoner complaints” that can take 210 days

161. *Id.* at 335.

162. *See id.*

163. *See* Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, sec. 803, § 1997e(a), 110 Stat. 1321-66, 1321-70 (codified as amended at 42 U.S.C. § 1997e(a)); *Porter v. Nussle*, 534 U.S. 516, 523 (2002) (describing the intentional introduction by Congress of an exhaustion requirement for prisoner-litigated suits). On the other hand, *Lawrence* involved a situation where Congress had actively provided for tolling under some circumstances as a matter of statutory law. *See Lawrence*, 549 U.S. at 329 (citing 28 U.S.C. § 2244). The subject of *Battle*—42 U.S.C. § 1983—has no statutory tolling scheme at all. *See Lewis v. Richmond City Police Dep’t*, 947 F.2d 733, 735 (4th Cir. 1991) (“There is no federal statute of limitations for § 1983 claims.”). *See generally Battle v. Ledford*, 912 F.3d 708, 714 (4th Cir. 2019) (analyzing this issue).

164. The PLRA was passed into law on April 26, 1996, making it twenty-five years old as of the date of this Recent Development’s publication. *See* Prison Litigation Reform Act of 1995, sec. 803, § 1997e(a), 110 Stat. 1321-70 to -73 (codified as amended at 42 U.S.C. § 1997e). Federal courts are intimately familiar with the PLRA because it dictates the prerequisites and procedures by which they hear prisoner civil rights suits. *See id.* Between 17,558 and 23,433 such suits were filed in 2015. *Federal Judicial Caseload Statistics*, U.S. CTS. (2015), <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2015> [<https://perma.cc/7K4C-58JA>]; Margo Schlanger, *Trends in Prisoner Litigation as the PLRA Approaches 20*, 28 CORR. L. REP. 69, 71 tbl.1 (2017), <https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Publications/Trends%20in%20Prisoner%20Litigation%20as%20the%20PLRA%20Approaches%2020.pdf> [<https://perma.cc/GS8B-Z5NV>]. This means prisoner civil rights suits subject to the PLRA comprised between eleven and sixteen percent of all federal question cases in the U.S. district courts in 2015. *See Federal Judicial Caseload Statistics, supra* (noting 150,157 total federal question filings and 281,608 total civil filings).

165. *See Battle*, 912 F.3d at 715 n.5 (describing Virginia’s grievance procedures and noting that “[a]bsent tolling, this policy could have the unintended effect of substantially reducing a prisoner’s § 1983 filing time when bringing a serious abuse claim against a corrections officer”).

166. *See* 42 U.S.C. § 1997e(a)–(b) (noting that administrative remedies “as are available” must be exhausted and emphasizing that a state’s failure to adopt or refusal to comply with any such procedure “shall not constitute the basis” for an enforcement action).

to resolve.¹⁶⁷ In conjunction with the state's two-year statute of limitations, the PLRA's exhaustion mandate could reduce a Virginia prisoner's time to file by nearly thirty percent.¹⁶⁸ Similarly, in North Carolina, prison grievance procedures can take more than nine months to exhaust.¹⁶⁹ And in Texas, the largest state-prison system in the country today, administrative exhaustion can take between three and six months' time.¹⁷⁰

Prison grievance procedures are also idiosyncratic and plagued by ambiguities, offering incarcerated people little guidance about how long exhaustion will take or whether courts will consider their efforts sufficient as a matter of law.¹⁷¹ In some circumstances, prison exhaustion requirements even vary between facilities within a single prison system,¹⁷² meaning the PLRA's mandate will change each time a prisoner is relocated. Prisoners must navigate these administrative mazes without clear guidance or the assistance of counsel even though people who are incarcerated, on average, have less formal educational attainment, are less literate, and live with higher rates of learning disabilities and mental conditions than the U.S. population as a whole.¹⁷³ The Supreme Court has hinted, though it has never held, that both "legal confusion" and "mental incapacity" may comprise extraordinary circumstances that warrant equitable tolling.¹⁷⁴

167. *Battle*, 912 F.3d at 715.

168. *See id.* at 712, 715.

169. Under North Carolina Department of Public Safety policy, prisoners must file a formal grievance within ninety days of the complained-of action. *See* N.C. DEP'T OF PUB. SAFETY, PRISONS, ADMINISTRATIVE REMEDY § G.0306(c)(2) (2013). Prison administrators are then permitted ninety-three days to respond but may extend that period by up to seventy additional days. *Id.* § G.0307(a)–(b), (f)(6). Notably the North Carolina statute of limitations for § 1983 actions is also longer at three years. *Brooks v. City of Winston-Salem*, 85 F.3d 178, 181 (4th Cir. 1996).

170. *See* TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE DIRECTIVE: MANAGEMENT OF OFFENDER GRIEVANCES 5–6 (2012) (noting deadlines that amount to 105 days, plus two potential extensions reaching 180 days); *see also* *Texas Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/TX.html> [<https://perma.cc/3SYW-BGE5>] (detailing the state's high rates of imprisonment).

171. *See* 42 U.S.C. § 1997e; *see also* Brief for ACLU et al. as Amici Curiae Supporting Petitioner at 26–28, *Jones v. Bock*, 549 U.S. 199 (2007) (No. 05-7058); Schlanger, *supra* note 164, at 69 ("The PLRA condition[s] court access on prisoners' meticulously correct prior use of onerous and error-inviting prison grievance procedures.").

172. *See* Samuel Jan Brakel, *Administrative Justice in the Penitentiary: A Report on Inmate Grievance Procedures*, 7 AM. BAR FOUND. R.J. 111, 115 (1982) (noting that prison grievance procedures "show a good deal of diversity from jurisdiction to jurisdiction and often from institution to institution as well"); *see also, e.g.*, U.S. DEP'T OF JUST., FED. BUREAU OF PRISONS, ADMINISTRATIVE REMEDY PROGRAM (2014) (requiring prisoners within the Federal Bureau of Prisons to first attempt "informal resolution" of complaints through procedures established at the facility level by individual wardens).

173. *See* U.S. DEP'T OF EDUC., OFF. OF EDUC. RSCH. & IMPROVEMENT & NAT'L CTR. FOR EDUC. STAT., *LITERACY BEHIND PRISON WALLS*, at xviii–xix (1994).

174. *See* *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007) (qualifying the defendant's deficient factual showing by adding, "Even assuming this argument could be legally credited").

Most extraordinary, however, is data about the PLRA's litigation-foreclosing effects. The PLRA's mandate that prisoners satisfy complex, time-intensive grievance procedures prior to bringing suit has proved a major hurdle for prisoner-litigants.¹⁷⁵ Since the PLRA's passage in 1996, civil rights complaints filed in federal courts by people who are incarcerated have dropped more than fifty percent, despite an overall rise in the number of people in prison.¹⁷⁶ Meanwhile, litigation remains one of the only tools available to prisoners who seek to remedy poor conditions of confinement and other affronts to their rights.¹⁷⁷ Ultimately, this data buttresses the Fourth Circuit's holding that the PLRA's exhaustion mandate is an extraordinary circumstance warranting application of the equitable tolling rule whenever an imprisoned plaintiff demonstrates reasonable diligence.

CONCLUSION

For these reasons, *Battle's* substantive legal analysis is both the strongest articulation of why prisoners who bring § 1983 claims may toll the PLRA-mandated exhaustion period notwithstanding state law to the contrary and an open invitation to revisit widely adopted tolling rules on their merits. The Fourth Circuit's reasoning is the clearest among the circuits' decisions considering the equitable tolling rule that allows incarcerated people additional time to exhaust administrative remedies before filing suit, but it is not unassailable. *Battle's* discussion of the principles undergirding the tolling rules may permit later courts to deconstruct and ultimately dismantle them. If the current Supreme Court's wariness of federal equitable law and, more generally, prisoner appeals to federal rights are any indication,¹⁷⁸ *Battle* may herald its own undoing.

Whatever its shortcomings, *Battle's* rule is clear: the statute of limitations for § 1983 actions must be equitably tolled for prisoners who follow the PLRA's mandate and diligently exhaust available administrative remedies before filing suit, whether or not state law would provide a similar relief. The decision was not appealed.¹⁷⁹ The PLRA's tolling rule now applies across nine circuits and

175. See Schlanger, *supra* note 164, at 80.

176. See *id.* at 71 tbl.1 (comparing the total incarcerated population, civil rights filings, and filing rates in 1996 and 2014). In addition to making lawsuits harder to file, the PLRA has also made them "harder to win." *Id.* at 72–73. This is because the failure to satisfy the PLRA's conditions—including exhaustion—can result in dismissal, even if the substantive constitutional claim seems meritorious. See *id.*

177. Cf. *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974) ("There is no iron curtain drawn between the Constitution and the prisons of this country.").

178. See *supra* notes 13–14, 18–19.

179. An appeal for writ of certiorari to the U.S. Supreme Court is timely if filed within ninety days after entry of judgment at the court of appeals. SUP. CT. R. 13. That time period can be extended under certain circumstances but not beyond an additional sixty days. 28 U.S.C. § 2101(c). Because the

thirty-three states and may soon spread further.¹⁸⁰ This is as it should be, as a matter of justice as well as law.

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Fourth Circuit's judgment was entered on January 8, 2019, review is now unavailable. *See Battle v. Ledford*, 912 F.3d 708, 708 (4th Cir. 2019).

180. In addition to the Fourth Circuit, the Second, Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits "have expressly applied federal equitable tolling . . . impliedly done so[,] or suggested that this would be appropriate." *See Battle*, 912 F.3d at 719. The Tenth Circuit applied *Battle's* broader rule, permitting tolling after setting aside an inconsistent state law, in March 2020. *See Johnson v. Garrison*, 805 F. App'x 589, 593–94 (10th Cir. 2020). Together, these circuit courts cover thirty-nine states and three U.S. territories. *See* 28 U.S.C. § 41 (defining the number, name, and geographic composition of the courts of appeals). *Battle* was also recently cited with approval by a district court in the Eighth Circuit, *see Oakley v. Howard*, No. 19CV00048, 2019 WL 2932443, at *2 (E.D. Ark. June 18, 2019), *report and recommendation adopted*, 2019 WL 2929009 (E.D. Ark. July 8, 2019), and another in the First Circuit, *see Marshall v. Lilley*, No. 19-cv-11829, 2020 WL 905989, at *2 n.2 (S.D.N.Y. Feb. 21, 2020), neither of which have yet offered binding opinions on the question.

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