

Civil Rights Enforcement and the Racial Wage Gap*

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Abstract

We present new evidence on differences in litigation, judge dismissal, and plaintiff win rates across United States district courts from 1979 to 2016. Across courts, litigation rates are negatively (positively) correlated with judge dismissal (plaintiff win) rates. Further, Republican judges tend to dismiss cases at a higher rate than Democrats, regardless of judge gender and race. Finally, states with higher litigation rates also exhibit higher racial wage gaps, whereas states where judge dismissal (plaintiff win) rates are higher experience higher (lower) racial wage gaps. Our results highlight the importance of legal institutions on the persistence of racial inequality.

JEL classification codes: J7, K0, J71, J78, K31

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1 Introduction

While there is a vast body of literature on labor market discrimination, we lack comprehensive empirical evidence on the effectiveness of private enforcement of anti-discrimination legislation, through the federal courts, to reduce racial gaps in earnings and other socioeconomic outcomes of interests.¹ We present new evidence on differences in civil rights enforcement across United States district courts from 1979 to 2016. Using the entire universe of civil rights cases terminated during our sample period, we construct three measures of enforcement: litigation rates, judge dismissal rates, and plaintiff win rates. Across courts, litigation rates are negatively (positively) correlated with judge dismissal (plaintiff win) rates, suggesting that the litigation choice by private parties responds to the likelihood of success. Further, we show that Republican judges tend to dismiss cases at a higher rate than Democrats, regardless of court composition in terms of judge gender and race. Finally, we find that states with higher litigation rates also exhibit higher racial wage gaps, whereas states where judge dismissal (plaintiff win) rates are higher experience higher (lower) racial wage gaps.

The Civil Rights Act of 1964 established court-centered enforcement of civil rights through private litigation—with the possibility of economic damages and attorney’s fee awards to winning plaintiffs.² Specifically, Title VII of the Civil Rights Act of 1964 and, later, Title VIII of the Civil Rights Act of 1968 provided provisions for remediating grievances related to discrimination in employment and housing based on personal characteristics. Immediately following the passage of the Civil Rights Act of 1968, civil right cases brought to U.S. courts increased significantly (Farhang, 2010). Subsequent amendments to the Civil Rights Act further expanded the reach of private enforcement along several dimensions: the Equal Employment Act (1972) gave the Equal Employment Opportunity Commission authority to file lawsuits in federal courts against

¹A non-exhaustive reference list of research show a significant relationship between anti-discrimination policies and the economic progress of disadvantaged groups includes Cascio and Washington (2014); Almond et al. (2006); Kurtulus (2016); Miller (2017); Donohue III et al. (1991); Wright (2013); Smith and Welch (1989); McCrary (2007).

²Prior to 1964, the dominant mode of enforcement was bureaucracy-centered, at the state level. Only 28 states, primarily outside the South, had fair employment practice laws (Farhang, 2010). The adoption of these state-level laws improved the labor market outcomes of Black workers (Collins, 2001).

individuals, employers, and unions which violated the employment discrimination provisions of the 1964 Act; the Civil Rights Attorney's Fee Award Act (1976) allowed courts to award reasonable attorneys' fees as part of costs to a prevailing party in federal civil rights lawsuits; and The Civil Rights Act of 1991 provided the right to a jury trial on discrimination cases, introduced possible emotional distress damages, and limited the amount awarded by a jury.

A court-centered system where enforcement is guided by federal statutes has the potential to partially insulate civil right enforcement from the whims of local institutions. However, private litigation through the court system partially shifts the merits of discrimination to market incentives. From a policy perspective, this brings the role of courts into question. Intuitively, the most blatant and egregious forms of discrimination are likely to settle out of court because they are easier to prove, while more subtle and nuanced instances can either remain unchecked or be brought to court.³ Still, the litigation choice by private parties is influenced by the perceived likelihood of success, which in turn is a reflection of biases in the justice system. On the whole, our findings not only support the notion that potential plaintiffs and defendants—and their respective lawyers—respond to court-level probabilities of success, but also that the odds of success are strongly associated with the political party composition of courts. Moreover, our results also suggest that local economic agents incorporate the observed level of enforcement into their decisions to discriminate. To the extent that the party composition of active federal judges is largely the result of the amount and location of vacant seats during each President's tenure, understanding the effects of these life-long appointments on observed differences in civil rights enforcement, and on labor market outcomes for minorities, remains of first-order importance for those interested in systemic racial inequality in the United States.

2 Court Data and Civil Rights Enforcement

Data on civil rights cases come from the Federal Court Cases: Integrated Data Base, for the period 1979-2016. Our sample contains 1,017,841 cases that either received a judgment or were

³Fryer (2011) argues that federal intervention for equal rights in the labor market has drastically reduced overt labor discrimination.

dismissed for a variety of reasons without receiving a judgment, across the 90 United States District Courts in 50 states and the District of Columbia. ⁴

2.1 Measuring civil rights enforcement

We consider three measures of enforcement in our analysis. The first is litigation rates, measured as the number of cases filed in federal courts per 100 thousand population (Farhang, 2010). The other measures of enforcement capture the likelihood of success for plaintiffs and defendants at different stages of the litigation process observable in the data. The second measure of enforcement is the share of judgments where the case is dismissed by a judge after one of the parties (usually the defendant) files a “motion to dismiss before trial.” In the sample, over 90 percent of dismissal judgments were in favor of the defendant, and less than five percent were in favor of the plaintiff. The third measure of enforcement is plaintiff win rates in non-dismissal judgments. That is, it measures the probability that the plaintiff wins, conditional on having prevailed after a motion to dismiss before trial.

Summary statistics for the measures of enforcement just described over our sample period are provided in Table 1. All of these measures exhibit considerable variation across district courts. Over the years in our sample, the average district court had an average litigation rate of 10 cases per 100 thousand population per year. However, on average, some courts had as few as 4 cases (North Dakota), and as many as 77 cases (DC) per 100 thousand population per year. A majority of judgments (59 percent) end up in dismissal, but in some courts that share can be as low as 33 percent, and as high as 79 percent. In general, judgments tend to favor defendants regardless of whether the case survived a motion to dismiss. However, surviving past a motion to dismiss doubles the chances of the plaintiff winning the case. This fact can be observed by comparing the last two rows of Table 1, which contain the plaintiff win rates in cases that survived a motion to

⁴Cases from the District Courts in Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands are excluded. All cases that were transferred or remanded to other court or agency, as well as prisoner-related cases, are excluded from the analysis. Cases that were dismissed without a judgment include instances in which the parties reached a settlement after the case was filed and before a verdict or judgment was issued, but we can only observe settled cases separately from other non-judgment dismissals for the period after 1988.

dismiss and over all judgments, respectively.

In Table 2 we reported the coefficients from regressing litigation rates at the court-year level on the share of dismissal judgments (out of all judgments), and plaintiff win rates (over all judgments, and over non-dismissal judgments), separately. Court and year fixed effects are included in all regressions. The purpose of this exercise is to show that litigation is likely to be influenced by outcome expectations, since lawyers are familiar with judges' ruling histories in their local courts. This hypothesis is supported by the negative and significant coefficient associated with the share of dismissal judgments, as well as the positive and significant coefficients associated with both measures of plaintiff win rates. High dismissal judgment rates seem to discourage litigation, while the opposite is true for plaintiff win rates.⁵

2.2 Civil rights enforcement and court judge composition

The data on tenure, gender, race and party affiliation of judges were obtained from the Biographical Directory of Article III Federal Judges, maintained by the Federal Judicial Center. Table 3 shows the court average judge composition over our sample period. On average, slightly over half of active district court judges have been appointed by a republican president, but in some courts this share has been as low as zero (Middle District of Louisiana) and as high as one (North Dakota).⁶ Historically, females make 12 percent of all active judges, but over our sample period this figure increased more than six-fold, from four percent in 1979 to roughly 26 percent in 2016. The historical share of active Black and Hispanic judges is six and two percent, respectively. Increases in Black and Hispanic representation among judges has been far less dramatic compared to that of females, but in some courts, historical Black (Hispanic) representation is as high as 27 (34) percent.⁷

In Table 4 we report results from regressing the dismissal judgment rate, as well as the plaintiff

⁵The court-level relationship between litigation and case outcomes documented in Table 2 is not observed at the state level, which supports the notion that the litigation choice is a function of expected outcomes at the court level.

⁶The party-affiliation mix of judges is mainly determined by the amount and location of vacant seats during each President's tenure.

⁷Historically, the Middle District of North Carolina and the Western District of Texas have the highest shares of active Black and Hispanic judges, respectively.

win rate over non-dismissal judgments, on court composition of judges in terms of party affiliation along with gender and race. The first pair of columns show that a higher share of Republican judges is associated with a higher judge dismissal rate, while courts with higher shares of female judges exhibit lower dismissal rates. Party affiliation and gender seem to have no relationship with plaintiff win rates. The coefficient associated with the share of Black judges is positive, although significant only at the 10 percent level, for both dismissal and plaintiff win rates, suggesting that Black judges tend to dismiss cases at a higher rate; but, conditional on not being dismissed, plaintiffs have a higher chance of winning the case in courts with a higher share of Black judges. The share of Hispanic judges seems to have significant relationship with either measure of enforcement. In the second pair of columns, we breakdown gender and race shares by party affiliation. From these results it is clear that party affiliation is the main driver of the correlations described in the first two columns. Republican judges tend to dismiss cases at a higher rate, independently of whether they are female, Black, or Hispanic. The fact that a higher share of Republican judges are also associated with higher non-dismissal plaintiff win rates is likely a mechanical result, given cases that are not dismissed by judges are more likely to be won by plaintiffs, as described in Table 1.

3 Civil rights enforcement and racial wage gaps

We use data from the March Current Population Survey (Annual Social and Economic Supplement) from 1980 to 2017 to examine the relationship between civil rights enforcement via the courts and racial wage gaps.⁸ We limit our sample to adults between the age of 25 and 54 that work more than 34 hours per week and were employed at least 50 weeks in the previous year (full-time, year-round workers). Following the vast literature on racial gaps in labor market outcomes, we use repeated cross-sections to estimate the following equation:

$$y_{it} = \alpha_i + \gamma_t + \pi RGG_{it} + \delta Enforcement_{it} + \rho RGG_{it} \times Enforcement_{it} + \Theta' X_{it} + \varepsilon_{it} \quad (1)$$

⁸CPS ASEC collect wage information from the previous year, so we match enforcement rates to the reporting year of wages by focusing on wages between 1979 and 2016.

where y_{it} is the log wage for individual i in year t . We include state fixed effects, α , and year fixed effects, γ , to capture unobserved heterogeneity across locations as well as variation across time. RGG is a binary variable equal to one if individual i belongs to one of the four *Race-Gender Groups*, Non-Hispanic Black Men, Non-Hispanic Black Women, Hispanic Men, or Hispanic Women, and zero if white. We estimate Equation 1 with individuals from the race-gender group of interest and white individuals from the same gender group. For instance, for Hispanic men, the sample will include Hispanic men and white men, or to estimate the wage gap for Black women, the sample includes only Black women and white women. The vector X_{it} contains labor market characteristics including occupation indicator variables, age group indicators, educational attainment group indicators, marital status, and metropolitan area status.⁹ The main variable of interest is the interaction term, $RGG \times Enforcement$, which will uncover the correlation between civil rights enforcement and racial wage gaps if a relationship exists.

Table 5 reports the coefficients for RGG , $Enforcement$, and $RGG \times Enforcement$ from Equation 5. We focus on the enforcement measures from the first three rows of Table 1: the litigation rate (Panel A), dismissal judgment (Panel B), and non-dismissal plaintiff win rate (Panel C). Column 1 (3) focuses on the wage gap between Black (Hispanic) Men and White Men, while column 2 (4) focuses on the gap between Black (Hispanic) Women and White Women. The coefficient on RRG is negative and statistically significant in all four columns but varies based on the measure of enforcement. The negative estimate of RRG highlights the existing racial wage gap. As it relates to our measures of enforcement, litigation rate is negatively related to wages; dismissal judgment rate is positively correlated with wages, and the non-dismissal plaintiff win rate is only negatively correlated with wages for Hispanic Women and White Women.

Our main coefficient of interest, ρ , captures how enforcement of civil rights through the courts impacts racial wage gaps. The results from Panel A show that litigation rates widen the wage gap for Blacks but have no impact on the wage gap for Hispanic workers. The negative relationship

⁹Age groups are the following: $24 \leq \text{age} \leq 29$, $30 \leq \text{age} \leq 34$, $35 \leq \text{age} \leq 39$, $40 \leq \text{age} \leq 44$, $45 \leq \text{age} \leq 49$, and $50+$. The educational attainment groups are the following: High School Dropout, High School Graduate, Some College, and Four or more years of College.

captures that fact that discrimination in the labor market will widen racial wage gaps but also lead to more complaints of civil rights infractions. Therefore, litigation itself may capture the presence of discrimination but not how the courts themselves influence wage gaps. Changes in wage gaps through court enforcement should reflect the likelihood that plaintiffs are successful in reaching a resolution in their favor. Indeed, as shown in Panel B, when courts are more likely to dismiss a case in favor of the defendant—as measured by the dismissal judgment rate—the racial wage gap widens. On the other hand, Panel C shows that when the courts are more likely to rule in favor of the plaintiff, the racial wage gap shrinks. Enforcement, as measured by plaintiff win rates in non-dismissal judgments, reduces the wage gap for Black males by 3.4 percentage points (19 percent reduction in wage gap) and by 7.7 percentage points for Hispanic men. The impact of plaintiff win rates is much larger for women; reducing the wage gap by 71 percent for Black women and by 50 percent for Hispanic women.

4 Conclusion

President Obama appointed over 250 judges to U.S. district courts during his tenure, and President Trump has appointed over 160 in four years. Understanding the impact of civil rights enforcement has the potential to identify a novel underlying mechanism that either contributes to or reduces racial inequality. Our results show that party affiliation matters, but, moreover, enforcement matters. The racial wage gap shrinks when courts are more likely to rule in favor of plaintiffs in civil right cases. Although a vast number of discrimination cases are settled out of court, a relationship exists between court rulings and labor market outcomes. Future work should explore causal mechanisms in which the enforcement of civil rights, via the courts, influence racial and economic inequality.

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Table 1: Enforcement measures by District Court: 1979-2016.

	Mean	S.D.	Median	Min.	Max.
Litigation rate	10.48	8.14	8.76	3.78	76.56
Dismissal judgment (out of all judgments)	0.59	0.10	0.60	0.33	0.79
Plaintiff win rate (non-dismissal judgments)	0.28	0.07	0.28	0.12	0.46
Plaintiff win rate (all judgments)	0.14	0.04	0.14	0.08	0.25

Table 2: Civil rights litigation rates and case outcomes by District Court: 1979-2016.

	Dismissal judgment (all judgments)	Plaintiff win (all judgments)	Plaintiff win (non-dismissal judgments)
Litigation rate	-1.2*** [0.43]	2.52*** [0.83]	1.09*** [0.41]
R^2	0.87	0.87	0.87
N	3388	3388	3380

Note: Each column reports coefficients from regressing litigation rates at the court-year level on the share of dismissal judgments, and plaintiff win rates, separately. Court and year fixed effects are included in all regressions. Standard errors in brackets. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$.

Table 3: Judge composition by district court: 1979-2016.

	Mean	S.D.	Median	Min.	Max.
Republican share	0.53	0.16	0.54	0.00	1.00
Female share	0.12	0.10	0.11	0.00	0.74
Black share	0.06	0.07	0.06	0.00	0.27
Hispanic share	0.02	0.06	0.00	0.00	0.34

Table 4: Case outcomes and court judge composition: 1979-2016.

	(1)		(2)	
	Dismissal judgment	Plaintiff win	Dismissal judgment	Plaintiff win
Republican	0.08*** [0.02]	0.01 [0.02]		
Female	-0.07** [0.04]	-0.01 [0.04]		
Black	0.11* [0.06]	0.10* [0.06]		
Hispanic	0.10 [0.09]	0.01 [0.10]		
Female Rep.			0.14*** [0.05]	0.11* [0.05]
Female Dem.			-0.23*** [0.04]	-0.09** [0.04]
Black Rep.			0.38*** [0.11]	0.55*** [0.12]
Black Dem.			0.06 [0.06]	0.03 [0.06]
Hispanic Rep.			0.25** [0.11]	0.06 [0.12]
Hispanic Dem.			-0.29** [0.12]	-0.19 [0.13]
R^2	0.45	0.25	0.45	0.26
N	3420	3411	3420	3411

Note: Standard errors in brackets. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

Table 5: Wage Differential by Enforcement Measure

	(1)	(2)	(3)	(4)
		<i>Race-Gender Group</i>		
	Black Men	Black Women	Hispanic Men	Hispanic Women
Panel A				
Litigation Rate	-0.000759** [0.000315]	-0.000876** [0.000342]	-0.000986*** [0.000308]	-0.00130*** [0.000347]
Race- Gender Group (0/1)	-0.163*** [0.00537]	-0.0491*** [0.00476]	-0.196*** [0.00453]	-0.122*** [0.00528]
Race-Gender x Litigation	-0.000864* [0.000478]	-0.00138*** [0.000414]	0.000174 [0.000417]	-3.50e-05 [0.000491]
Panel B				
Dismissal Judgment Rate	0.0376*** [0.00594]	0.0400*** [0.00654]	0.0554*** [0.00586]	0.0473*** [0.00657]
Race- Gender Group (0/1)	-0.151*** [0.00962]	-0.0411*** [0.00848]	-0.108*** [0.00781]	-0.0663*** [0.00901]
Race-Gender x Dismissal	-0.0333** [0.0149]	-0.0358*** [0.0132]	-0.140*** [0.0122]	-0.0910*** [0.0141]
Panel C				
Plaintiff Non-Dismissal Win Rate	0.00551 [0.00572]	-0.00903 [0.00623]	-0.00288 [0.00567]	-0.0158** [0.00624]
Race- Gender Group (0/1)	-0.186*** [0.00516]	-0.0787*** [0.00469]	-0.216*** [0.00457]	-0.148*** [0.00514]
Race-Gender x Plaintiff	0.0536*** [0.0171]	0.0565*** [0.0156]	0.0802*** [0.0151]	0.0966*** [0.0174]
Observations	664,379	506,109	716,065	506,207

Note: Each column reports regression coefficients from Equation 1. Each regression includes state and year fixed effects as well as the following covariates: educational attainment group indicators, marital status, metropolitan status, age-group indicators, and occupation group indicators. Robust standard errors in brackets. *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

5 Acknowledgments

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