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# The Pro Se Gender Gap

Roger Michalski<sup>†</sup>

## INTRODUCTION

Gender disparities abound. There remains a massive gender wage gap.<sup>1</sup> That gap also applies to lawyers,<sup>2</sup> law firm partners,<sup>3</sup> and general counsels.<sup>4</sup> Beyond this wage gap lies an even bigger wealth gap.<sup>5</sup> Then there is the glass ceiling when it

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<sup>†</sup> Professor of Law, The University of Oklahoma College of Law. For their feedback, ideas, and suggestions, I would like to thank Melissa Mortazavi, Joshua Sellers, Emily Taylor Poppe, Hannah Haksgaard, Noah Smith-Drelich, Andrew Hammond, and all the participants of the Civil Procedure Workshop and the UC Irvine Civil Justice Research Initiative Workshop

<sup>1</sup> See U.S. BUREAU OF LAB. STATS, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY (2022), <https://www.bls.gov/cps/cpsaat39.htm> [<https://perma.cc/UHT4-5HMS>].

<sup>2</sup> See, e.g., LAUREN STILLER RIKLEEN, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY & COMM'N ON WOMEN IN THE PRO., CLOSING THE GAP: A ROAD MAP FOR ACHIEVING GENDER PAY EQUITY IN LAW FIRM PARTNER COMPENSATION 3 (2013) (“[W]omen lawyers earn significantly less than their male colleagues in the legal profession.”).

<sup>3</sup> See, e.g., Lauren Stiller Rikleen, *Solving the Law Firm Gender Gap Problem*, HARV. BUS. REV. (Aug. 20, 2013), <https://hbr.org/2013/08/solving-the-law-firm-gender-gap> [<https://perma.cc/QDG8-QDAN>] (“Decades of studies have demonstrated that male law firm partners earn considerably more than their female colleagues. Even when data is controlled for such variables as billable hours, origination, seniority, and law firm size, the gender gap persists. And yet women have been 40–50% of law school students for decades.”); Debra Cassens Weiss, *Pay Gap Has Widened for Male and Female Partners in Larger Law Firms, New Report Says*, A.B.A. J. (Sept. 15, 2020, 11:30 AM), <https://www.abajournal.com/news/article/pay-gap-has-widened-for-male-and-female-partners-in-larger-law-firms-report-says> [<https://perma.cc/38YM-HR4L>] (“In 2010, female partners at larger law firms earned an average of 24% less than their male counterparts. . . . By 2018, the gap had widened, with female partners making 35% less than male partners.”).

<sup>4</sup> See, e.g., AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., A CURRENT GLANCE AT WOMEN IN THE LAW (2018), [https://www.pbi.org/docs/default-source/default-document-library/10569\\_a-current-glance-at-women-in-the-law-jan-2018-\(1\).pdf?sfvrsn=0](https://www.pbi.org/docs/default-source/default-document-library/10569_a-current-glance-at-women-in-the-law-jan-2018-(1).pdf?sfvrsn=0) [<https://perma.cc/Y885-XV5C>] (citing that among Fortune 500 companies, only about 26% of general counsels are women). *But see* Michele Gorman, *Almost Half of New Fortune 500 GCs in 2021 Were Women*, LAW360 (May 12, 2022, 3:48 PM), <https://www.law360.com/pulse/articles/1492646/almost-half-of-new-fortune-500-gcs-in-2021-were-women> [<https://perma.cc/9QVQ-2JNH>] (citing that among Fortune 500 companies, only about 49 percent of general counsels are women).

<sup>5</sup> See, e.g., Janice Traflet & Robert E. Wright, *America Doesn't Just Have a Gender Pay Gap. It Has a Gender Wealth Gap*, WASH. POST (Apr. 2, 2019), <https://www.washingtonpost.com/outlook/2019/04/02/america-doesnt-just-have-gender-pay-gap-it-has-gender-wealth-gap/> [<https://perma.cc/LK5Z-BCKC>] (“On average, women in the United States own a mere 32 cents to every dollar owned by men.”); Erin Ruel &

comes to promotion and leadership.<sup>6</sup> There are gender gaps among CEOs,<sup>7</sup> hospital leadership,<sup>8</sup> legislators,<sup>9</sup> executives,<sup>10</sup> and federal<sup>11</sup> and state<sup>12</sup> judges. On top of that lengthy list, an employment gap,<sup>13</sup> pandemic layoff gap,<sup>14</sup> household chores

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Robert M. Hauser, *Explaining the Gender Wealth Gap*, 50 DEMOGRAPHY 1155, 1155 (2013) (“A burgeoning body of literature has found that women do not accumulate as much wealth as men, resulting in a gender wealth gap.”).

<sup>6</sup> See generally U.S. FED. GLASS CEILING COMM’N, U.S. DEPT’ OF LAB., GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION’S HUMAN CAPITAL 36, 243 (1995) (describing that the glass ceiling represents the longer amount of time that it takes women to achieve the similar high-level position that a man holds in a corporation); Merida L. Johns, *Breaking the Glass Ceiling: Structural, Cultural, and Organizational Barriers Preventing Women from Achieving Senior and Executive Positions*, 10 PERSPECTIVES IN HEALTH INFO. MGMT. 1e (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3544145/> [<https://perma.cc/QNB6-2VX2>].

<sup>7</sup> See, e.g., Shep Hyken, *The Executive Gender Gap*, FORBES (Dec. 15, 2019), <https://www.forbes.com/sites/shephyken/2019/12/15/the-executive-gender-gap/?sh=5700463b2f50> [<https://perma.cc/PD4M-E8VY>] (“[W]omen make up just under half of the workforce, but only hold about 25% of senior executive positions at U.S. public companies . . . Furthermore, only about 5% of the leaders of the S&P 500 companies are women.”); Vanessa Fuhrmans, *Where Are All the Women CEOs?*, WALL ST. J. (Feb. 6, 2020), <https://www.wsj.com/articles/why-so-few-ceos-are-women-you-can-have-a-seat-at-the-table-and-not-be-a-player-11581003276> [<https://perma.cc/59WF-N6DA>] (“Women today lead 167 of the country’s top 3,000 companies. That’s more than double the share a decade ago, but still under 6%.”).

<sup>8</sup> See Jason N. Mose, *Representation of Women in Top Executive Positions in General Medical-Surgical Hospitals in the United States*, 2.1 WOMEN’S HEALTH REP. 124 (2021) (“Women executives generally were underrepresented in all positions except in chief human resources and chief nursing officer positions.”).

<sup>9</sup> Carrie Blazina & Drew Desilver, *A Record Number of Women Are Serving in the 117th Congress*, PEW RSCH. CTR. (Jan. 15, 2021), <https://www.pewresearch.org/fact-tank/2021/01/15/a-record-number-of-women-are-serving-in-the-117th-congress/> [<https://perma.cc/CB2M-VAGG>] (“Women make up just over a quarter of all members of the 117th Congress—the highest percentage in U.S. history and a considerable increase from where things stood even a decade ago.”).

<sup>10</sup> See, e.g., Edith M. Lederer, *Women Greatly Outnumbered by Men in Political Power*, AP NEWS (Mar. 12, 2019), <https://apnews.com/article/61cae53214ac4c36a19546b273465039> [<https://perma.cc/PGR9-QXUV>] (“When it comes to political power, women are totally outnumbered by men, accounting for less than 7 percent of the world’s leaders.”).

<sup>11</sup> See, e.g., Atthar Mirza & Chiqui Esteban, *Female Judges Were a Rarity When Ruth Bader Ginsburg Was Born. They Still Are*, WASH. POST (Sept. 21, 2020), <https://www.washingtonpost.com/politics/2020/09/21/female-judges-were-rarity-when-ruth-bader-ginsburg-was-born-they-still-are/> [<https://perma.cc/KU6U-GCGS>] (“[W]omen still make up only 27 percent of all federal judges.”).

<sup>12</sup> See, e.g., Tracey E. George & Albert H. Yoon, *The Gavel Gap: Who Sits in Judgment on State Courts?* AM. CONST. SOC’Y L. & POL’Y (2018) (“[L]ess than one-third of state judges are women. In some states, women are underrepresented on the bench by a ratio of one woman on the bench for every four women in the state. Not a single state has as many women judges as it does men.”).

<sup>13</sup> See, e.g., *Full-Time Equivalent Employment Rate, by Sex*, OECD.STAT (Sept. 10, 2022), <https://stats.oecd.org/index.aspx?queryid=54749> [<https://perma.cc/5BBP-4JN9>] (showing a 17.5 percent gap in full time equivalent employment rates in the United States in 2021).

<sup>14</sup> See, e.g., *Women Hardest-Hit in Pandemic Job Market, U.N. Labour Body Says*, REUTERS (July 19, 2021, 10:56 AM), <https://www.reuters.com/business/women-hardest-hit-pandemic-job-market-un-labour-body-says-2021-07-19/> [<https://perma.cc/HF7K-SQB3>] (“The number of employed women in 2021 is projected to be 13 million

gap,<sup>15</sup> political participation gap,<sup>16</sup> stock option gap,<sup>17</sup> and patent litigation gap.<sup>18</sup> There is even a gendered legal scholars citation gap.<sup>19</sup> Men outnumber women in every single one of these examples. Sometimes doing so is not advantageous. For example, men far outnumber women in federal<sup>20</sup> and state<sup>21</sup>

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fewer than in 2019, while the number of men in employment is projected to be about the same as in 2019.”); Sarah Chaney & Lauren Weber, *Coronavirus Employment Shock Hits Women Harder Than Men*, WALL ST. J. (May 15, 2020, 5:30 AM), <https://www.wsj.com/articles/coronavirus-employment-shock-hits-women-harder-than-men-11589535002> [<https://perma.cc/Y3NN-QVNV>] (“In April, when the full force of the coronavirus-related lockdown struck, unemployment surged to 14.7% from 4.4%. Among women, the rate rose to 16.2%, compared with 13.5% for men, according to Labor Department data released last week. In February, before the pandemic, the rates were similar at close to 3.5%.”).

<sup>15</sup> See, e.g., Eliana Rubiano-Matulevich & Mariana Viollaz, *Gender Differences in Time Use Allocating Time Between the Market and the Household* 3–4, 51 (World Bank Pol’y Rsch., Working Paper No. 8981, 2019) (citations omitted) (“[A]s women entered the labor force, feminist economists expected that there would be a complementary increase in men’s engagement in household chores, and that the time allocated to domestic activities would equalize. Instead, the total workload for mothers has gone up. . . . [M]en spend more hours in the market and less in unpaid domestic work in comparison to women, regardless of their marital status and age.”); GAËLLE FERRANT ET AL., OECD DEV. CTR., UNPAID CARE WORK: THE MISSING LINK IN THE ANALYSIS OF GENDER GAPS IN LABOUR OUTCOMES 1, 12 (2014), [https://www.oecd.org/dev/development-gender/Unpaid\\_care\\_work.pdf](https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf) [<https://perma.cc/5U7G-BVN7>] (“Around the world, women spend two to ten times more time on unpaid care work than men.”).

<sup>16</sup> See NANCY BURNS ET AL., THE PRIVATE ROOTS OF PUBLIC ACTION: GENDER, EQUALITY, AND POLITICAL PARTICIPATION (2001).

<sup>17</sup> J.J. McCorvey & Julia Carpenter, *There’s Another Gender Pay Gap: Stock Options*, WALL ST. J. (Sept. 26, 2021), <https://www.wsj.com/articles/gender-pay-gap-stock-options-11632414012> [<https://perma.cc/49J5-DQAJ>] (“Some 24% of male employees hold company stock or stock options, compared with 17% of female employees, [an] analysis found. When it comes to the value of employee shares—including those held by workers who participate in federally regulated employee stock ownership plans—the gap is also stark. According to the report, the average value of company shares held by male employees in 2018 was \$104,902. For women, it was \$26,361.”).

<sup>18</sup> Paul Gugliuzza & Rachel Reboché, *Gender Inequality in Patent Litigation*, 100 N.C. L. REV. 1683, 1683 (2022) (“[O]ver the past decade, 87.4% of oral arguments in patent appeals at the Federal Circuit have been presented by men. The numbers are similar at the Supreme Court: over the past thirty years, more than 90% of arguments in patent cases have been delivered by male attorneys.”).

<sup>19</sup> Fred R. Shapiro, *The Most-Cited Legal Scholars Revisited*, 88.7 U. CHI. L. REV. 1595, 1609 (2021) (“Only two of the fifty most-cited legal scholars of all time are women . . . I attribute the low number of women scholars on that list to the historical scarcity of women in legal academia and the legal profession, prejudice against those women who did participate in law, and sociological factors such as the greater demands on women to juggle work and family obligations.”).

<sup>20</sup> See, e.g., *Inmate Gender Statistics*, FED. BUREAU PRISONS (last updated Aug. 27, 2022), [https://www.bop.gov/about/statistics/statistics\\_inmate\\_gender.jsp](https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp) [<https://perma.cc/2DMY-2HQB>] (showing that only 7 percent of federal prisoners are female).

<sup>21</sup> See, e.g., OFF. OF RSCH., CAL. DEPT OF CORRS. & REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT OCTOBER 31, 2021 (2021), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/11/Tpop1d2110.pdf> [<https://perma.cc/YJ3U-WGNE>] (showing that California incarcerated 95,489 men, and 3,838 women in the previous month).



prisons, are more likely to be killed by police,<sup>22</sup> and die more often of opioid overdoses.<sup>23</sup> Elsewhere the roles are reversed. For example, women have significantly higher life expectancies than men.<sup>24</sup> Women outnumber men in various professions such as healthcare and childcare, primary and secondary school teaching, and veterinary services.<sup>25</sup> Women have higher graduation rates in high school<sup>26</sup> and, newly, from college.<sup>27</sup> These gaps, even where not fully understood, are important warning signals that something is amiss, and our societal aspirations for gender equality remain unfulfilled.

This article adds an additional gender gap to the list: a gendered skew among federal pro se litigants. The article is the first to identify, name, and empirically measure this gap. It reveals a troubling disparity in who has effective access to justice, whose stories are heard, who shapes the development of

<sup>22</sup> See, e.g., Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race–Ethnicity, and Sex*, 116 PROC. NAT'L ACAD. SCI. 16793–94, 16798 (2019) (“The average lifetime odds of being killed by police are about 1 in 2,000 for men and about 1 in 33,000 for women.”).

<sup>23</sup> See, e.g., *Drug Overdoses*, NAT'L SAFETY COUNCIL INJURY FACTS, <https://injuryfacts.nsc.org/home-and-community/safety-topics/drugoverdoses/> [https://perma.cc/GW9H-CXCT] (“Seven out of 10 preventable opioid overdose death victims are male.”); *Overdose Deaths Rates*, NAT'L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates> [https://perma.cc/54EH-78PH] (showing historic trends); See also Dan Keating & Lenny Bernstein, *100,000 Americans Died of Drug Overdoses in 12 Months During the Pandemic*, WASH. POST (Nov. 17, 2021, 10:00 AM), <https://www.washingtonpost.com/health/2021/11/17/overdose-deaths-pandemic-fentanyl/> [https://perma.cc/UVC3-4TG6].

<sup>24</sup> See, e.g., CDC, NVSS VITAL STATISTICS RAPID RELEASE: PROVISIONAL LIFE EXPECTANCY ESTIMATES FOR JANUARY THROUGH JUNE, 2020 (2021) (“The difference in life expectancy between the sexes was 5.4 years.”).

<sup>25</sup> See BUREAU OF LAB. STATS., EMPLOYED PERSONS BY DETAILED INDUSTRY, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY (2022) <https://www.bls.gov/cps/cpsaat18.htm> [https://perma.cc/5D8B-RZYB] (illustrating the statistics in professions that women outnumber men in).

<sup>26</sup> See Richard V. Reeves et al., *The Unreported Gender Gap in High School Graduation Rates*, BROOKINGS INST. (Jan. 12, 2021), <https://www.brookings.edu/blog/up-front/2021/01/12/the-unreported-gender-gap-in-high-school-graduation-rates/> [https://perma.cc/UYL9-YG4K] (“In 2018, about 88% of girls graduated on time compared to 82% of boys—a 6 percentage point gap.”).

<sup>27</sup> See, e.g., Douglas Belkin, *A Generation of American Men Give Up on College*, WALL ST. J. (Sept. 6, 2021, 1:12 PM), <https://www.wsj.com/articles/college-university-fall-higher-education-men-women-enrollment-admissions-back-to-school-11630948233> (“At the close of the 2020-21 academic year, women made up 59.5% of college students, an all-time high, and men 40.5%. . . . After six years of college, 65% of women in the U.S. who started a four-year university in 2012 received diplomas by 2018 compared with 59% of men during the same period.”); Derek Thompson, *Colleges Have a Guy Problem*, ATLANTIC (Sept. 14, 2021), <https://www.theatlantic.com/ideas/archive/2021/09/young-men-college-decline-gender-gap-higher-education/620066/> (“American colleges and universities now enroll roughly six women for every four men. This is the largest female-male gender gap in the history of higher education, and it's getting wider.”).

the law, and whose rights are vindicated by federal courts.<sup>28</sup> Labeling and measuring the pro se gender gap also provides a new benchmark to test the efficacy of future policy interventions.

Previous scholarship on this topic is sparse, and most scholars have completely overlooked the potential for pro se gender disparities.<sup>29</sup> The pro se gender gap documented in this article exists against the background of the typical narrative on pro se litigation that has ignored gender.<sup>30</sup> Conventional wisdom holds that courts are increasingly inundated by a “pro se crisis”<sup>31</sup> and “pro se explosion”<sup>32</sup> where a tidal wave of unrepresented

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<sup>28</sup> See generally Colleen F. Shanahan et al., *Power, and Strategic Expertise*, 93 DENV. U. L. REV. 469, 469 (2014) (“[T]his Article examines the interaction of party power and representation and finds that represented parties have better case outcomes than unrepresented parties.”); Jessica K. Steinberg, *A Theory of Civil Problem-Solving Courts*, 93 N.Y.U. L. REV. 1579, 1597 (2018) (“The side without counsel is likely to have difficulty identifying legally cognizable claims and parsing through the procedural thicket of case presentation.”); Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 51 (2019) (“Access is equal when the probability of lawful resolution is the same for all groups in the population: for example, men, women, and transgender; rich and poor; every race and ethnicity; each religion and those with none.”); Rebecca L. Sandefur, *Paying Down the Civil Justice Data Deficit: Leveraging Existing National Data Collection*, 68 S.C. L. REV. 295, 301 (2016) (“The distribution of experiences with civil justice problems and their consequences tells us about how civil justice as a social institution equalizes or stratifies groups in society—for example, men, women and transgender, the elderly and the young, the well-off and the poor, and the diverse racial and ethnic groups that constitute our society.”); Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOCIO. 339, 340 (2008) (“[E]xisting evidence reveals that civil justice experiences can be an important engine in reproducing inequality, suggesting that access to civil justice merits greater attention from inequality scholars.”).

<sup>29</sup> See Richard Schauffler & Shauna Strickland, *The Case for Counting Cases*, 51 CT. REV. 52, 52 (2015) (“Reliable, consistent statistics on the number of cases with self-represented litigants do not exist.”); see generally DONNA STIENSTRA ET AL., FED. JUD. CTR., ASSISTANCE TO PRO SE LITIGANTS IN U.S. DISTRICT COURTS: A REPORT ON SURVEYS OF CLERKS OF COURT AND CHIEF JUDGES (2011) (no mention of gender); SHAUNA STRICKLAND ET AL., NAT’L CTR. FOR STATE CTS., VIRGINIA SELF-REPRESENTED LITIGANT STUDY: DESCRIPTIVE ANALYSIS OF CIVIL DATA IN CIRCUIT COURT (2017) (same).

<sup>30</sup> See, e.g., Deborah L. Rhode, *What We Know and Need to Know About the Delivery of Legal Services by Nonlawyers*, 67 S.C. L. REV. 429, 429 (2016) (“Millions of Americans lack any access to justice let alone equal access.”).

<sup>31</sup> See, e.g., Christine E. Cerniglia, *The Civil Self-Representation Crisis: The Need for More Data and Less Complacency*, 27 GEO. J. ON POVERTY L. & POL’Y 355, 355 (2020) (“The increased number of filings by SRLs [self-represented litigants] is often referred to as a crisis.”); Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647, 647 (2018) (“Active judging, where judges step away from the traditional, passive role to assist those without counsel, is a central feature of recent proposals aimed at solving the pro se crisis in America’s state civil courts.”); Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1270–72 (2010); Rebecca L. Sandefur & James Teufel, *Assessing America’s Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 755 (2021) (“No agreement exists on the nature of the access to justice crisis.”).

<sup>32</sup> See JEFRI WOOD, FED. JUD. CTR., PRO SE CASE MANAGEMENT FOR NONPRISONER CIVIL LITIGATION 3 n.19 (2016) (“[Various] concerns apply mainly to what some have termed ‘good faith’ pro se litigants—those who have a genuine complaint, whether ultimately successful or not, and who look to the courts to provide a fair venue for airing it. Those who engage in vexatious or harassing litigation, or seek to make a

litigants with weak or even vexatious claims unduly burden federal courts that already have crushing caseloads, stretched budgets, and overworked judges.<sup>33</sup> Key elements of this narrative have been questioned or qualified,<sup>34</sup> but it still holds considerable sway among policymakers,<sup>35</sup> rule-makers, judges,<sup>36</sup> and the broader public. An empirical measure of the pro se gender gap is important to inform these policy debates with information on an overlooked facet of the “pro se crisis.” It will also enrich and deepen scholarship on the disparate impact of facially neutral procedures and gendered dimensions of federalism. Finally, it could redirect doctrinal debates on how to balance assisting pro se litigants with other procedural values.<sup>37</sup>

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political statement, are likely less interested in the fairness of the process than in winning, making a point, or carrying on a grudge.”).

<sup>33</sup> See, e.g., JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 6 (2020) (“The judiciary is facing an uncertain federal budget environment, with likely constraints on the ability of congressional appropriations committees to meet judiciary funding requirements. . . . Another key challenge for the judiciary is to address critical longer-term resource needs. Many appellate, district and bankruptcy courts have an insufficient number of authorized judgeships. The judiciary has received very few Article III district judgeships, and no circuit judgeships, since 1990.”).

<sup>34</sup> See, e.g., Mark D. Gough & Emily S. Taylor Poppe, *(Un)Changing Rates of Pro Se Litigation in Federal Court*, 45 LAW & SOC. INQUIRY 567, 568 (2020).

<sup>35</sup> See, e.g., Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 287–88 (2018) (“A number of states and localities have responded [to the perceived pro se crisis] by increasing the availability of legal services, funding programs that offer solutions ranging from limited assistance to full representation, and a few legislatures have even established a statutory right to counsel for particular categories of cases. Given the expense of advocates’ labor, however, most jurisdictions have sought instead to improve litigants’ ability to handle their legal matters on their own.”) (citations omitted); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 38 (2010) (“Over the past decade, the phenomenon of self-representation in civil cases has . . . [led to] the development of programs designed to facilitate self-representation.”); Jessica K. Steinberg, *Demand Side Reform in the Poor People’s Court*, 47 CONN. L. REV. 741, 759–60 (2015); Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 75–76 (2018) (“With the celebration of the fortieth and fiftieth anniversaries of *Gideon*, conferences, scholarship, and state commissions on a civil *Gideon* blossomed. In light of this activity, combined with increased recognition of the growing numbers of pro se litigants appearing in court, state and local jurisdictions have begun implementing new access-to-justice initiatives to expand the availability of representation.”) (footnotes omitted).

<sup>36</sup> See generally Jessica K. Steinberg et al., *Judges and the Deregulation of the Lawyer’s Monopoly*, 89 FORDHAM L. REV. 1315, 1316 (2021) (“Across the nation, the rise of pro se parties has forced judges to rethink their roles. . . . [T]his Article shows how some judges—mired in the pro se crisis—are relying on a shadow network of nonlawyer professionals to substitute for the role counsel has traditionally played.”); JUD. CONF. OF THE U.S., THE LONG RANGE PLAN FOR THE FEDERAL COURTS 63 (1995), [https://www.uscourts.gov/sites/default/files/federalcourtslongrangeplan\\_0.pdf](https://www.uscourts.gov/sites/default/files/federalcourtslongrangeplan_0.pdf) [<https://perma.cc/K3X2-BVZM>] (“Pro se litigation places great stress on the resources of the federal courts.”).

<sup>37</sup> See *Purcell v. Miner*, 71 U.S. 513, 518 (1866) (Pro se litigants “are excusable for their ignorance of all the rules of pleading and practice in a court of chancery, or the proper mode of taking testimony.”); *Coppedge v. United States*, 369 U.S. 438, 442 n.5 (1962) (admonishing district courts to take “a liberal view of papers filed by” pro se

More recent scholarship moved beyond the classical narrative on pro se litigation and explored the doctrinal underpinnings of pro se gender gaps.<sup>38</sup> However, this literature did so without direct empirical measurements, explaining that “[t]here is no obtainable data on the gender of pro se parties,”<sup>39</sup> and “conced[ing] that definitive empirics have not been gathered and much remains unknown.”<sup>40</sup> This left room for speculation, including the conjecture that “the vast majority of women who attempt to vindicate their rights in [state] civil tribunals do so

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prisoners); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding that a pro se prisoner’s civil rights complaint, “however inartfully pleaded,” must be held “to less stringent standards than formal pleadings drafted by lawyers”). *But cf.* *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975) (“The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.”); *McKaskle v. Wiggins*, 465 U.S. 168, 183–84 (1984) (“A defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. Nor does the Constitution require judges to take over chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course.”); *see also* Julie M. Bradlow, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 659–60 (1988) (footnote omitted) (“[P]rocedural treatment of pro se civil litigants is at best highly case-specific, at worst inconsistent.”).

<sup>38</sup> *See, e.g.*, Sandefur & Teufel, *supra* note 31, at 780 (“Our illustrative analysis focused on gender, and found that once women become middle aged, they may spend more of their lives dealing with civil justice problems than will men; and, throughout their lives, women will likely spend more of their years suffering from hardships that result from civil justice problems.”).

<sup>39</sup> *See* Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1, 24 (forthcoming 2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3807349](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3807349); *see also* Meredith J. Ross, *Introduction: Measuring Value*, 2013 WIS. L. REV. 67, 69 (2013) (explaining in an introduction to a symposium issue on access to justice research that “[t]he most fundamental question [addressed by the symposium essays] is, ‘What should we measure?’”); Rebecca L. Sandefur, *Paying Down the Civil Justice Data Deficit: Leveraging Existing National Data Collection*, 68 S.C. L. REV. 295, 296, 298 (2016) (“One of the most striking facts about civil justice in the United States is how few solid representative facts we have about it. . . . [W]e certainly cannot know with any precision how access to justice differs in different kinds of communities, or different regions of the country, or across racial, or gender, or economic groups.”).

<sup>40</sup> Sabbeth & Steinberg, *supra* note 39 (manuscript at 8); *See also* Elizabeth Chambliss et al., *Introduction: What We Know and Need to Know About the State of “Access to Justice” Research*, 67 S.C. L. REV. 193, 193 (2016) (“Ongoing, systematic research on civil legal needs and services is an essential component of improving the quality and availability of such services. Currently, however, we know little about the legal resource landscape—especially services for ‘ordinary Americans’—and our research infrastructure is underdeveloped.”); Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 446 (2016) (“Little research systematically compares civil justice experience across groups.”); Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 339, 350–51 (2008) (summarizing research on gender inequality that focuses on who pursues formal grievances but not whether they do so with or without representation); Stephen Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 441 (2009) (characterizing empirical work on federal pro se litigation as “patchy and only occasionally longitudinal”).

without lawyers.”<sup>41</sup> It is time to fill this lacuna of vital information with empirical evidence.

This article does exactly that. Using a massive database of ten years’ worth of federal civil dockets from more than two million cases, it examines all cases with pro se litigants. It extracts from those cases information about the pro se litigants, including their names, addresses, and role in the litigation. The names are used in conjunction with a dataset from the Social Security Administration (SSA) to probabilistically match genders to different pro se litigants. The addresses are used to geolocate and census-intersect the neighborhoods of these pro se litigants. This approach, for the first time, allows for a description of federal pro se litigants that takes gender and other demographic and economic variables into account.

This article proceeds in three parts. Part I explains the data utilized in this article, the methodology used, and limitations inherent in this approach. The primary aims of this Part are to explain the methodological foundations of this article—including strengths and weaknesses—and to enable other researchers to replicate this approach in other settings.

Part II presents the empirical findings. The main finding is a two-to-one gender imbalance. For every federal woman pro se litigant there are two men. This finding is robust and stable. It holds true for plaintiffs, defendants, and other parties. It is also true across most subject areas, time, litigation length, and across states, districts, and circuits. The study excludes prisoner rights and habeas petitions—including them would widen the gender gap even further.

Part III discusses the policy and doctrinal implications of these findings. What might explain this gap? Is it a sign that women are disadvantaged or that men are? Perhaps women do not have access to federal courts. Conversely, perhaps men cannot find legal representation at the same rates as women. What, if anything, can or must be done to ameliorate the federal pro se gender gap? Are there doctrinal roots of this gender gap and potential doctrinal solutions? This article concludes by identifying important areas of future research including procedural gender gaps beyond pro se litigation, as well as pro se gender gaps in state courts, tribal courts, arbitrations, and administrative proceedings.

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<sup>41</sup> Sabbeth & Steinberg, *supra* note 39 (manuscript at 5); *see also* Colleen F. Shanahan et al., *Lawyers, Power, and Strategic Expertise*, 93 DENV. U. L. REV. 469, 472 (2016) (using “a data set of 1,794 unique cases . . . [which] is larger in the number of cases collected than many recent empirical studies of representation and has broader data collected about each case than previous studies” but that does not include gender).

## I. DATA, METHODS, AND CAVEATS

This Part explains the data used in this article, the methodology employed, and the strengths and limitations of this approach. The article uses a massive database of federal dockets paired with Social Security Administration data to probabilistically match genders to different pro se litigants and match them with demographic and economic data from the US Census Bureau. For the first time, this approach allows for a description of federal pro se litigants that takes gender and other demographic and economic variables into account.

### A. *Data and Methods*

This article combines three sources of data to draw a fresh portrait of federal pro se litigation: federal docket sheets, demographic and economic data from the Census Bureau, and Social Security Administration data. The foundation of the analysis is a massive database of federal docket sheets generously made available by Professor Gelbach. Originally obtained through a grant funded by the Oscar M. Ruebhausen Fund at the Yale Law School, “it is supposed to be (and appears to be at least quite close to) the universe of federal district court docket activity for cases filed on or after January 1, 2005, with data continuing through December 31, 2014.”<sup>42</sup> All in all, this database contains more than two million federal docket sheets, a massive data trove that was unavailable to most scholars in the past.<sup>43</sup>

The underlying data exists in xml files that were processed case-by-case. Excluded from the analysis are cases that involved prisoner rights, habeas petitions, immigration and deportation cases, naturalization, and bankruptcy. Prisoner rights and habeas cases present unique procedural issues,<sup>44</sup> and for a while the federal judiciary focused significant attention on this slice of the pro se pie.<sup>45</sup> Also, including these types of cases

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<sup>42</sup> See Jonah B. Gelbach, *Transintexity* (forthcoming 2023); see also Jonah B. Gelbach, *Can the Dark Arts of the Dismal Science Shed Light on the Empirical Reality of Civil Procedure?*, 2 STAN. J. COMPLEX LITIG. 223, 239 (2014); Jonah B. Gelbach, *Rethinking Summary Judgment Empirics: The Life of the Parties*, 162 U. PA. L. REV. 1663, 1668–69 (2014).

<sup>43</sup> Currently the database is not publicly available.

<sup>44</sup> See, e.g., Prison Litigation Reform Act of 1996, 42 U.S.C. § 1997(e) (exemplifying a statute that was designed to decrease litigation within the federal court system by prisoners).

<sup>45</sup> See, e.g., FED. JUD. CTR., RECOMMENDED PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES IN THE FEDERAL COURTS 45 (1980), <https://www.fjc.gov/sites/default/files/materials/41/PrisCivR.pdf> [<https://perma.cc/8PY5->

would dramatically skew the analysis even more toward men. It does not come as a surprise that most prisoner rights and habeas suits are brought by men because the vast majority of people incarcerated in prisons and jails are men.<sup>46</sup> Including these types of cases would thus obscure the main point of this article and its surprising finding. It would make it difficult to know how much of the gender skew is due to these common types of federal cases rather than gender dynamics present across a broad range of other subject matters. Similarly, immigration, deportation, and naturalization cases present a unique slice of federal litigation with separate issues and concerns which could obscure the analysis. Bankruptcy, likewise, might feature gendered dynamics and trends—perhaps tied to broader economic developments—that could overwhelm or obscure the main insights of this article. For these specific cases, I hope future research will examine various questions related to gender skews. However, these issues are beyond the scope of this article.

Each remaining case was examined for whether the address field contained a “pro se” marker.<sup>47</sup> From these cases I harvested all names, addresses, the subject matter of the suit, and the roles of the pro se litigants.<sup>48</sup>

The names are used in conjunction with a dataset from the SSA to probabilistically match genders to different pro se litigants.<sup>49</sup> Each pro se litigant’s first name is matched with

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K9EQ]; JUD. CONF. OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS 1 (1995), [https://www.uscourts.gov/sites/default/files/federalcourtslongrangeplan\\_0.pdf](https://www.uscourts.gov/sites/default/files/federalcourtslongrangeplan_0.pdf) [<https://perma.cc/3KZA-T94D>]; FED. JUD. CTR., RESOURCE GUIDE FOR MANAGING PRISONER CIVIL RIGHTS LITIGATION WITH SPECIAL EMPHASIS ON THE PRISON LITIGATION REFORM ACT vii (1996), <https://www.fjc.gov/sites/default/files/2012/prisoner.pdf> [<https://perma.cc/W85K-7R7T>].

<sup>46</sup> See *Inmate Gender Statistics*, *supra* note 20; OFF. OF RSCH., *supra* note 21.

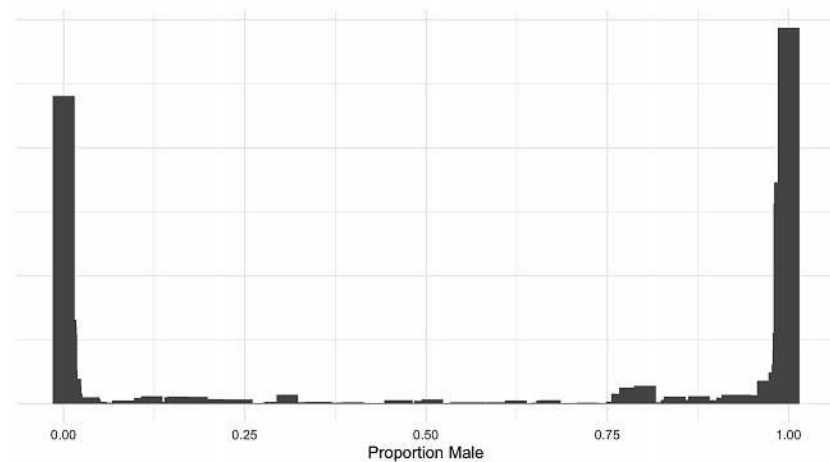
<sup>47</sup> One important blind spot of this approach is the understudied issue of partial pro se litigation where a litigant is represented for only part of the proceedings (e.g. discovery) but not others. Little is known about how common this is. See, e.g., Christine E. Cerniglia, *The Civil Self-Representation Crisis: The Need for More Data and Less Complacency*, 27 GEO. J. ON POVERTY L. & POL’Y 355, 379 (2020) (“Initially, a litigant may file the case as a represented party with counsel fully retained, but as the case progresses, the client may decide to release their attorney, the attorney may withdraw, or the attorney may have only contracted for a portion of the representation. The changing scope of representation is still relatively unstudied.”).

<sup>48</sup> As such, for cases with multiple pro se plaintiffs, or multiple pro se defendants, or multiple pro se litigants in other roles, it captures all of them rather than just the first named (as other methods and datasets do that focus solely on the name of the case).

<sup>49</sup> The underlying data from the SSA is available online. *Baby Names from Social Security Card Applications—National Data*, DATA.GOV (May 5, 2022), <https://catalog.data.gov/dataset/baby-names-from-social-security-card-applications-national-data> [<https://perma.cc/YU7-5JRD>]; *Baby Names from Social Security Card Applications—State and District of Columbia Data*, DATA.GOV (May 5, 2022), <https://catalog.data.gov/dataset/baby-names-from-social-security-card-applications-state-and-district-of-columbia-data> [<https://perma.cc/7TYZ-YD4M>]; *Baby Names from Social*

Social Security data to infer sex assigned at birth.<sup>50</sup> The SSA dataset contains a list of first names and a count of how many times each name was assigned to each gender for the years 1880 through 2020.<sup>51</sup> All names that were used at least five times each year are included in a list, therefore including all but the most idiosyncratic names.<sup>52</sup> For example, the name “Mark” is assigned a 0.9965 probability of belonging to a man. Seemingly most people with that name were designated as male at birth.<sup>53</sup> The name “Barbara” is assigned a 0.0028 probability of belonging to a man. Most people with that name were designated female at birth.<sup>54</sup> Figure 1 shows the overall distribution of gender assignments across all the names of pro se litigants.

Figure 1: SSA Gender Assignments for Pro Se Litigants  
(Using data range of 1920–1990)



*Security Card Applications—Territory Data*, DATA.GOV (May 5, 2022), <https://catalog.data.gov/dataset/baby-names-from-social-security-card-applications-territory-data> [https://perma.cc/BW5Q-R5NV]. There are also packages for different statistical software that make the analysis faster and more convenient, for example the “gender” library for R. *Gender: Predict Gender from Names Using Historical Data*, CRAN.R, <https://CRAN.R-project.org/package=gender> [https://perma.cc/G6QU-JQTR].

<sup>50</sup> See Cameron Blevins & Lincoln Mullen, *Jane, John . . . Leslie? A Historical Method for Algorithmic Gender Prediction*, 9 DIGIT. HUMANITIES Q. 3 (2015) (providing a method to predict genders based using historical datasets); see also Helena Mihaljević et al., *Reflections on Gender Analyses of Bibliographic Corpora*, FRONTIERS BIG DATA 1, 2 (2019) (discussing “common biases induced by gender assignment algorithms and other common data processing steps applied to bibliographic records”).

<sup>51</sup> The dataset is periodically updated.

<sup>52</sup> A few of them are in the dataset on pro se litigants and were therefore not assigned a gender probability and they are excluded from the analysis. However, it is unlikely that this biases the analysis because there is no reason to believe that such idiosyncratic names are systematically of one gender rather than the other.

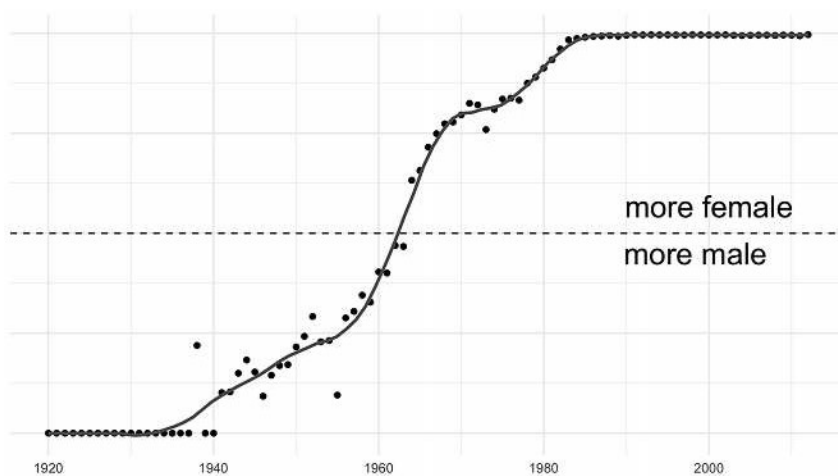
<sup>53</sup> *Baby Names from Social Security Card Applications—National Data*, *supra* note 49.

<sup>54</sup> *Id.*



For most names the gender assignment is fairly clear. However, there are also names that fall in the middle and are less clear. Often that is the case because connotations and naming practices changed over time. For example, “Ashley,” “Lindsey,” “Tracy,” and “Paris,” used to be more commonly given to men.<sup>55</sup> However, that shifted over the last century and these names are now more commonly associated with women.<sup>56</sup> For illustration, Figure 2 shows how, year-by-year, the name “Ashley” switched from a name predominantly given to men to a name now almost exclusively given to women.

Figure 2: Changing Gender Assignments of the name “Ashley” (1920–2012)



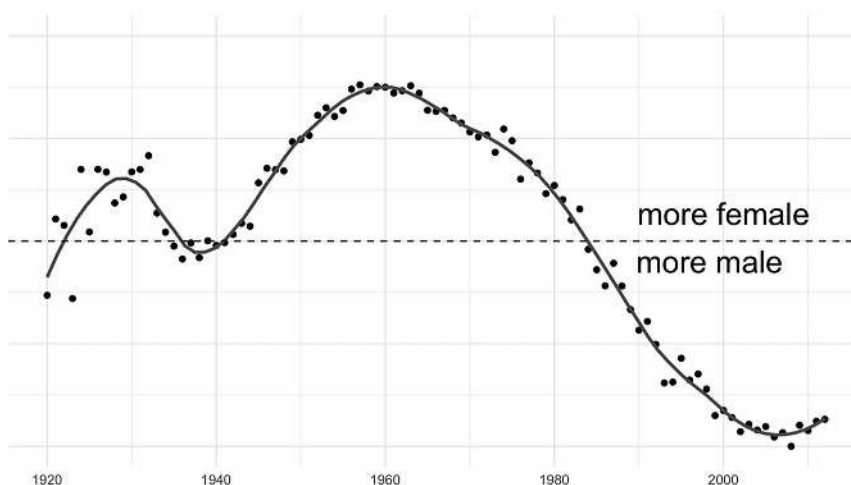
There seem to be fewer and less common names that switched from a female association to a male association.<sup>57</sup> Figure 3 shows an example of such switching. It also illustrates that some names have more complicated back-and-forth swings that, unlike in Figure 2, might not go all the way.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Consider: Kenyatta, Robbie, or Milan.

Figure 3: Changing Gender Assignments of the name “Jan” (1920–2012)



This raises the question of time horizon. What timespan should we consider when probabilistically inferring gender? A shorter timeframe, say the last twenty years, might give us more current information but at the cost of misassigning older pro se litigants who were born, say, in the 1940s when “Ashley” was still a name predominantly given to men. Conversely, using the full dataset all the way back to the 1880s might incorporate gender norms into the analysis that scarcely reflect the naming practices associated with the pro se litigants.

For this project, I chose a middle ground, using the data range of 1920 to 1990.<sup>58</sup> The federal docket sheets used for this article span from 2005 through 2014. It is reasonable to assume that most pro se litigants in these docket sheets were between twenty-five and eighty-five years old. Undoubtedly, some were younger and some older; however, naming practices rarely change quickly but rather move over decades.<sup>59</sup> As such, this timeframe provides a good proxy for the relatively few names that changed over time.

It is important to keep in mind that this methodology is not suitable to infer the gender of any *one* particular individual. People are quirky. They give their kids names that defy larger

<sup>58</sup> If we knew the age of pro se litigants we could, of course, tailor the analysis more closely. However, that was not an option given the data limitations of this paper. Hopefully future researchers will be able to find ways to fine-tune the analysis.

<sup>59</sup> See Clive Thompson, *The Science of Baby Name Trends*, JSTOR DAILY (Dec. 28, 2019), <https://daily.jstor.org/science-baby-names/> [<https://perma.cc/J3MR-APQG>].

trends. However, the methodology is useful to study populations in the aggregate where individual quirks are subsumed by far larger trends. Of course, a more nuanced approach would always be preferable. For example, it would be helpful if we could inquire with each pro se litigant directly and not simply ask about sex assigned at birth but about their lived gender experience in all its rich diversity. Alas, that is not feasible for the tens of thousands of pro se litigants in this dataset, many of whom might have died, moved, or simply have better things to do with their time than to respond to the inquiries of a legal academic. The alternative to this approach, at least on a national scale spanning ten years' worth of data, is to not study gender at all. But notice that this would blind us to real-life phenomena that are connected to gender (however imperfectly measured).

Similarly, one might object to the seemingly binary male-female dichotomy inherent in the approach of this paper. As persuasively argued in many fora ranging from the formalistic academic to the brash quotidian, many people experience gender on a subtle spectrum, perhaps even containing multiple dimensions, or even beyond any classification at all. To some extent the methodology used in this paper is responsive to these views. Gender is not assigned in a binary manner (all male or all female) but is inherently on a gradient (more or less male or female). However, the data does not and cannot tell us anything beyond this one spectrum. It contains no information on sexual preferences, nontraditional gender expression, or nonconformity with sex assigned at birth.<sup>60</sup> It cannot measure anything beyond the traditional, state-imposed gender binary. It is important to keep this limitation in mind.

However, it is difficult to imagine practical alternatives. Insisting on perfectly subtle and nuanced gender categorization sounds appealing but there is little agreement on what that would look like. Even if we all came to agree on a new categorization scheme, there would be no historical data to flesh it out. Similarly, one could object to the entire premise of this project and refuse to assign gender. Again, this would mean we cannot study gender in the context of federal litigation at all on a large scale. We could also not determine that there is a national gendered wage gap, differences in who is promoted to CEO, or that the pandemic affected women differently than men.<sup>61</sup> This would make it difficult to diagnose problems,

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<sup>60</sup> *Baby Names from Social Security Card Applications—National Data*, *supra* note 49.

<sup>61</sup> *See supra* notes 5–14 and accompanying text.

propose cures, and measure the efficacy of interventions. Preferable then, to do the best we can with the available tools, while keeping the many limitations of this approach in mind and hope that future researchers will find ways to do better.<sup>62</sup> For now, this approach enriches our analytical toolset and represents a significant step forward in our ability to analyze gender across large-n datasets as attested by a broad stream of research in allied fields that utilizes this approach.<sup>63</sup>

After probabilistically assigning genders to each pro se litigant, the next step is to use their addresses to geolocate them and census-intersect the neighborhoods. When filing a federal lawsuit, each pro se litigant provides the court with an address.<sup>64</sup> This address is important for notice purposes, and litigants are encouraged to update addresses when they move. The addresses are contained on the top of all federal docket sheets.<sup>65</sup> The extracted addresses can then be used to geolocate pro se litigants and place them in real space<sup>66</sup> Next, the geolocation can be used to determine membership in different Census geographic units. The US Census Bureau divides the country into various geographic units for administration and analysis purposes.<sup>67</sup> The

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<sup>62</sup> See Sabbeth & Steinberg, *supra* note 39 (manuscript at 3, 3 n.6) (“We focus our discussion of gender on the self-presentation and lived experience that maps onto common understandings of ‘men’ and ‘women.’ Relevant data does not currently include categories for other gender identities.”).

<sup>63</sup> See, e.g., Marysia Szymkowiak & Melissa Rhodes-Reese, *Addressing the Gender Gap: Using Quantitative and Qualitative Methods to Illuminate Women’s Fisheries Participation*, 7 FRONTIERS MARINE SCI. 1 (2020); Christina Ladam et al., *Prominent Role Models: High-Profile Female Politicians and the Emergence of Women as Candidates for Public Office*, 62 AM. J. POL. SCI. 369 (2018); Francis X. Flanagan, *Race, Gender, and Juries: Evidence from North Carolina*, 61 J.L. & ECON. 189 (2018); Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649 (2020).

<sup>64</sup> FED. R. CIV. P. 4. (“A summons must . . . state the name and address of the plaintiff’s attorney or—if unrepresented—of the plaintiff.”); see also ADMIN. OFF. OF THE U.S. COURTS, PRO SE 1 (REV. 12/16) COMPLAINT FOR A CIVIL CASE TEMPLATE (2016), [https://www.uscourts.gov/sites/default/files/complaint\\_for\\_a\\_civil\\_case.pdf](https://www.uscourts.gov/sites/default/files/complaint_for_a_civil_case.pdf) [https://perma.cc/6H3N-93EG] (“Provide the [address] information below for each plaintiff named in the complaint.”).

<sup>65</sup> ADMIN. OFF. OF THE US COURTS, *supra* note 64; see generally FED. R. CIV. P. 79 (“The clerk must keep a record known as the ‘civil docket’ in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.”); see also FED. JUD. CTR., GUIDELINES FOR DOCKETING CLERKS 1, 2 (“There are very few requirements imposed on the Clerk as to how docketing should be performed . . . Most docketing procedures are the result of tradition or practices used in a court, proved effective, and adopted by other courts.”).

<sup>66</sup> For a more detailed account of this part of the analysis, see Roger Michalski & Andrew Hammond, *Mapping the Civil Justice Gap in Federal Court*, 57 WAKE FOREST L. REV. 463 (2022).

<sup>67</sup> *Standard Hierarchy of Census Geographic Entities*, U.S. CENSUS BUREAU (2020), <https://www2.census.gov/geo/pdfs/reference/geodiagram.pdf> [https://perma.cc/M5ZC-QWYF] (illustrating the division of the country into the various geographic units); U.S. CENSUS BUREAU, GEOGRAPHIC ENTITIES AND CONCEPTS,

main hierarchy flows is Nation, Regions, Divisions, States, Counties, Census Tracts, Block Groups, Census Blocks.<sup>68</sup> The Census Bureau makes available numerous demographic and economic indicators for these geographic units.<sup>69</sup> There are different sets of variables for different geographic units in part to protect private information. Census Blocks are fairly small,<sup>70</sup> and making too much information available would make it easy to infer information about individuals. As such, there is an analytical tradeoff to be made: larger geographic units provide for more variables but less resolution, smaller geographic units are more fine-grained but for fewer variables of interest. Placing pro se litigants into census geographies allows for indirect inferences about them.

### B. *Caveats and Limitations*

The methodology used in this article provides a new perspective on pro se litigation. However, it is important to keep numerous caveats and limitations in mind in addition to the ones mentioned above. Most importantly, this article is primarily descriptive in nature. It does not make causal claims. For example, it provides first indicia of what might cause this gender disparity and provides a platform for future research, but it does not identify primary and secondary causes. It could be men just have more legal claims than women. Perhaps they are injured more often. That seems unlikely, but the data in this article, alone, cannot reject such potential explanations. The hope is that this article will enable and incite future research on some of these causal questions.

The second important caveat to keep in mind is that even though the data used in this article is massive, it is still confined to federal courts. Nothing in this article addresses conditions in state courts.<sup>71</sup> It is entirely possible that the gendered features

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<https://www.census.gov/content/dam/Census/data/developers/geoareaconcepts.pdf> [<https://perma.cc/LX5H-7KAW>].

<sup>68</sup> *Standard Hierarchy of Census Geographic Entities*, *supra* note 67. Other units exist as well, like Congressional Districts and Urban Growth Areas.

<sup>69</sup> *Available APIs*, U.S. CENSUS BUREAU, <https://www.census.gov/data/developers/data-sets.html> [<https://perma.cc/M48Y-D53R>].

<sup>70</sup> There are more than eleven million census blocks though many contained zero population. Of the populated census blocks, most feature less than one hundred inhabitants. *2010 Census Tallies*, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html> [<https://perma.cc/QTM8-TVKU>]; see Michalski & Hammond, *supra* note 66, at 485.

<sup>71</sup> See generally Anna E. Carpenter et al., *Studying the 'New' Civil Judges*, 2018 WIS. L. REV. 249, 249 (2018) ("Given legal scholarship's near-complete focus on federal civil courts, the stories we tell about the civil justice system may be based on assumptions and models that only apply in the rarefied world of federal court.").

identified in this article in federal court are much diminished in state courts, nonexistent, or perhaps even reversed. It might also be the case that they are heightened in state court. Since this article does not present any data on state courts it cannot answer comparative questions about how pro se litigants in state courts compare to those in federal court. It is blindingly obvious that replicating this study at the state court level would provide an invaluable point of comparison.<sup>72</sup>

A final note on the mixed gender reference frames employed in this article. At various points the article makes claims about gender proportions (e.g., in Figure 1, “proportion male”, in Figure 4 “percent female”). Such references, to be intelligible, must always be in relation to one gender. The article mixes references that are in relation to women with those that are in relation to men. As such, all figures and notes must be read with caution as the references are not fixed. The reason for introducing such complexity is an effort to be evenhanded. That is not a mere reflex but part of a larger theoretical and conceptual project. It is important to recognize and embed in our analysis and writing the insight that gender imbalances, no matter which way they swing, are not “women-issues” or the like but of concern to all.<sup>73</sup>

## II. DOCUMENTING THE PRO SE GENDER IMBALANCE IN FEDERAL COURT

The result of this data collection and processing is that pro se litigants in federal courts are no longer just a long list of names. We can now infer, cautiously, gender and other demographic and economic variables about them. This enables a novel description of federal pro se litigation that can make claims about gender distributions and gender imbalances beyond anecdotal evidence or a reliance on a handful of published opinions.

This Part describes the two-to-one gender imbalance among federal pro se litigants. For every federal woman pro se litigant there are two men. Women pro se litigants are grossly outnumbered. But is that true everywhere? Always? Across all

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<sup>72</sup> See Justin Weinstein-Tull, *The Structures of Local Courts*, 106 VA. L. REV. 1031, 1036 (2020) (“Local courts—and not federal courts—are the starting point from which we should define and evaluate our system of justice.”).

<sup>73</sup> For those who insist on harmonizing all gender proportions, each can be converted easily from referencing women to referencing male and vice versa by subtracting the stated amount from 1. For example, consider the above example where the name “Mark” was assigned a 0.9965 probability of being male.  $1 - 0.9965 = 0.0035$ . Therefore, the probability of “Mark” being assigned female is 0.0035.

areas of law? This Part answers these questions. It describes the pro se gender gap across multiple dimensions: temporal, geographical, role of pro se litigant (plaintiff, defendant, etc.), length of the litigation, and subject matter. Next, it compares census tracts with low, medium, and high gender skew along a range of demographic and economic variables.

A. *Summary*

About 68 percent of the federal pro se docket during the timespan investigated is male; about 32 percent is female. Or, put more precisely, the average probabilistically matched gender is 0.68 male.<sup>74</sup> The distribution of gender probabilities is bimodal and has an extreme skew, as indicated by the median clocking in at a whopping 0.99.

These numbers are similar across different roles. Pro se litigants are commonly plaintiffs, but they are also often defendants, and more rarely in other roles (e.g., resisting nonparty discovery targets). In these various roles, male pro se litigants consistently outnumber female pro se litigants. About 67 percent of pro se plaintiffs are men (33 percent women), 69 percent of pro se defendants are men (31 percent women), and 78 percent of pro se litigants in other roles are men (22 percent women).<sup>75</sup>

The gender distributions of federal pro se litigants vary based on their state of residence, ranging from 60 percent male (Georgia) to 80 percent male (Alaska), with close to a normal distribution around the national mean.<sup>76</sup>

B. *Across Time*

The next question is whether these numbers vary across the timespan of the underlying data (the years 2005–2014). Encapsulated in these years are significant changes and upheavals that might impact the gender balance of the pro se docket. For example, 2009 saw the height of the financial crisis followed by years that have since become known as the Great Recession; the consequence of this era was economic instability

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<sup>74</sup> Recall that genders were not assigned in a binary 1 or 0 manner but on a spectrum from 0 to 1 for each name, with few names scoring completely male or completely female. Most are towards the end of the spectrums but not completely there. See *supra* notes 47–50 and accompanying text. The 0.68 measure is the mean of all assigned federal pro se gender probabilities. For convenience and accessibility reasons, I will use the shorthand percentage rate going forward rather than the more precise term of probabilistically matched gender.

<sup>75</sup> *Infra* Figure 5.

<sup>76</sup> *Infra* Figure 6.

and crisis for millions.<sup>77</sup> The years also span two presidencies that had different policy and enforcement priorities, which might affect different slices of the public differently and trigger different lawsuits.

On the doctrinal side there were also important changes that, conceivably, impacted pro se litigants in a differentiated manner. For example, the Supreme Court in 2007's *Twombly* decision and 2009's *Iqbal* decision heightened the federal pleading standard for the first time in fifty years.<sup>78</sup> This change might disproportionately affect pro se litigants who could be less aware of the need for pre-suit information gathering and artfully crafted complaints.<sup>79</sup> Did these economic, political, and doctrinal developments leave a mark on the pro se gender gap in federal court?

Figure 4 takes a measure of the pro se gender gap week-by-week.<sup>80</sup> It shows the chronological development of the percentage of the federal pro se docket that is female. The black line shows the actual count, the blue line shows the trend line.

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<sup>77</sup> See generally CHRISTOPHER ODINET, FORECLOSED: MORTGAGE SERVICING AND THE HIDDEN ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA (2019) (discussing the experiences of homeowners facing foreclosure and financial distress as a result of the Great Recession).

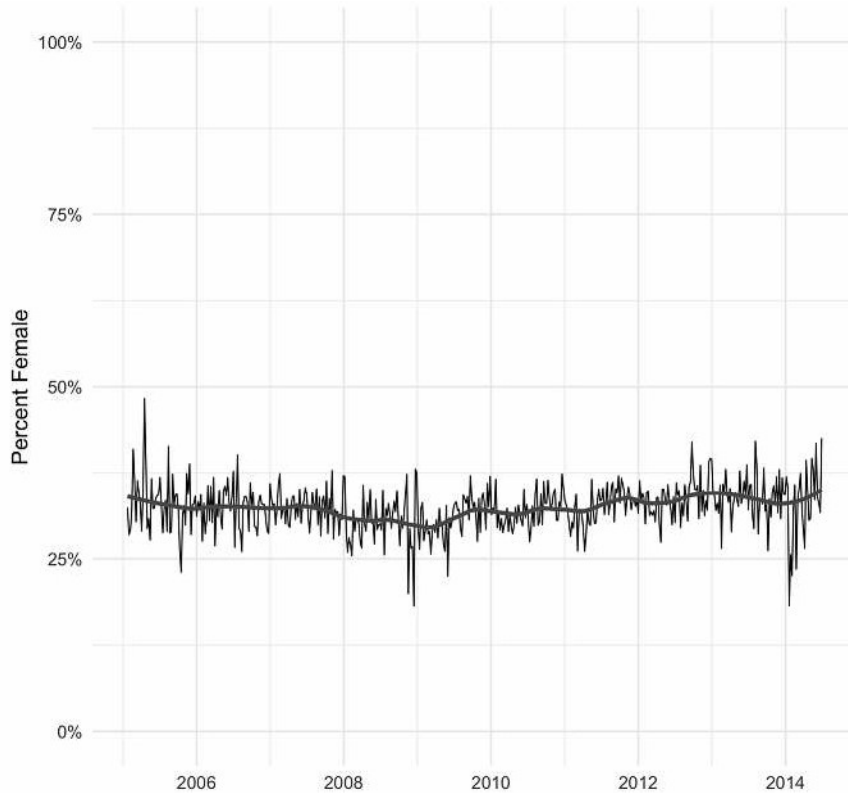
<sup>78</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); cf. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (explaining that pro se pleadings are “to be liberally construed”); *Fed. Exp. Corp. v. Holowecki*, 552 U.S. 389, 402 (2008) (“[P]ro se litigants are held to a lesser pleading standard than other parties.”); cf. *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957) (“[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”).

<sup>79</sup> See William Hubbard, *A Fresh Look at Plausibility Pleading*, 83 U. CHI. L. REV. 693, 739–40 (2016) (“Empirically, we might expect that pro se plaintiffs, who are not constrained by an attorney and may have a very low opportunity cost of their time . . . will be affected by pleading standards. This prediction may manifest itself empirically in changes in dismissal rates of pro se or IFP cases after a change from notice pleading to plausibility pleading. . . . [M]uch of the empirical work on the effects of *Twombly* and *Iqbal* (including some of mine) has excluded pro se and IFP plaintiffs from their analyses.”).

<sup>80</sup> The weeks are calculated based on each case’s original filing or removal date. I also reran the analysis by when cases closed, and the main results remained the same.



Figure 4: Pro Se Gender Skew Across Time



The trend line in Figure 4 is remarkably flat. There are mild weekly ups and downs reflecting the vagaries of whether a few men or women pro se litigants decided to file this week or next. However, the overall trend is clear. Despite massive changes to the economy, the federal government, and even some important doctrinal changes, the overall two-to-one gender ratio remains steady throughout these ten years.<sup>81</sup> Similarly, there are no obvious seasonal effects (e.g., always higher women filings in the summer or the like). This suggests that whatever is driving the pro se gender gap in federal court is not significantly affected by swings in the economy, changes in the White House, or doctrinal changes in procedural law.

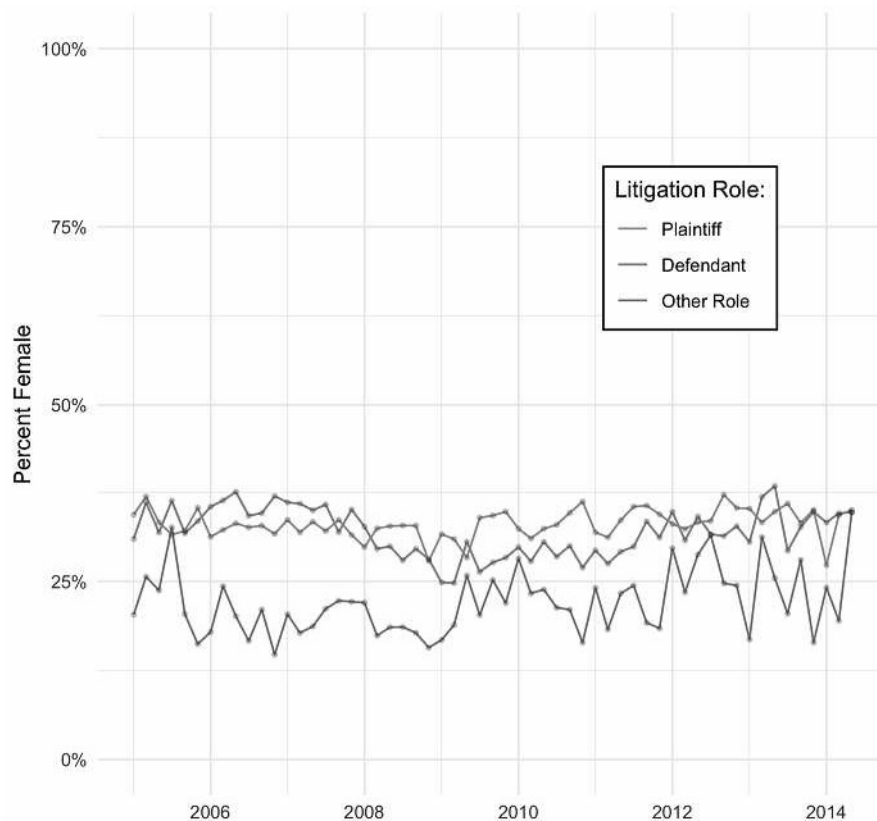
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<sup>81</sup> Of course, the data does not allow me to rule out the chance that these different factors all had a massive effect on the gender distribution of the pro se docket but that they largely negated each other. That is possible but strikes me as unlikely. The chronological alignment would have to be uncanny. Again, possible, but unlikely.

### C. *By Role*

The same holds true when we differentiate the analysis by litigation roles. Figure 5 shows the gender skew among federal pro se litigants across time,<sup>82</sup> by their role in the litigation. The red line is for pro se plaintiffs; the green line for pro se defendants; and the blue line for pro se litigants in other roles.

Figure 5: Pro Se Gender Skew Across Time by Roles



Again, the lines are surprisingly flat. The various potential influences identified above do not seem to have a differentiated effect on pro se litigants in different roles. One might have thought that the increased number of property foreclosures and credit litigation in the wake of the Financial

<sup>82</sup> Figure 4 used a weekly count. Figure 5 uses a bimonthly count because for some months there are simply very few cases with pro se litigants in “Other Roles.” Using a weekly count would show misleadingly erratic lines. Instead, Figure 5’s bimonthly count replaces the trend line from Figure 4.

Crisis might lead to unusual defendant pro se activity with a gendered component, perhaps because men own their homes more often than women or have different credit risks and behaviors. But nothing in the data suggests this is the case.

*D. By Geography*

We can also inquire into the geographic distribution of the pro se gender gap. One of the main advantages of a geographic inquiry is it recognizes that proximity and clumping often matter.<sup>83</sup> Previous and subsequent parts of the analysis treat each pro se litigant as a separate and independent observation. In this part, the analysis recognizes that some of the litigants might be neighbors and that geographic clustering can be informative. Geography is an intuitive and quick proxy for a host of factors that might be relevant and could be overlooked by temporal or subject matter specific approaches. Figure 6 maps the federal district courts.<sup>84</sup> For each district, the map shows the average gender proportion of its pro se litigants.<sup>85</sup>

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<sup>83</sup> See generally Roger Michalski, *MDL Immunity: Lessons from the National Prescription Opiate Litigation*, 69 AM. U. L. REV. 175, 196 (2019) ("Geography is information-rich, multifaceted, and underutilized.").

<sup>84</sup> The map omits the special trial courts (The United States Court of International Trade and The United States Court of Federal Claims) and courts in territories (Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands).

<sup>85</sup> Maps based on bigger or smaller geographic units (say states or counties or Census Blocks) are possible but can be misleading. For example, averages for smaller and less populous geographic units are sometimes heavily driven by outliers. A county with, say five thousand residents might produce only a single pro se litigant in a ten-year span that might be, by mere chance, female. That would show up on the map as 100 percent female federal pro se litigants.

Figure 6: Average Gender of Pro Se Litigants by Districts

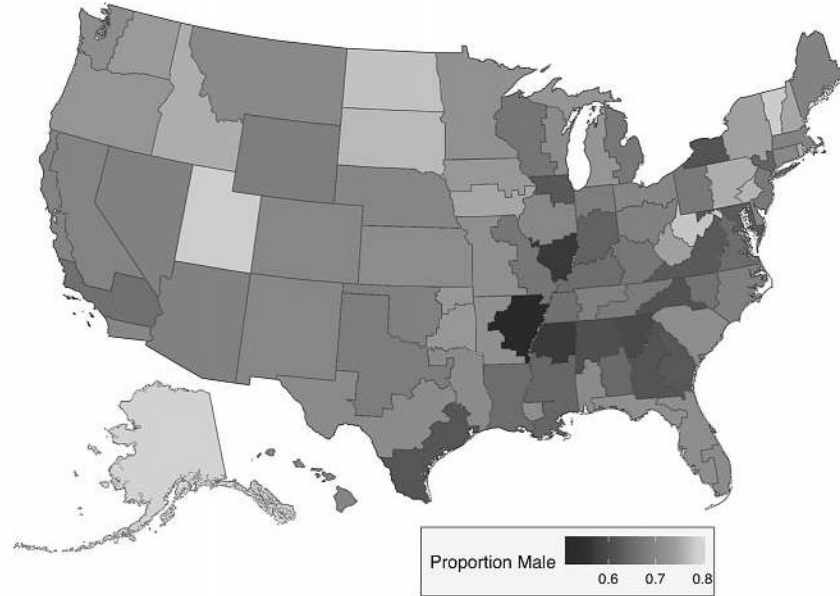


Figure 6 shows both uniformity and variation. The uniform part is that every district skews towards men. There is not a single federal district where there were more women than men pro se litigants. However, there is also variation. Some districts have a far higher percentage of male pro se litigants than others. For example, the Eastern District of Arkansas is almost evenly balanced (51 percent men) while the District of Alaska is heavily lopsided (80 percent men).<sup>86</sup>

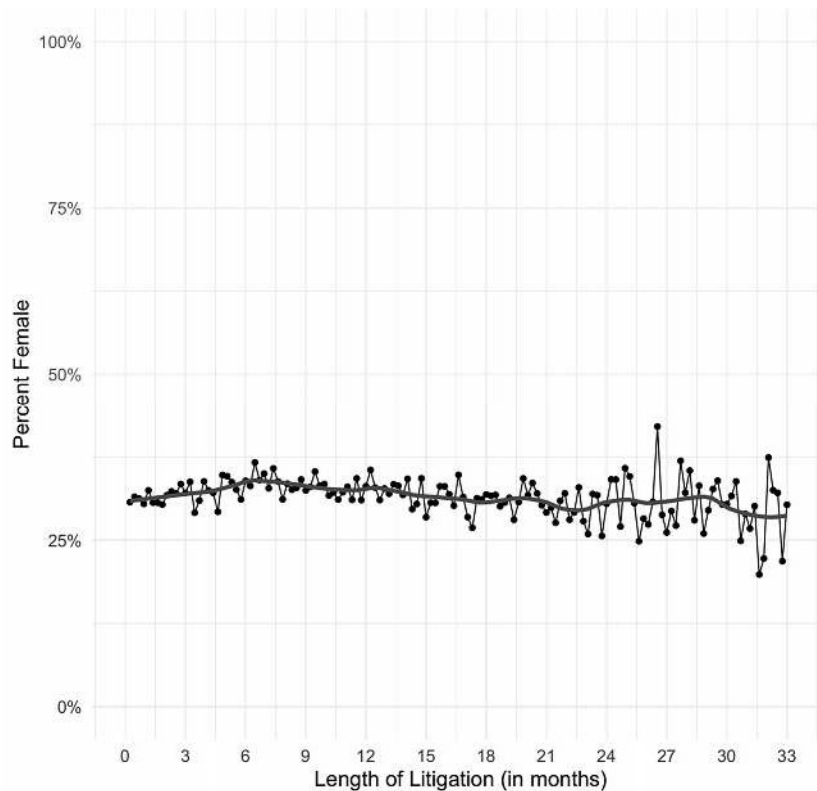
It is difficult to detect a clear overall geographic pattern in Figure 6. There is a weak pattern running along a belt going south from Chicago and southwest from Washington DC, where districts are more evenly balanced. However, this is not a clear pattern, and there are numerous and important deviations. Similarly, one might be tempted to look at the most male-skewed districts and think of cultural explanations. Alaska skews most male, followed by Utah, Vermont, West Virginia, the Dakotas, and Pennsylvania. There are hints of a cultural or political correlation, but it is weak and relies on cherry-picking some examples and disregarding others.

<sup>86</sup> Georgia is the state that, overall, is most evenly balanced. Each of its three districts lean toward the balanced part of the spectrum. Arkansas, in contrast, features two divergent districts that drive the overall state average close to the national average. Alaska has only one federal district and therefore its state average is the same as the one for its federal district.

### *E. By Length of Litigation*

Another way to examine the pro se gender gap is to compare length of litigation.<sup>87</sup> Here, too, the gender gap tracks the overall average in a surprisingly stable manner. Figure 7 measures the pro se gender gap based on the length of litigation. The left side shows cases that survived in federal court only for a few weeks. The middle shows cases that terminated within one to two years. The right side shows cases that survived longer.<sup>88</sup>

Figure 7: Pro Se Gender Skew by Length of Litigation



<sup>87</sup> Here operationalized by measuring the timespan between when litigation was initiated and when it terminated. The data spans ten years and the brunt of cases originated and terminated within that period. However, some did not (for example those that were initiated one day before the end of the ten-year period). As such, this Section only looks at cases that were terminated. It disregards all cases that were not. It is unlikely that this data-limitations biases the findings.

<sup>88</sup> There are few pro se cases that are in federal court for more than two years, for many reasons (for example, many cases settle). As such, the right side of the curve is heavily influenced by a few cases, which explains the increasingly erratic-seeming swings. Notice that the trend line is fairly flat (taking monthly, bimonthly, or quarterly measures instead of weekly ones would similarly flatten the curve and illustrate the steady trend line).

The overall trend line in Figure 7 is flat and tracks the overall average. The gender gap is consistent across cases that terminated quickly as well as cases that were litigated for years.

Length of litigation is not a reliable indicator for quality of litigation or underlying merits. However, it is a concise and handy proxy that provides some initial sense of what is happening during litigation. Figure 7 suggests the pro se gap is not related to procedural steppingstones or massive differences in the way men and women pro se litigants behave in court. Two counterfactuals illustrate this point. First, imagine Figure 7 showed a curve that starts high on the left and drops sharply toward the right. This would indicate that pro se women outnumber pro se men in cases that are quickly terminated, but the longer litigation continues the more men outnumber them. That would not be proof of anything, but it would suggest the possibility that women might plead in a manner that makes it easy for judges to dismiss their cases. Or it might indicate they remove cases to federal court without subject matter jurisdiction, thus triggering a quick remand. But that is not what Figure 7 suggests.

Similarly, consider a counterfactual where the line starts far below the overall average for short lived pro se cases but then slopes upward above the average for cases that are in federal court for years. This would suggest women pro se litigants survive various procedural challenges more successfully than men. For example, it might suggest they survive pleading and summary judgment more often than pro se men. Perhaps this would indicate that they get to trials on the merits adjudications, and appellate review more frequently. But again, that is not what Figure 7 shows. Instead, Figure 7 suggests that women's pro se cases are rather similar to men's pro se cases. There are just fewer of them, at all stages of litigation.

#### *F. By Subject Matter*

The Sections above revealed a pro se gender gap that was large and consistent across time, space, roles, and length of litigation. This Section inquires into the gender gap across different subject matter. Is the pro se gender gap equally wide in all areas of law, or are there some subject matters where it is heightened or diminished? This line of questioning is interesting and consequential in its own right. Additionally, it may also provide hints about what drives the overall gender gap.

The analysis in this Section is based on grouping suits by their underlying subject matter. The classification of cases into these subject matters, as well as the names for the subject

matters, originates with the Civil Cover Sheets.<sup>89</sup> Attorneys in represented suits and pro se litigants in unrepresented suits must file a Civil Cover Sheet together with their original complaint. Part of the form asks plaintiffs to identify the “Nature of the Suit” (NOS) for their case by checking a box next to a lengthy list of options. The Clerk of the Court subsequently enters the submitted information into the docket sheet for that case.

There are numerous places where things can go awry. Filers might misunderstand the form, carelessly fill out parts of the Civil Cover Sheet, or even purposefully misclassify. Similarly, clerks might make mistakes when entering information from the cover sheet on the docket sheets.<sup>90</sup> Even in the best-case scenario, it is difficult to select a single NOS code for a lawsuit with multiple and perhaps unrelated claims. Consequently, the NOS codes must be used with caution.<sup>91</sup> Still, the NOS codes provide a useful indication in many pro se suits—that might rely less on complex joinder rules—about the underlying subject matter of the suit that could only be improved by retrieving, reading, and classifying thousands of pleadings.

Figure 7 shows the pro se gender gap by subject matter using these NOS codes. The red line indicates gender parity—an equal number of women and men pro se litigants in that subject area. Points to the left of the red line indicate there are more women pro se litigants than men pro se litigants. Points to the right indicate a gender skew toward men. The dashed black line indicates the average across all subject matters. Displayed here are the sixty-five subject matters with the highest numbers of pro se litigants.<sup>92</sup> There are more subject areas beyond these sixty-five but many of them feature very few pro se litigants and makes the skew unreliable. Including these subject matters in Figure 7 might thus be misleading. The ten most common types of pro se suits are marked with three asterisks.

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<sup>89</sup> U.S. COURTS, FORM JS 44 (Rev. 04/21) (2021) [hereinafter FORM JS 44], [https://www.uscourts.gov/sites/default/files/js\\_044.pdf](https://www.uscourts.gov/sites/default/files/js_044.pdf) [<https://perma.cc/98PS-DL5F>].

<sup>90</sup> Alas, among the tens of thousands of pro se cases there were a few where the NOS code on the docket sheets did not match any of the available options on the cover sheet.

<sup>91</sup> See Christina L. Boyd & David A. Hoffman, *The Use and Reliability of Federal Nature of Suit Codes*, 2017 MICH. ST. L. REV. 997, 997 (“Our data reveal that for lawsuits like employment discrimination and intellectual property cases, the selected NOS codes do a very good job of summarizing the legal content of the complaint. However, in other types of civil lawsuits, including many contract, tort, and real property cases, there is a great deal of inconsistency between the NOS codes and the complaint contents.”).

<sup>92</sup> To be clear, the subject areas of law are not in order of commonality but ordered by magnitude of gender skew.

Figure 8: Pro Se Gender Skews by Subject Matters

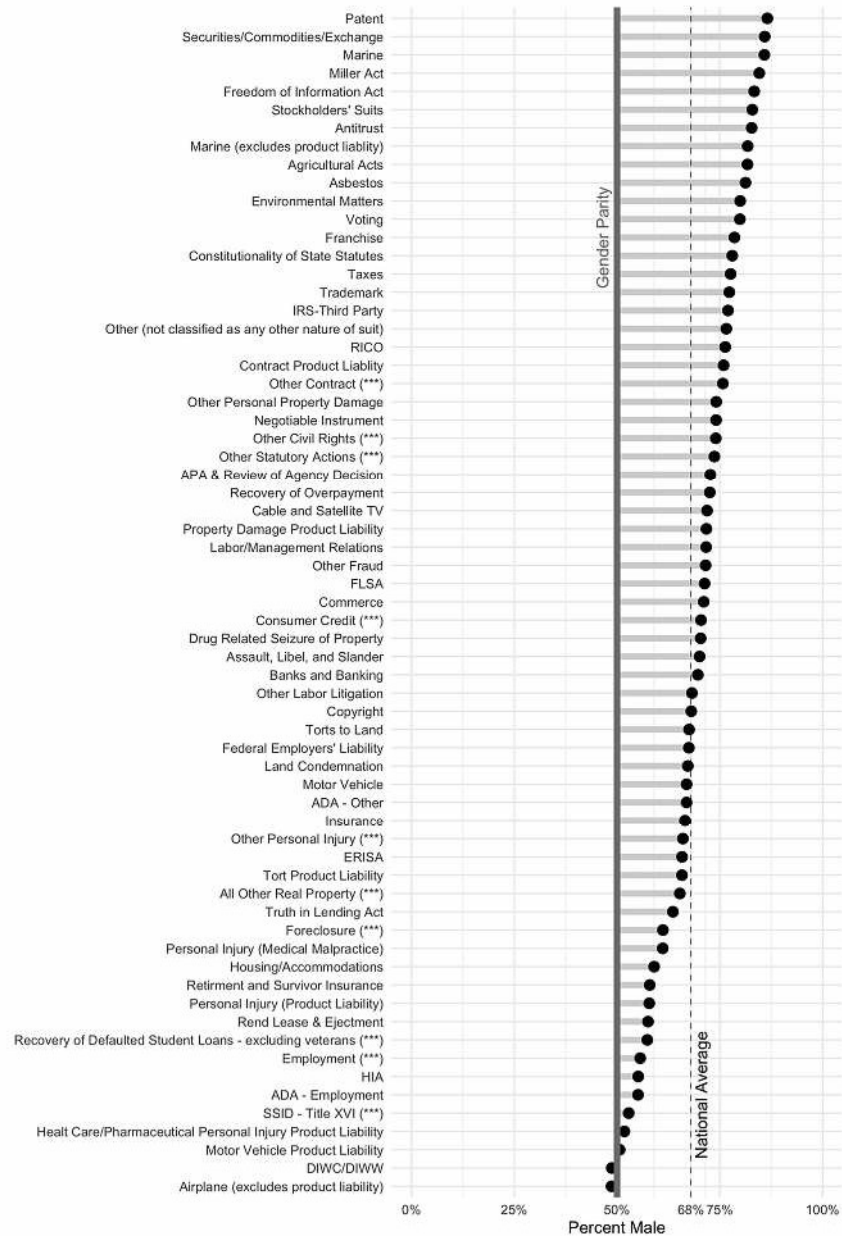


Figure 8 shows a clear pattern. The vast majority of subject matters have a male skew for pro se litigants. The most important exception consists of actions filed under 42 U.S.C. § 405(g), which are “Disabled Insured Workers Claim” (DIWC) and “Disabled Insured Widow’s/Widower’s Claim” (DIWW)



actions,<sup>93</sup> or “social security benefits provided to disabled individuals: worker or child, or widow.”<sup>94</sup> Other suits related to welfare programs like Medicare (HIA) and Supplemental Security Income Disability (SSID) under Title XVI are also close to the gender parity line. Two other categories that have numerous pro se suits close to gender parity are employment discrimination suits (both ADA and non-ADA) as well as products liability cases related to motor vehicles and health care. Beyond these types of cases, most pro se suits feature significant gender skews. Some types of suits feature more than 80 percent men. Put differently, for every woman pro se litigant there are four men. For example, pro se patent suits (Patent) are predominantly brought by men. Similarly, suits related to securities (Securities, Commodities, or Exchange), maritime law (Marine), and some suits related to contractors on federal construction projects (Miller Act) are extremely gender skewed.<sup>95</sup>

This provides a hint or mild indicia of what might cause the pro se skew. Though certainly not conclusive, these heavy skews in some subject areas but not others suggest pro se suits are gender skewed because the laws invoked in these different subject matters are utilized to different degrees by men and women. For example, if more men file and use more patents, then it would not be surprising that pro se lawsuits about patents are also more commonly invoked by men. Similarly, if most federal contractors are men, then pro se suits related to federal constructions projects would likely swing male.

When considering Figure 8, it is important to remember that some types of suits are far more common than others. For the ten most common pro se suits (those marked with asterisks), the band of gender variation is more narrowly drawn around the overall average, but the overall trend remains consistent.

### *G. Descriptive Statistics*

Another way to approach the federal pro se gap is to inquire into demographic, social, and economic factors that might be related to different filing rates for pro se litigants of different genders. This Section does so indirectly, inquiring into

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<sup>93</sup> “DIWC/DIWW” refers to “Disabled Insured Workers Claim” and “Disabled Insured Widow’s/Widower’s Claim.”

<sup>94</sup> U.S. COURTS, CIVIL NATURE OF SUIT CODE DESCRIPTIONS 7 (2022), [https://www.uscourts.gov/sites/default/files/nos\\_code-descriptions\\_updated\\_v.2\\_4-07-22.pdf](https://www.uscourts.gov/sites/default/files/nos_code-descriptions_updated_v.2_4-07-22.pdf) [<https://perma.cc/4BD2-3G4K>]; see 42 U.S.C. § 405(g).

<sup>95</sup> See 40 U.S.C. §§ 3131–34 (codifying various rights of action for contractors on federal construction projects).

descriptions of the communities where pro se litigants live. There are numerous potential units of analysis, ranging from the small Census Blocks to Block Groups, Tracts, counties, and states.<sup>96</sup> This section uses counties (and county equivalents) to strike a balance between analytical resolution and avoiding an undue influence of a few observations in nonpopulous areas. This initial approach compares three sets of counties: those that feature a rough gender balance when it comes to federal pro se litigants (60 percent men and less), those in a band around the national average (60–75 percent men), and heavily male-skewed counties (above 75 percent men). Table 1 provides an initial sense of whether these three groups of counties are systematically different regarding a range of important economic, social, and demographic variables. The names and definitions for these categories are from the US Census Bureau,<sup>97</sup> except for the distance to the nearest courthouse, which is calculated as the smallest distance between the county centroid and the location of all federal courthouses on a normalized scale.

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<sup>96</sup> See *supra* notes 67–68 and accompanying text.

<sup>97</sup> See generally *Census Data API: Variables* in `/data/2021/acs/acs1/variables`, U.S. CENSUS BUREAU, <https://api.census.gov/data/2021/acs/acs1/variables.html> [<https://perma.cc/2Y4G-ZNNG>].

Table 1: Descriptive Statistics of Demographics by County and County-Equivalent (by Ranges of Pro Se Proportion Male)

Means by Ranges of Proportion Male									
	Mean	SD	Min	P25	P75	Max	Below 60%	60-75%	Above 75%
Distance to Nearest Federal Courthouse	0.053	0.047	0	0.027	0.065	1	0.055 (0.053)	0.042 (0.034)	0.062 (0.050)
Median Household Income	46,039	12,208	20,972	37,931	51,408	122,238	44,115 (11,541)	48,618 (13,457)	44,912 (10,897)
Median Earnings	26,927	5,297	4,764	23,713	29,346	61,463	26,435 (5,012)	27,935 (5,901)	26,296 (4,693)
Median Age	40.1	4.96	21.6	37.3	43.1	63.8	40.2 (5.0)	39.18 (4.8)	41.1 (4.9)
Average Household Size	2.54	0.24	1.85	2.39	2.64	4.70	2.54 (0.25)	2.56 (0.23)	2.51 (0.24)
Portion of Population:									
Non-White	0.17	0.17	0	0.08	0.24	0.96	0.18 (0.18)	0.19 (0.16)	0.14 (0.15)
Veteran	0.11	0.03	0.02	0.09	0.12	0.29	0.11 (0.03)	0.10 (0.03)	0.11 (0.03)
College Degree	0.20	0.09	0.05	0.14	0.24	0.74	0.19 (0.08)	0.23 (0.10)	0.18 (0.08)
Without Work Last Year	0.27	0.09	0.09	0.21	0.32	0.72	0.27 (0.09)	0.27 (0.08)	0.27 (0.10)
Receiving Public Assistance	0.03	0.02	0	0.02	0.03	0.22	0.03 (0.02)	0.03 (0.01)	0.03 (0.02)
Receiving Food Stamps	0.14	0.06	0	0.10	0.18	0.46	0.18 (0.06)	0.14 (0.06)	0.14 (0.06)
Hispanic/Latino	0.08	0.13	0	0.02	0.08	0.98	0.07 (0.10)	0.10 (0.14)	0.08 (0.13)
Not US Citizen	0.03	0.04	0	0.01	0.03	0.36	0.02 (0.03)	0.04 (0.04)	0.03 (0.04)
Lives in Poverty	0.17	0.06	0.04	0.12	0.21	0.53	0.18 (0.06)	0.17 (0.06)	0.17 (0.06)
Has a Disability	0.15	0.04	0.03	0.12	0.18	0.32	0.16 (0.04)	0.15 (0.04)	0.16 (0.04)
With Health Insurance (public or private)	0.85	0.05	0.52	0.81	0.89	0.97	0.84 (0.05)	0.85 (0.05)	0.85 (0.06)
Born in State of Residence	0.67	0.15	0.13	0.58	0.78	0.94	0.68 (0.14)	0.65 (0.15)	0.68 (0.14)
Earnings Ratio Female/Male	0.67	0.11	0.27	0.61	0.73	2.10	0.67 (0.12)	0.68 (0.09)	0.67 (0.13)
Note: The descriptive statistics are not describing the population but, instead, provide a measure of countries and county equivalents. Some countries, especially those with small populations, can be heavily influenced by outliers. Counties without any federal pro se litigants in the dataset have been excluded.									

Table 1 shows numerous null findings. There are, of course, differences here or there, however we are not only inquiring into statistical significance but also meaningful substantive differentiation. Here that is lacking. For example, while the median earnings differ between counties with more women pro se litigants compared to counties with fewer, the difference is not very large and disappears when compared to the most extremely male skewed counties. Similarly with median age and average household size.

The null findings of Table 1 are important because some might think there would be a clear ascending or descending relationship between some of these variables and the three buckets of counties. Perhaps one might think a county that produces a pro se gender skew in excess of a three-to-one ratio is different from one that is more evenly balanced. Such counties might be systematically richer (or poorer), less educated (or more), older (or younger). Many hypotheses are imaginable, but Table 1 provides little indication that any are clearly viable.

### III. DISCUSSION, LESSONS & DOCTRINAL IMPLICATIONS

What should we make of the federal pro se gender gap documented above? What, if anything, can or must be done to ameliorate the federal pro se gender gap? This Part will discuss these issues raised by the findings above, keeping in mind that the analysis above is fundamentally descriptive in nature, not causal. It will also highlight areas of future research to sort through potential explanations and normative prescriptions.

#### A. *The Role of Formal Barriers*

We begin by examining whether formal barriers generate the federal pro se gender gap. Are there statutes, rules, or doctrines that might help to explain the gap documented above?

A hundred or even fifty years ago the answer would have been a resounding “yes.” While the right to proceed pro se is old,<sup>98</sup> it used to clearly favor men. For example, women used to be

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<sup>98</sup> See, e.g., Judiciary Act of 1789, Pub. L. No. 1-20, § 35, 1 Stat. 73, 92 (protecting the right of unrepresented parties to “plead and manage their own causes personally”).

excluded from juries,<sup>99</sup> there were few women federal judges,<sup>100</sup> and few women lawyers.<sup>101</sup> There were also strong norms skeptical of women pursuing their own claims. Courts in general and particularly federal courts were unfriendly places for women pro se litigants.<sup>102</sup> It would not be surprising if the pro se gender gap was significant one hundred years ago.

However, these various examples of formal barriers no longer have the same bite. Legislators and courts steadily eliminated and replaced these outdated laws and practices with gender-neutral ones. Facially discriminatory practices are largely in the past.<sup>103</sup> Women serve on juries.<sup>104</sup> Women are joining the federal bench in record numbers.<sup>105</sup> Modern pro se

<sup>99</sup> See generally Barbara A. Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139, 1161–74 (1993) (recounting “the long sad history of discrimination against women in the courtroom and on juries”); see also Carol Weisbrod, *Images of the Woman Juror*, 9 HARV. WOMEN'S L.J. 59, 59–60 (1986) (“[F]or most of American history, jury service was restricted to men.”).

<sup>100</sup> See Judith Resnik, *Representing What? Gender, Race, Class, and the Struggle for the Identity and the Legitimacy of Courts*, *The Law & Ethics of Human Rights*, 15 L. & ETHICS OF HUM. RTS. 1, 22 (2021) (“chart[ing] women who have been identified over the course of some seven decades as the ‘firsts’ in various parts of the United States” including Florence E. Allen, the first female federal judge in 1934); see generally Mary L. Clark, *One Man's Token is Another Woman's Breakthrough: The Appointment of the First Women Federal Judges*, 49 VILL. L. REV. 487, 540 (2004) (explaining that women continued to lag behind men in federal judicial leadership positions) (explaining that women continued to lag behind men in federal judicial leadership positions).

<sup>101</sup> See, e.g., *In re Bradwell*, 55 Ill. 535, 539 (1869), *aff'd sub nom.* *Bradwell v. State*, 83 U.S. 130 (1873) (“God designed the sexes to occupy different spheres of action,” and denying the possibility that the legislature intended the “privilege” to practice law to “extended equally to men and women.”).

<sup>102</sup> See generally *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 11, 15 (1987) (“[G]ender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences.”); see also Resnik, *supra* note 100, at 6 (“In the 1980s and 1990s, judiciaries and bar associations published more than 60 court-sponsored reports. The findings underscored the relatively small number of women jurists, the limited opportunities for women lawyers, and the problematic treatment of women litigants.”).

<sup>103</sup> See, e.g., *Strauder v. West Virginia*, 100 U.S. 303, 305, 308–09 (1879) (holding unconstitutional a West Virginia statute excluding any but “white male persons” from juries); see *Ballard v. United States*, 329 U.S. 187, 195 (1946) (reversing the conviction of a male criminal defendant who objected to the lack of women in the jury pool because the exclusion of women “deprives the jury system of the broad base it was designed . . . to have in our democratic society”).

<sup>104</sup> See, e.g., Laura Gaston Dooley, *Our Juries, Our Selves: The Power, Perception, and Politics of the Civil Jury*, 80 CORNELL L. REV. 325, 325 n.3 (1995) (finding that women comprised 52.9 percent of juries in a study of federal courts in several major cities); see also *J.E.B. v. Alabama*, 511 U.S. 127, 146 (1994) (prohibiting the use of gender-based peremptory challenges).

<sup>105</sup> See, e.g., Carrie Johnson, *Biden Had a Productive Year Picking Federal Judges. The Job Could Get Tougher in 2022*, NPR (Dec. 28, 2021), <https://www.npr.org/2021/12/28/1067206141/biden-federal-judges-nominations-diverse> [<https://perma.cc/3Q9L-KG22>] (“[N]early 75% of Biden's picks have been women.”).

related statutes,<sup>106</sup> the Federal Rules of Civil Procedure, local rules,<sup>107</sup> practices, canons of judicial ethics,<sup>108</sup> forms, and doctrines do not formally distinguish based on sex.<sup>109</sup> Pro se help desks and assistance programs are open to all pro se litigants.

The right to counsel under *Gideon* also does not formally discriminate based on sex.<sup>110</sup> However, it applies only in criminal cases, there is no civil *Gideon*.<sup>111</sup> Arguably the civil-criminal dichotomy discriminates against women because they are more commonly involved in civil rather than criminal suits.<sup>112</sup> But the lack of a civil *Gideon* alone cannot explain why there is an imbalance *within* civil pro se gender rates. If anything, the lack

<sup>106</sup> See, e.g., 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally.”). Many states also provide for the right to proceed pro se in state courts either through statute or constitutional provision. See Helen B. Kim, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to Be Heard*, 96 YALE L.J. 1641, 1641 n.2 (1987) (enumerating state statutes and constitutional provisions).

<sup>107</sup> See generally Andrew Hammond, *The Federal Rules of Pro Se Procedure*, 90 FORDHAM L. REV. 2689, 2689 (2022) (collecting “every pro se-specific rule and practice—nearly 500 in all—in the 94 federal district courts”).

<sup>108</sup> See, e.g., MODEL CODE OF JUD. CONDUCT r. 2.3 (AM. BAR ASS’N 1908) (“(A) A judge shall perform judicial duties without bias or prejudice. (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge’s direction and control to do so.”).

<sup>109</sup> However, conventions and biases might tell a different story. See, e.g., *Final Report & Recommendations of the Eighth Circuit Gender Fairness Task Force*, 31 CREIGHTON L. REV. 9, 14 (1997) (“[N]ot only female attorneys but also female parties and witnesses appear to be more likely than their male counterparts to encounter hostility during the discovery process.”); see generally Kelsey Hess et al., *The Influence of Gender and Other Extralegal Factors on Student Loan Bankruptcy Decisions*, 28 PSYCH., PUB. POL’Y, & L. 137, (noting that the “[f]indings demonstrate that female debtors who are single parents are significantly more likely to have their student loans discharged than similarly situated male debtors, but females are significantly less likely than males to obtain a discharge when they allege a medical condition. Additionally, having attorney representation significantly increases debtors’ odds of having their student loans discharged. Results are discussed in connection with the influence of debtor gender and potential gender biases that influence judicial decision-making.”).

<sup>110</sup> See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

<sup>111</sup> See *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 25 (1981); *Turner v. Rogers*, 564 U.S. 431, 441 (2011); see also Paul Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2193 (2013) (discussing the criminal implications of *Gideon* and the socio-economic results in criminal law).

<sup>112</sup> See Sabbeth & Steinberg, *supra* note 39 (manuscript at 3–4) (“[T]he constitutional guarantee of counsel accrues largely to the benefit of men. The vast majority of criminal defendants with a constitutional right to counsel are men. Women, in contrast, appear much more often as defendants in civil proceedings, where they enjoy no such right.”); cf. Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 968–70 (2012) (“*Gideon*’s shortcomings in the criminal context should caution us against assuming that a new judicially created right will alleviate chronic shortages. . . . Indeed, funding for counsel is scarce, existing lawyers are already overtaxed, and appointing civil lawyers would siphon time and resources from felony cases, which are typically more important and more complex. In a world of scarce resources, legislatures, courts, and legal aid organizations need flexibility in order to triage cases.”).

of a civil *Gideon* might suggest there would be *more* women pro se litigants on the civil side because they pursue more civil claims and do not have access to legal representation.<sup>113</sup>

In short, there is a massive gap between facially neutral rules and disparate effects. It is not possible to point to one place in the federal code or to one doctrine, practice, or local rule and identify the singular problem that explains the pro se gender gap in federal court. Instead, the story is likely far more complicated and devoid of smoking gun, intentional discrimination. Instead, there is likely a complicated confluence of factors behind the pro se gender gap with no simple remedy, and no clear place to point out the flaw and quickly fix it.

### B. Formalism

This invites a caricature formalist challenge—why care? There are no formal barriers to women filing and prosecuting pro se suits in federal court. Perhaps they do not file lawsuits because they do not want to. And if they do not care, why should we?

Many answers are imaginable. I suggest we should care for the same reasons we care about the massive gender gap in primary education. In many elementary schools, most or all of the teachers are still women.<sup>114</sup> Again, a formalist might say that is not a problem because there are no formal barriers to men becoming primary teachers. Yes, men might be scared away by the low salary, the low prestige, social stigma, or poor work conditions, but there are no formal barriers. However, even without formal barriers that gender gap is troubling. For example, many boys learn during key formative years without a single role-model that looks like them.<sup>115</sup> Meanwhile girls might implicitly absorb a limited view of what career options are available or typical for them. Also, undoubtedly, there are many men out there who would be wonderful elementary school

<sup>113</sup> Though, again, the story might be and likely is different in state courts.

<sup>114</sup> See BUREAU OF LAB. STATS., *supra* note 25.

<sup>115</sup> See generally Alia Wong, *The U.S. Teaching Population Is Getting Bigger, and More Female*, ATLANTIC (Feb. 20, 2019), <https://www.theatlantic.com/education/archive/2019/02/the-explosion-of-women-teachers/582622/> (“One effect of the gender imbalance could be that younger students have fewer opportunities to interact with positive male role models. ‘As a black male teacher, sometimes I feel like a unicorn,’ said Charles Jean-Pierre, a D.C. Public Schools art and French teacher. He said the black male teachers he had as a child of immigrants in Chicago motivated him to embrace his passion for art and become a teacher himself. ‘I think it’s important for students to experience joy, nurturing, and compassion from men . . . Male teachers embody hope and love for many students who do not see that on a daily basis [from men] in their homes.”); Valentina Paredes, *A Teacher Like Me or a Student Like Me? Role Model Versus Teacher Bias Effect*, 39 ECON. EDUC. R. 38 (2014).

teachers that could enrich the lives of countless students. These men are missing from elementary schools and that is a loss for all of society. Similarly, undoubtedly, there are many women primary education teachers who might shine more brightly in another career. Perhaps they would be even better law professors than elementary school teachers. Their preponderance in one field means they are absent in another. Even without formal barriers to men becoming elementary school teachers, the gender gap suggests the possibility of a massive and multifaceted loss to society.<sup>116</sup>

Such is the case with the pro se gender gap as well; its occurrence suggests something went awry. The problem might not be a formal barrier that would allow for a clear formal solution. But it is a problem nonetheless that calls for inquiry and adaptation.

### C. *Cui Non Bono?*

Perhaps the biggest question in this context is just who is disadvantaged here: women or men? It could be that women are disadvantaged because they may not, for a variety of reasons, have or feel they have meaningful access to federal courts. For example, perhaps they view federal courts as inhospitable. Similarly, one might speculate there are fewer pro se litigants because women are less confrontational, resolve disputes without recourse to formal processes, and use pre-suit settlements and accommodations more often than men. However, an important body of research questions or refutes that possibility.<sup>117</sup> Or, to use another gender trope, one could think women are less inclined to use an adversarial process,

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<sup>116</sup> See generally OECD, THE ABC OF GENDER EQUALITY IN EDUCATION: APTITUDE, BEHAVIOR, CONFIDENCE PISA (2015), <https://www.oecd.org/pisa/keyfindings/pisa-2012-results-gender-eng.pdf> [https://perma.cc/ZMP4-D2BY] (discussing gender disparities in student “baseline level[s] of proficiency in reading, mathematics, and science”); Andreoni James et al., *Risk Preferences of Children and Adolescents in Relation to Gender, Cognitive Skills, Soft Skills, and Executive Functions*, J. ECON. BEHAVIOR & ORG. (2019) (discussing gender gaps in risk preferences emerging in early adolescence); Bertrand Marianne, & Pan Jessica, *The Trouble with Boys: Social Influences and the Gender Gap in Disruptive Behavior*, 5 AM. ECON. J.: APPLIED ECON. 32 (2013) (discussing the gender gap in disruptive child behavior).

<sup>117</sup> See, e.g., Sandefur & Teufel, *supra* note 31, at 766. (“[W]omen [are] slightly more likely to report problems than men; [but] the difference is not statistically significant.”); Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, *supra* note 28, at 351 (“In the Western democracies for which we have reports on individual experience, women confronting justiciable events are sometimes found to be *more activist* than men in the sense that they are more likely to respond with an action that involves a public third party, such as consulting an advice agency or an attorney about a problem.”) (emphasis added).



such as is the hallmark of American jurisprudence.<sup>118</sup> But again, there is little to support that assertion.<sup>119</sup> Finally, one could argue women pursue fewer pro se suits because they had bad experiences with the justice system. Research on this point suggests that men, if anything, should be less inclined to file civil pro se suits because of their predominance as criminal defendants.<sup>120</sup> All of these questions are complex and difficult to study. Much remains unknown.<sup>121</sup> However, insofar as there is evidence, it is mixed at best or tends to refute these hypotheses.

While it could be the case that the disadvantage of the pro se gender gap falls on women for all the reasons spelled out above, men could also be disadvantaged. Perhaps the comparatively low number of women pro se litigants in federal court exists because many women with legal needs find representation. Perhaps lawyers, when prescreening cases, find women litigants more persuasive and are more willing to take on their cases.<sup>122</sup> Or perhaps lawyers gravitate toward women in their pro bono practice. Or legal aid programs represent women more often than men.<sup>123</sup> Or perhaps judges are more inclined to use their discretion one-sidedly and request representation for

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<sup>118</sup> See generally ROBERT A. KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* (2003) (discussing the American legal system's adversarial nature compared to the legal systems of other economically advanced countries).

<sup>119</sup> See, e.g., Rebecca Aviel, *Why Civil Gideon Won't Fix Family Law*, 122 YALE L.J. 2106, 2116–17 (2013) (noting that research shows divorcing parties favor “less adversarial processes,” that is, both male and female divorcing parties).

<sup>120</sup> See Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1267 (2016) (“For most respondents, the criminal and civil justice systems are one and the same, and injustices they perceive in the criminal system translate into the belief that the legal system as a whole is unjust.”).

<sup>121</sup> See Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 117 (2013) (“[W]e have only a very rudimentary understanding of how people come to think about and act on their potentially justiciable experiences and of the consequences of these experiences for them and for society. . . . An expanded research agenda must explore the dynamics of how people come to think about their civil justice problems and their options for responding to them.”).

<sup>122</sup> But cf. Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 120–27 (2019) (documenting ways in which “class, race, and gender biases” both “undervalue[] and devalue[] . . . claims”).

<sup>123</sup> See, e.g., LIM, L. LAYTON ET AL., *LEGAL SERVS. CORP., LSC BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS* 62 (2020) (“Approximately 7 in 10 (71.7%) named clients whose gender was known were women in 2020.”); cf. Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1792, n.37 (2001) (“Legal aid programs that accept federal funds also may not accept entire categories of cases or clients who seldom have anywhere else to go, such as prisoners, undocumented immigrants, or individuals with claims involving abortions, homosexual rights, or challenges to welfare legislation.”) (citing 45 C.F.R. §§ 1610–42) (1999); see also *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001) (barring funded lawyers from challenging the validity of welfare laws violates the First Amendment).

women pro se litigants but not men.<sup>124</sup> Again, it could be that bias seeps in at some or all of these points. None of the data presented above speaks to these possibilities, and I hope future research will further explore these possibilities. Insofar as there is evidence on these points it is weak.

There is at least one way to interpret the findings of this article while staying agnostic on whether men or women are disadvantaged. In either case, the massive gender disparities documented in this article are a flashing warning sign that something is amiss, though, clearly, more research is needed to figure out where precisely the problem lies and how to fix it.

#### D. *A Gendered Federalism*

There are few indicia that the accounts mentioned above can provide a full explanation. The one clear hint we get from the data presented in the previous section is in relation to the pro se gender gap in different subject matters.<sup>125</sup> There we saw in some subject areas pro se women are as common as pro se men and in other subject areas the gender gap is even larger than the overall average. This suggests a deeper, structural cause of the federal pro se gender gap. I see no reason why women would experience fewer injuries than men, but perhaps, maybe, there are fewer injuries women experience that are recognized by federal law or are sufficiently grave in monetary terms to meet the diversity jurisdiction amount-in-controversy requirement.<sup>126</sup>

Of course, the commonly invoked federal statutes are not gender specific.<sup>127</sup> Both men and women can invoke them equally. But perhaps the gender differences in society at large are such that the federal statutes on the books are more useful for men than women.<sup>128</sup> This would suggest a partial sorting of

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<sup>124</sup> 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel.”).

<sup>125</sup> See *supra* Part II.

<sup>126</sup> See 28 U.S.C. § 1332; see generally Steven Gensler & Roger Michalski, *The Million Dollar Diversity Docket*, 47 *BYU L. REV.* 1653, 1717 (2022) (explaining that “states use jurisdictional amounts to prioritize some litigants and some types of cases over others”).

<sup>127</sup> Similarly, diversity jurisdiction does not inherently create a gender gap but perhaps the amount-in-controversy requirement affects who (more commonly) can access federal courts.

<sup>128</sup> See generally Anna E. Carpenter, *Active Judging and Access to Justice*, 93 *NOTRE DAME L. REV.* 647, 649 (2018) (“Some scholars now refer to our state civil courts as the ‘poor people’s courts.’ In these courts, cases most often involve family, housing, small claims, foreclosure, and consumer matters.”); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URBAN L.J.* 37, 41–43 (2010) (summarizing reports on the predominance of pro se litigants in housing, bankruptcy, small claims, and family

genders into different courts. Women and their primary concerns into underfunded state courts under state law claims where all too often roughshod conditions prevail.<sup>129</sup> Men and their primary concerns into majestic federal courts with federal claims and (comparatively) ample procedural opportunities. Federalism, viewed from this perspective, would be gendered. Again, there is precious little in the data to substantiate this claim.<sup>130</sup> But it is a possibility that calls for further inquiry.

## CONCLUSION

Clearly, there is much we do not know. Equally clear is the need to find answers to some of these questions. This article has taken the first steps towards identifying and outlining an empirical research agenda based on the pro se gender gap. The main point is to facilitate and incite further empirical work into these questions. It is a target rich environment. Does the gender gap hold for represented parties? Are there gender gaps at specific procedural moments?<sup>131</sup> Are there or have there been policy interventions that increased or decreased the gender gap? And most obviously: are there similar gender disparities in state courts, tribal courts, arbitrations, and administrative proceedings? Finding answers to these questions will help to articulate a gender balanced doctrine of access to justice that contributes to the long march for gender equality.

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matters); Anna E. Carpenter et al., *Judges in Lawyerless Courts*, 110 GEO. L.J. 509, 512 (2022) (“[T]he issues at stake in [state] courts are deeply connected to fundamental human needs such as safety, intimate relationships, housing, and financial security.”).

<sup>129</sup> See, e.g., Llezlie Green, *Wage Theft in Lawless Courts*, 107 CAL. L. REV. 1303, 1343–44 (2019) (“Small claims courts, by design, involve simplified procedures to efficiently process large numbers of cases, many with pro se parties, that rarely delve into the nuances of the law. In wage theft cases, however, these nuances are paramount for protecting exploited workers. The efficiencies of the court may therefore create substantial roadblocks for plaintiffs.”); see also Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365, 1432–33 (2021); see generally Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People’s Courts*, 22 GEO. J. ON POVERTY L. & POL’Y 473 (2015) (“develop[ing] the concept of ‘poor people’s courts,’ a term that has been used to describe courts serving large numbers of low-income people without representation”).

<sup>130</sup> One might wonder, for example, whether non-pro se suits feature a gender gap as well.

<sup>131</sup> For example, is there an empirically demonstrable summary judgment gender gap once we take selection effects into account? See generally Elizabeth M. Schneider, *The Dangers of Summary Judgment: Gender and Federal Civil Litigation*, 59 RUTGERS L. REV. 705, 706 (2007) (“explor[ing] the ways in which summary judgment impacts cases involving gender and how gender impacts judicial decision making on summary judgment”); see also Elizabeth M. Schneider, *The Changing Shape of Federal Civil Pretrial Practice: The Disparate Impact on Civil Rights and Employment Discrimination Cases*, 158 U. PA. L. REV. 517, 520 (2010).