

The majority's holding in *Wallace* places a plaintiff, in a catch twenty-two. Undermining the relevant and necessary distinctions emphasized in the creation of the heck-bar, fundamental principles of procedure, and in turn, 1983. Thus, this "catch twenty-two," necessarily implicates the principle advanced by Justice Breyer: "equitable tolling."

First, although the majority acknowledges the problem a plaintiff faces: whether to file a 1983 claim for damages immediately to avoid the statute of limitations, and potentially being heck-barred. The majority's holding, can have the effect of essentially punishing a plaintiff for not bringing forward a claim which might very well be heck-barred. Something the creation of heck-bar was designed to discourage. And, further, advancing those to sue "immediately," under 1983 is contrary to basic procedural principles advanced by Breyer: not filing uncertain, potentially "meritless claims."

Further, ironically, the majority acknowledges the principles which lay the foundation for why this particular situation requires equitable tolling. For example, the Court states that "the running for the statute of limitations for false-imprisonment is subject to a distinct rule because of the *reality* that the victim *may not be able to sue* while he is still imprisoned. The majority feels the time when plaintiff "can" sue under 1983 is when the false imprisonment ended. But, at that time, the question should be, can he meaningfully sue? A question Breyer addressed. The answer is no. In light of the many uncertainties Breyer mentioned, in addition to the realization that the Plaintiff will have to divide her time, attention, and money on bringing a 1983 claim which may very well eventually be dismissed, or had no merit to begin with, runs afoul of basic principles of procedures. Rules for procedure are designed to afford a plaintiff, or a criminal defendant, the proper and meaningful attention and time to the claim against them, or in determining whether to bringing forth claims, which further enables the objective of a *fair, efficient, and accurate outcome*.

In addition, in rejecting equitable tolling, the Court emphasizes the need of speedy notice on behalf of the officers sued. Although this is a valid interest, on the other hand, as touched upon by Breyer, it is certainly contrary to public policy to force officers to prepare to potentially litigate a claim that may never see the light of day. (although different context, see the valid reasons behind acknowledging qualified immunity.)

Thus the question posed under equitable tolling, "if a plaintiff just cannot *reasonably* be expected to sue in time," rather than the majority's rigid application of whether a plaintiff "can" tangibly sue, better furthers *Heck*, fair procedural rules, and 1983, as 1983 is a broad remedial statute designed to open its doors to *all* those who have suffered harm at the hands of those acting under color. And, equitable tolling ensures that "a plaintiff who possess a meritorious 1983 claim that his pursuit of criminal remedies designed to free him from unlawful confinement will not compromise his later ability to obtain a 1983 redress."