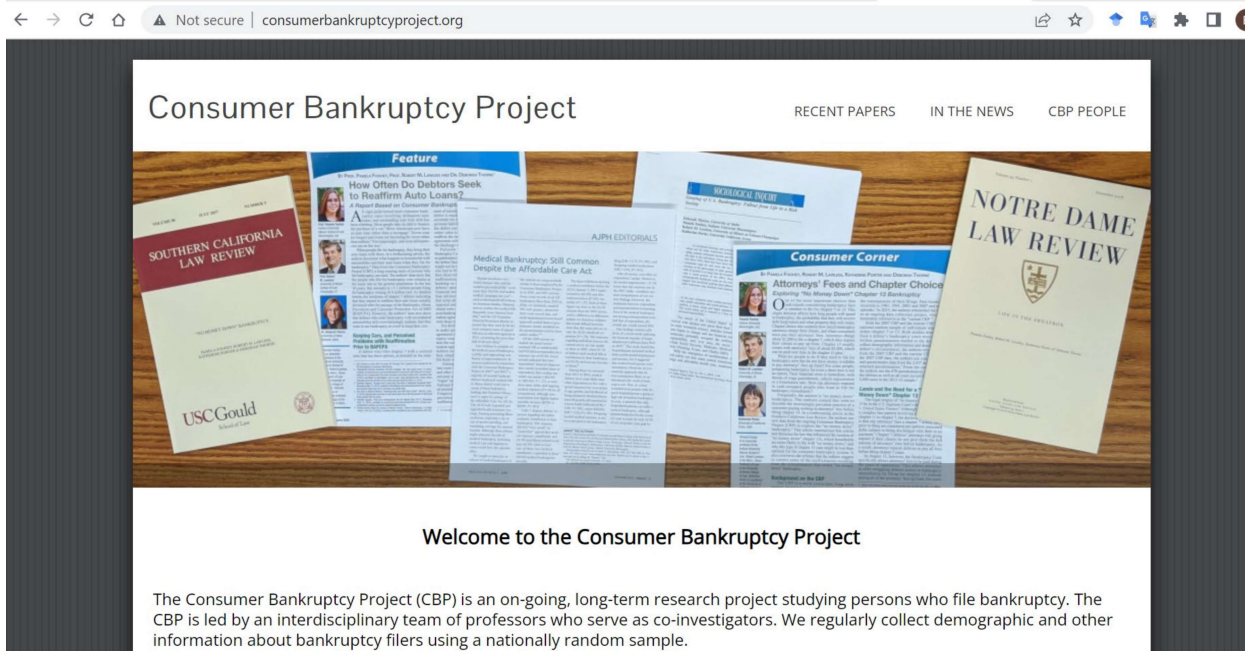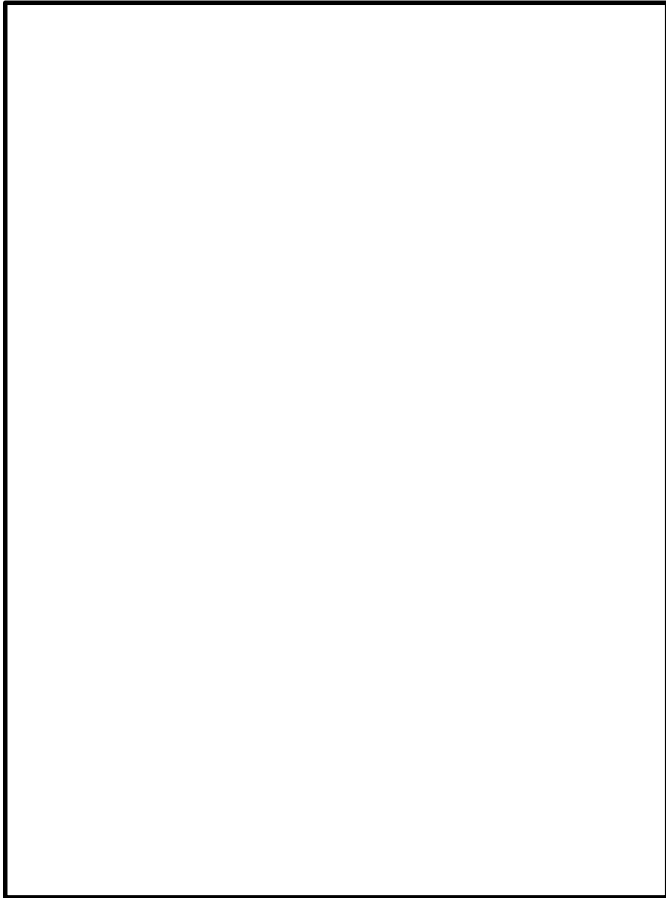# Bankruptcy, Race & Chapter Choices

based on research and papers by

Jean Braucher, Dov Cohen, Pamela Foohey, Bob Lawless, Angela Littwin, Katherine Porter, Faith Shin & Deborah Thorne

And featuring . . .

Frank W. Koger Bankruptcy Symposium, Charles Evans Whittaker Courthouse, Kansas City, MO, May 10, 2024

Debt's Grip:

Risk and Consumer Bankruptcy

University of California Press
forthcoming, 2025

Pamela Foohey
Yeshiva University
Benjamin N. Cardozo School of Law

Robert M. Lawless
University of Illinois

Deborah Thorne
University of Idaho

Consumer Bankruptcy Project

Welcome to the Consumer Bankruptcy Project

The Consumer Bankruptcy Project (CBP) is an on-going, long-term research project studying persons who file bankruptcy. The CBP is led by an interdisciplinary team of professors who serve as co-investigators. We regularly collect demographic and other information about bankruptcy filers using a nationally random sample.

Consumer Bankruptcy Project

- Long-term project studying the people who file bankruptcy
  - Past iterations in 1981, 1991, 2001, and 2007

- Current Consumer Bankruptcy Project, 2013—2022
  - National random sample, waves of 200 filings every 3 months
  - 8,000 individual chapter 7 and 13 cases
  - Courts records & written questionnaire
    - 2,122 responses; 27% response rate

Assets of Bankruptcy Filers, by Race & Chapter

	Black Filers, CH 7	Other Filers, CH 7	Black Filers, CH 13	Other Filers, CH 13
Total assets	$19,331	$26,995	$33,246	$130,538
% homeowners	30%	35%	46%	64%
Home value	$135,656	$148,685	$125,405	$155,444
Home equity	$4,362	$14,072	$19,925	$18,881
% car owners	77%	86%	88%	92%
Total value, all cars	$8,083	$8,004	$11,627	$12,348
Equity, all cars	$0	$1,750	($557)	$1,030

Debts of Bankruptcy Filers, by Race & Chapter

	Black Filers, CH 7	Other Filers, CH 7	Black Filers, CH 13	Other Filers, CH 13
Total Debts (median)	$84,732	$94,707	$89,359	$158,476
Total home loans	$125,512	$124,164	$105,339	$126,029
% with student loans	42%	23%	29%	25%
Student loans	$39,570	$28,561	$46,868	$30,974
Amt owed, all cars	$10,659	$4,216	$13,005	$12,483
Debt-to-asset ratio	3.46	2.48	1.83	1.30

Percentage of Debtors in Chapter 13

All cases – 36%

Percentage of Debtors in Chapter 13

Southerners ????

Homeowners ????

Unemployed ????

All cases – 36%

White households ????

Bottom 10% in assets ????

Top 10% in income ????
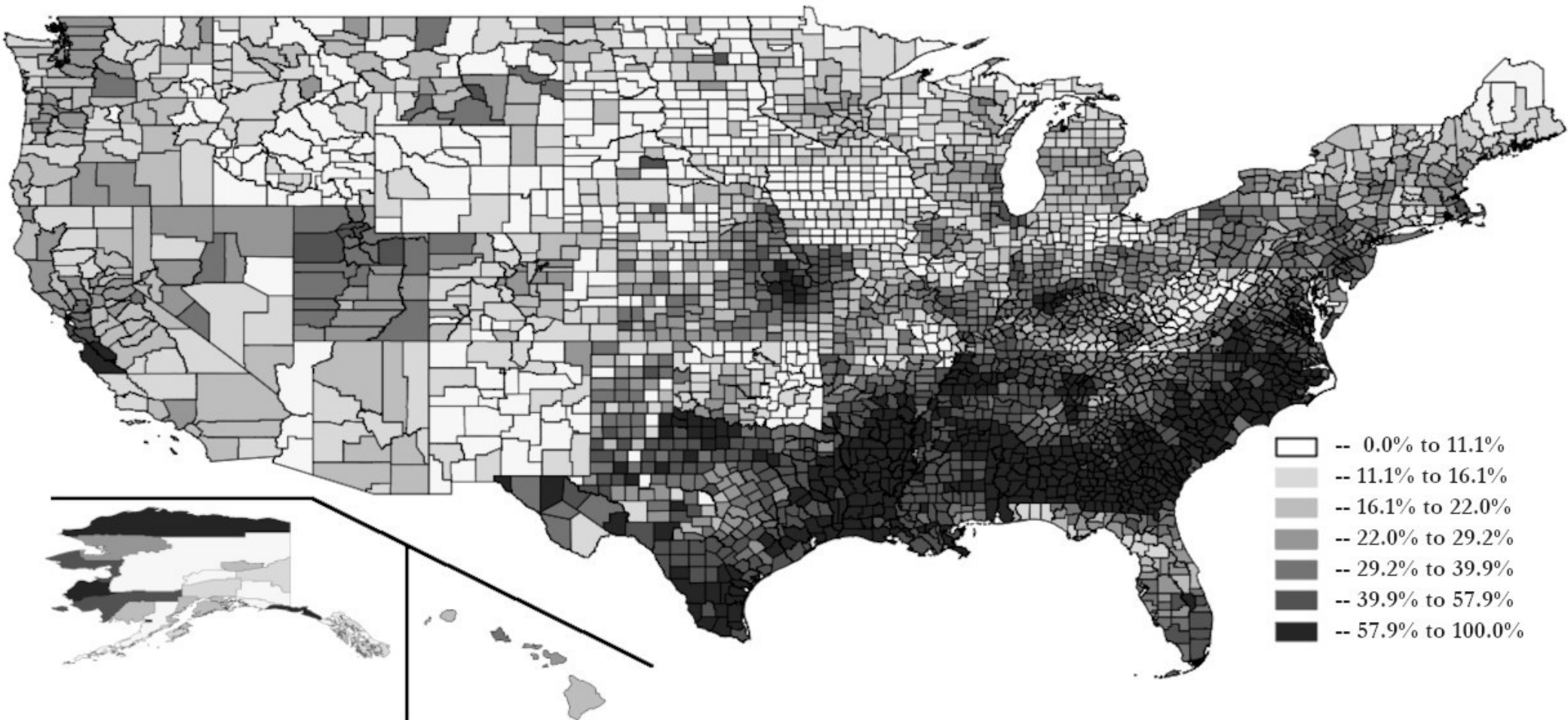
Black households ????

No retirement savings ????

Bankruptcy, Race & Chapter Choice

based on research and papers by

*Jean Braucher, Dov Cohen, Pamela Foohey, Bob Lawless,
Angela Littwin, Katherine Porter, Faith Shin & Deborah Thorne*

Percentage of Individual Bankruptcy Filings Filed as a Chapter 13, 2013-2022, by County
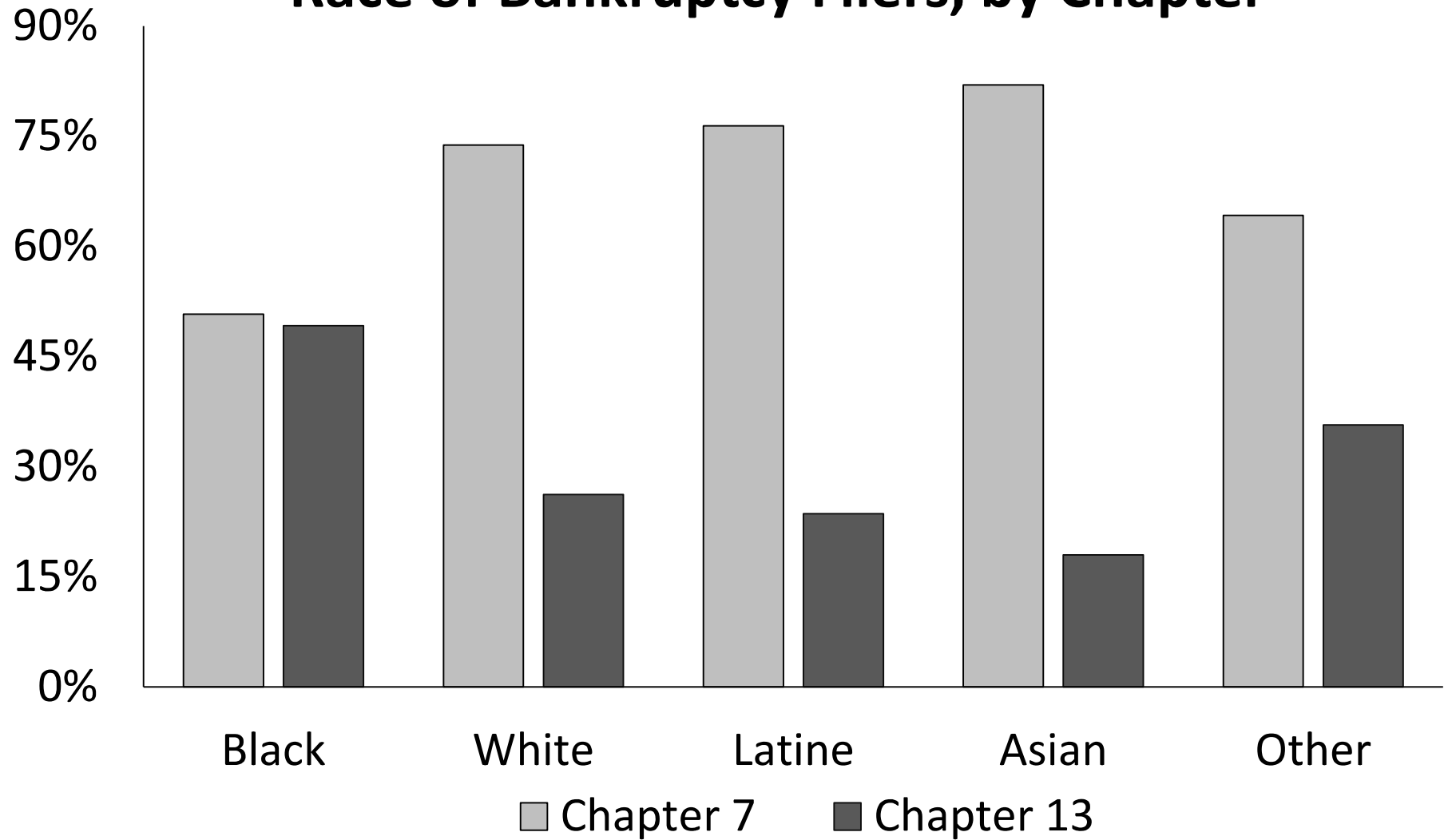

-- 0.0% to 11.1%
-- 11.1% to 16.1%
-- 16.1% to 22.0%
-- 22.0% to 29.2%
-- 29.2% to 39.9%
-- 39.9% to 57.9%
-- 57.9% to 100.0%

Chapter XIII Rates, 1964

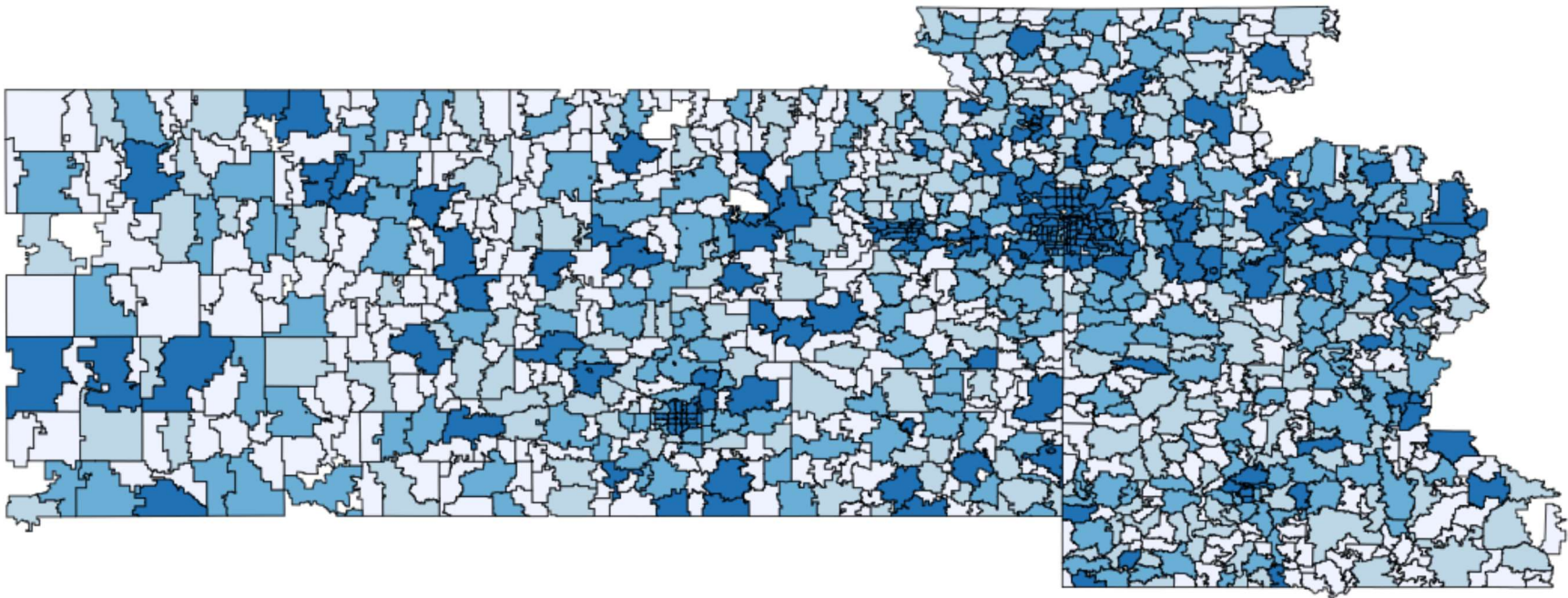| Judicial district	Chapter XIII %
Alabama, ND	76%
Maine	52%
Texas, WD	28%
California, SD	11%
Ohio, ND	7%
Oregon	5%
Illinois, ND	4%
Nation as a whole	17%

from Stanley & Girth (1971)

Race of Bankruptcy Filers, by Chapter
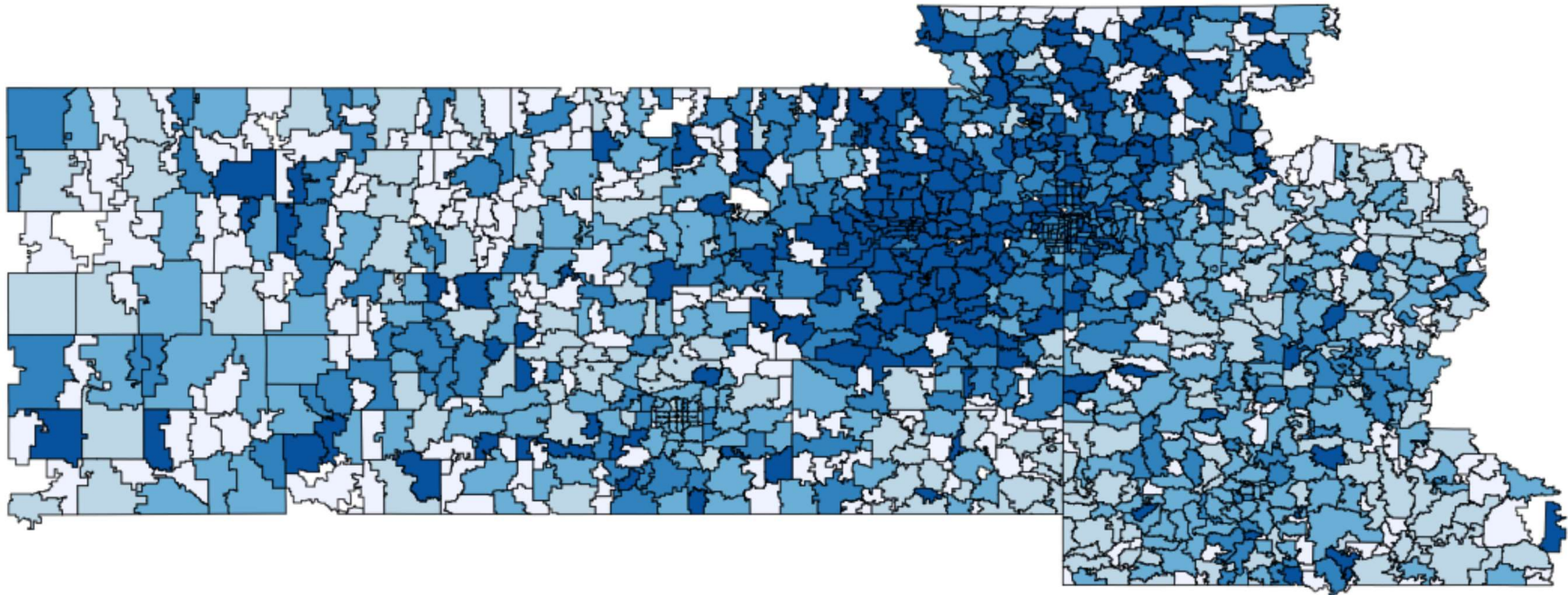
W.D. Missouri and Kansas, by zip code

Percent Black, 2018-2022

Sources: Federal Judicial Center/US Courts, Census Bureau

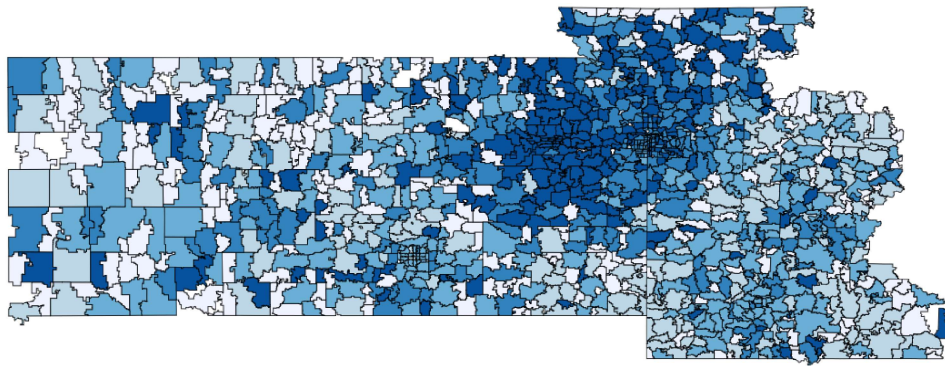# W.D. Missouri and Kansas, by zip code

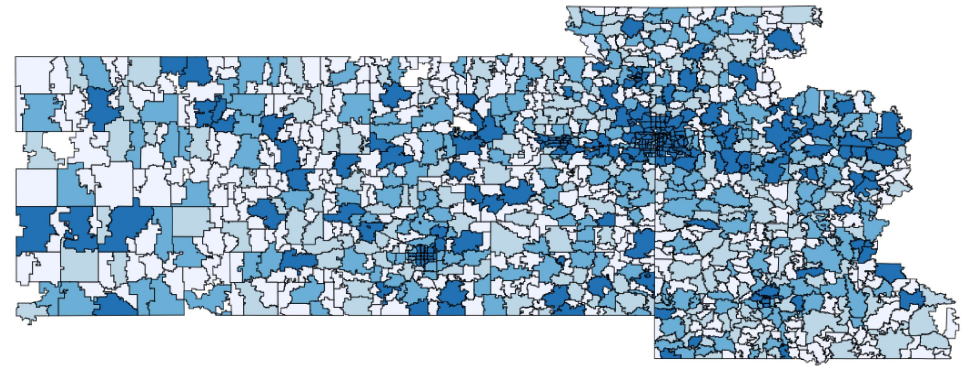## Percent Chapter 13s, 2018-2022

Sources: Federal Judicial Center/US Courts, Census Bureau

W.D. Missouri and Kansas, by zip code

Percent Chapter 13s, 2018-2022

Percent Black, 2018-2022

Sources: Federal Judicial Center/US Courts, Census Bureau

Study 1: What Do Attorneys Know?

- Groups
  - National random sample of consumer bankruptcy attorneys
  - All chapter 13 trustees

- "For each group below, please estimate the percentage of bankruptcies in that group that were filed as chapter 13s . . . ."

Dov Cohen, Robert M. Lawless & Faith Shin, *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, 91 Am. Bankr. L.J. 623 (2017)

Attorney Errors

	Atty Est. (mean)	Actual Ch 13 Rates	Error
Whites	46.3%	28.6%	**+17.8%**
Homeowners	54.5%	47.1%	**+7.3%**
Hispanics	14.0%	21.7%	**-7.7%**
Women filing alone	23.1%	31.4%	**-9.3%**
65 and over	14.7%	25.3%	**-10.6%**
Men filing alone	21.5%	33.3%	**-11.8%**
Southerners	34.1%	48.6%	**-14.5%**
Asian-Americans	9.9%	24.4%	**-14.5%**
Pro se debtors	8.6%	25.6%	**-17.0%**
African Americans	22.0%	54.6%	**-32.6%**
Prior bankrupts	35.2%	82.6%	**-47.4%**

Attorney Errors

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Prior bankrupts	35.2%	82.6%	**-47.4%**

Attorney vs. mTurkers

	Atty Est. (mean)	Actual Ch 13 Rates	MTurk Est. (mean)
Whites	46.3%	28.6%	43.0%
Homeowners	54.5%	47.1%	48.6%
Hispanics	14.0%	21.7%	23.2%
Women filing alone	23.1%	31.4%	25.1%
65 and over	14.7%	25.3%	30.5%
Men filing alone	21.5%	33.3%	32.8%
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Asian-Americans	9.9%	24.4%	31.7%
Pro se debtors	8.6%	25.6%	25.1%
African Americans	22.0%	54.6%	25.4%
Prior bankrupts	35.2%	82.6%	24.7%

Attorneys did better and statistically significant (5%)   Attorneys did worse and statistically significant (5%)

Base Rate Neglect

- Base rate (at time of questionnaires) = 28%
- Average distance from base rate*
 - Attorneys = 20.8%
  - mTurkers = 17.4%

(* - statistically significant at 5% level)

Study 2a: Real-world Debtors in 2007

- Consumer Bankruptcy Project (2007)
- National random sample
- 5,000 individual chapter 7 and 13 cases
  - Written questionnaires (50% response rate)
  - Court records
  - Telephone interviews

Dov Cohen & Robert M. Lawless, "Less Forgiven: Race and Chapter 13 Bankruptcy," in *Broke: How Debt Bankrupts the Middle Class* (ed. Katherine Porter), Stanford University Press, 2012); Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. Empirical Legal Stud. 393 (2012)

Debtors Filing Chapter 13 (2007)
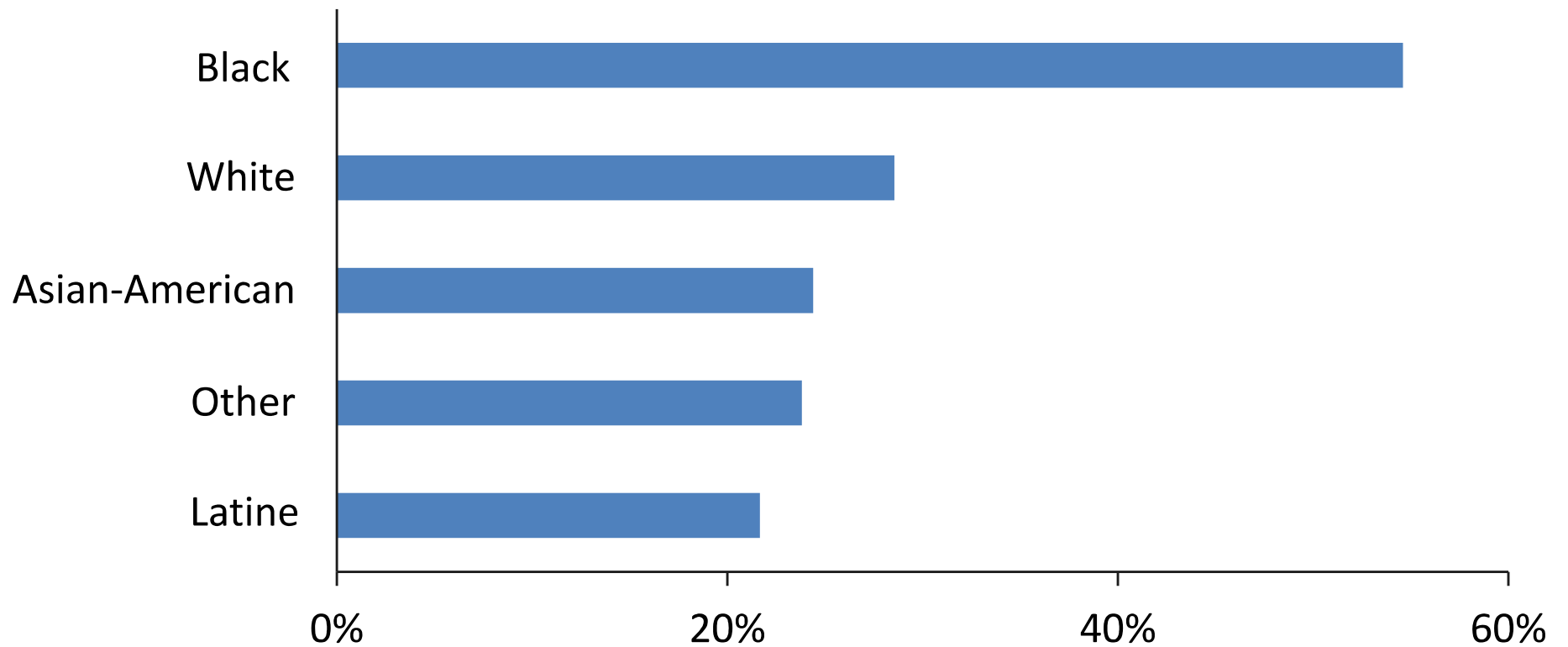
Debtors Filing Chapter 13 (2007)

Black households   54.6%
(N = 511)

All other races   28.2%
(N = 1,754)

Chi-square = 122.40*

* -- statistically significant at 5% level

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Prior bankruptcy	Home owner
Income (ln)	Total assets (ln)	Total debt (ln)
Priority debt (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Credit card debt/total debt	Represented by attorney	Bachelor's degree (or higher)
Occupational prestige score	Number of dependents	Live with spouse or partner
Female head of household	Tried to consolidate/credit card	Tried to consolidate/home eq.
Tried to "work with" creditors	Tried to refinance mortgage	Non-Black chapter 13 Rate

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Prior bankruptcy	Home owner
Income (ln)	Total assets (ln)	Total debt (ln)
Priority debt (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Credit card debt/total debt	Represented by attorney	Bachelor's degree (or higher)
Occupational prestige score	Number of dependents	Live with spouse or partner
Female head of household	Tried to consolidate/credit card	Tried to consolidate/home eq.
Tried to "work with" creditors	Tried to refinance mortgage	Non-Black chapter 13 Rate

More likely to file chapter 13 and statistically significant (5%)

Less likely to file chapter 13 and statistically significant (5%)

Probability of Filing Chapter 13

- Homeowners
  - Black households: 27.3%
  - All other households: 16.3%

- All other values at medians

Probability of Filing Chapter 13

- Non-homeowners
  - Black households: 20.0%
  - All other households: 11.5%

- All other values at medians

Probability of Filing Chapter 13

- Homeowners who identified foreclosure as reason for bankruptcy
  - Black households: 59.9%
  - All other households: 43.6%

- All other values at medians

Study 2b: Replication in 2013-14

- Consumer Bankruptcy Project (2013-14)
- National random sample
- 1,600 individual chapter 7 and 13 cases
  - Court records
  - Written questionnaires (29% response rate)

Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *"No Money Down" Bankruptcy*, 90 So. Cal. L. Rev. 1055 (2017)

Debtors Filing Chapter 13 (2013-14)
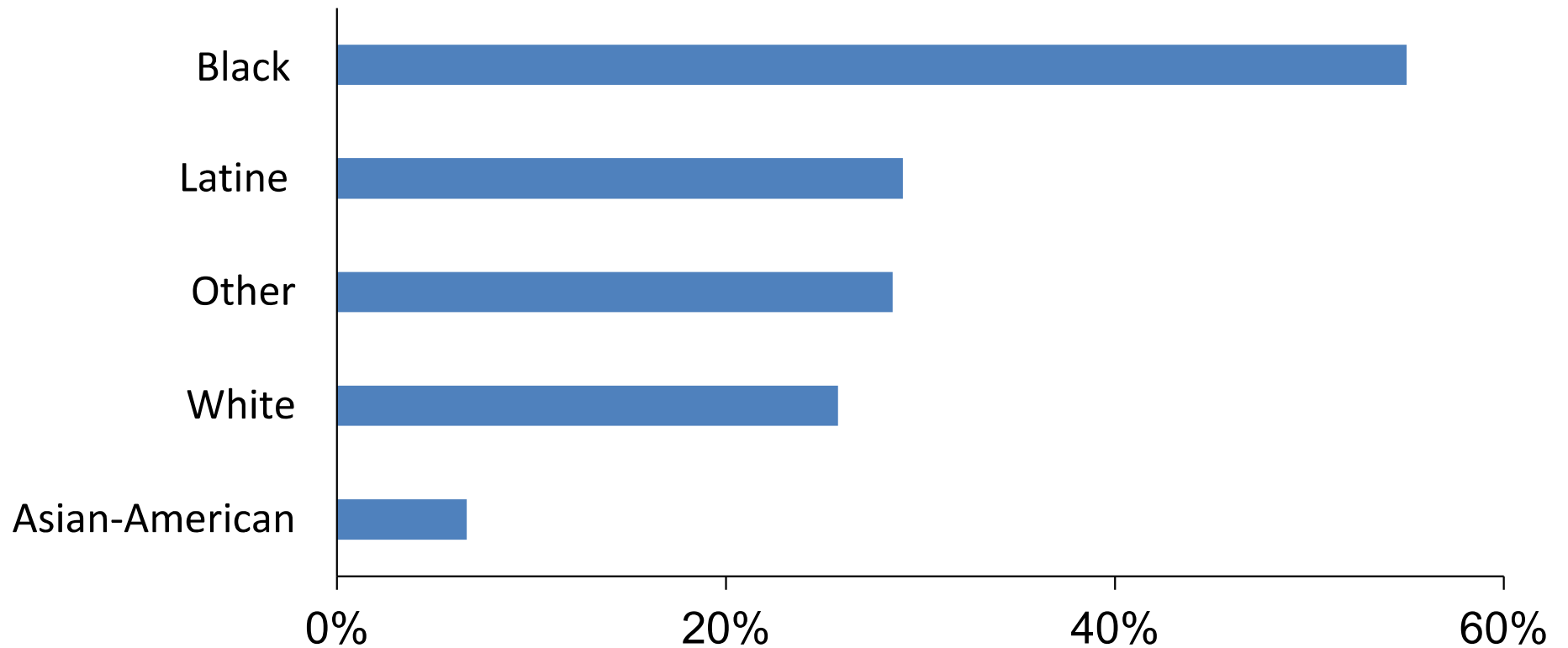
Debtors Filing Chapter 13 (2013-14)

Black households   55.0%
(N = 170)

All other races   26.1%
(N = 341)

Chi-square = 33.22*

* -- statistically significant at 5% level

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Total assets (ln)	Total debt (ln)
Income (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Priority debt (ln)	Represented by attorney	Bachelor's degree (or more)
Female head of household	Number of dependents	Live with spouse or partner
Tried "work with" creditors	Tried to refinance mortgage	Sold house/gave to lender
Prior bankruptcy	Home owner	

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Total assets (ln)	Total debt (ln)
Income (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Priority debt (ln)	Represented by attorney	Bachelor's degree (or more)
Female head of household	Number of dependents	Live with spouse or partner
Tried "work with" creditors	Tried to refinance mortgage	Sold house/gave to lender
Prior bankruptcy	Home owner	

More likely to file chapter 13 and statistically significant (5%)

Less likely to file chapter 13 and statistically significant (5%)

Study 2c: Replication in 2013-22

- Consumer Bankruptcy Project (2013-2022)
- National random sample
- 8,000 individual chapter 7 and 13 cases
  - Court records
  - Written questionnaires (27% response rate)

Pamela Foohey, Robert M. Lawless, & Deborah Thorne, *Debt's Grip: Risk and Consumer Bankruptcy,* California University Press (forthcoming 2025)

Debtors Filing Chapter 13
(2013-22)
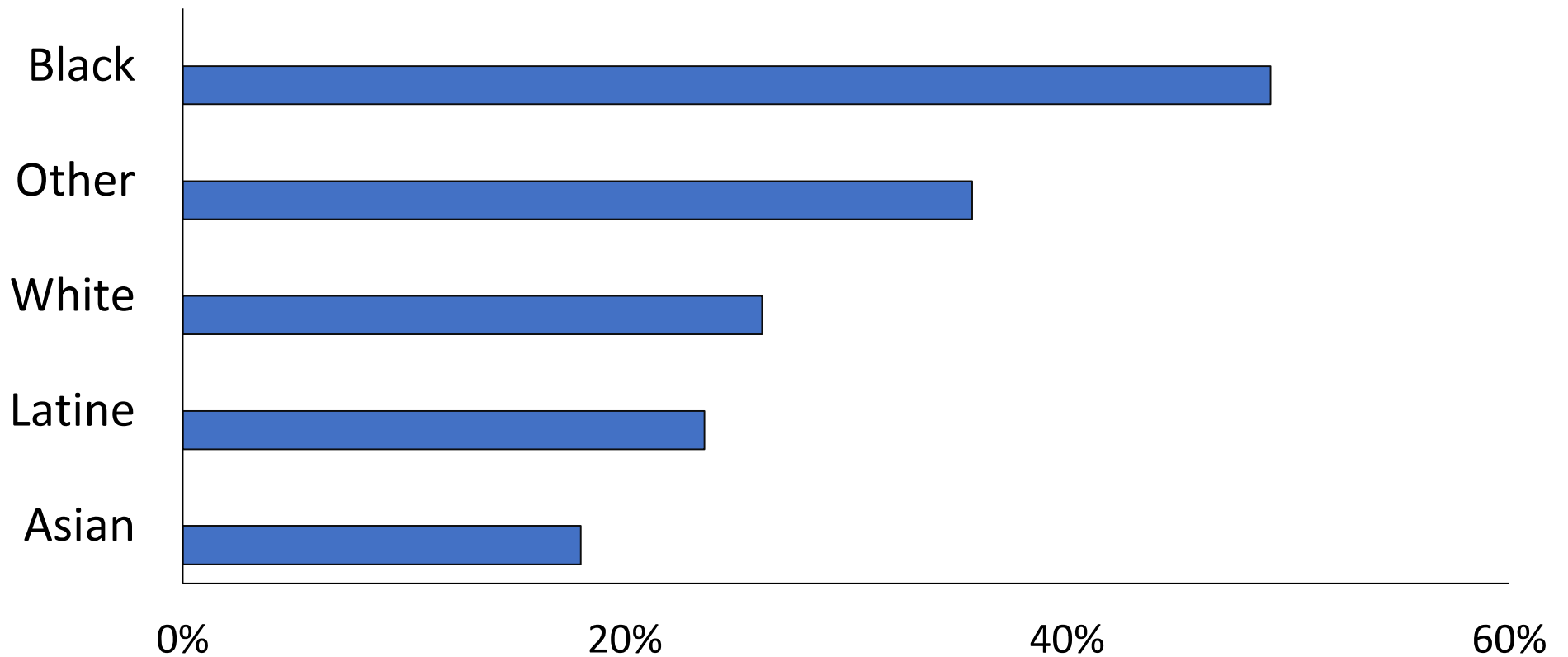
Debtors Filing Chapter 13 (2013-22)

Black households   49.2%
(N = 563)

All other races   25.6%
(N = 1,543)

Chi-square = 105.78*

* -- statistically significant at 5% level

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Total assets (ln)	Total debt (ln)
Income (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Priority debt (ln)	Represented by attorney	Bachelor's degree (or more)
Female head of household	Number of dependents	Live with spouse or partner
Tried "work with" creditors	Tried to refinance mortgage	Sold house/gave to lender
Prior bankruptcy	Home owner	

Controlling for Other Things

Variable of interest: Black debtor(s)

Controls:

Percent 13's in district	Total assets (ln)	Total debt (ln)
Income (ln)	Foreclosure reason for bkr.	Secured debt/total debt
Priority debt (ln)	Represented by attorney	Bachelor's degree (or more)
Female head of household	Number of dependents	Live with spouse or partner
Tried "work with" creditors	Tried to refinance mortgage	Sold house/gave to lender
Prior bankruptcy	Home owner	

More likely to file chapter 13 and statistically significant (5%)

Less likely to file chapter 13 and statistically significant (5%)

Study 3: Vignette to Attorneys

- Experimental vignette study with balanced facts on 7/13 choice

- Random selection of 594 consumer bankruptcy attorneys
  - Response rate = 44.0%

Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. Empirical Legal Stud. 393 (2012)

Scenario 1

A married couple is considering bankruptcy and has come to you for advice. The wife, L., has an associate's degree from a community college and has worked off and on as a teacher's aide in elementary schools. The husband, R., is a high school graduate who works as a custodian at the church he and L. attend regularly.

Scenario 2

A married couple is considering bankruptcy and has come to you for advice. The wife, <u>Latisha</u>, has an associate's degree from a community college and has worked off and on as a teacher's aide in elementary schools. The husband, <u>Reggie</u>, is a high school graduate who works as a custodian at <u>Bethel A.M.E</u>. Church, which he and <u>Latisha</u> attend regularly.

Scenario 3

A married couple is considering bankruptcy and has come to you for advice. The wife, <u>Allison</u>, has an associate's degree from a community college and has worked off and on as a teacher's aide in elementary schools. The husband, <u>Todd</u>, is a high school graduate who works as a custodian at <u>First United Methodist Church</u>, which he and <u>Allison</u> attend regularly.

Preference

In the intake interview _____ and _____ said their goals are to pay their creditors as much as they can, keep their home, and keep their car. . . . At the end of the interview, _____ and _____ expressed a preference for chapter 7/13/omitted.

Survey Instrument

I would recommend that _____ and _____

Definitely file chap. 7	1	2	3	4	5	6	7	8	9	*Definitely file chap.13*

- Also:
  - Attitudinal questions about debtors
  - Attitudinal questions about bankruptcy
  - Basic demographic information about attorney

"Competence"

- Attorneys asked to rate whether clients
  - Had self-discipline
  - Were realistic
  - Had brought problems on themselves
- Results were combined into a "competence index"

"Good Values"

Attorneys were asked:

_____ and _____ probably

Do not have
good values   *1*   *2*   *3*   *4*   *5*   *6*   *7*   *8*   *9*   *Have*
good values

Percentage Recommendation for Chapter 13

Black Couple — 47%
No Race Identified — 36%
White Couple — 32%

chi-square = 9.93
p = 0.042
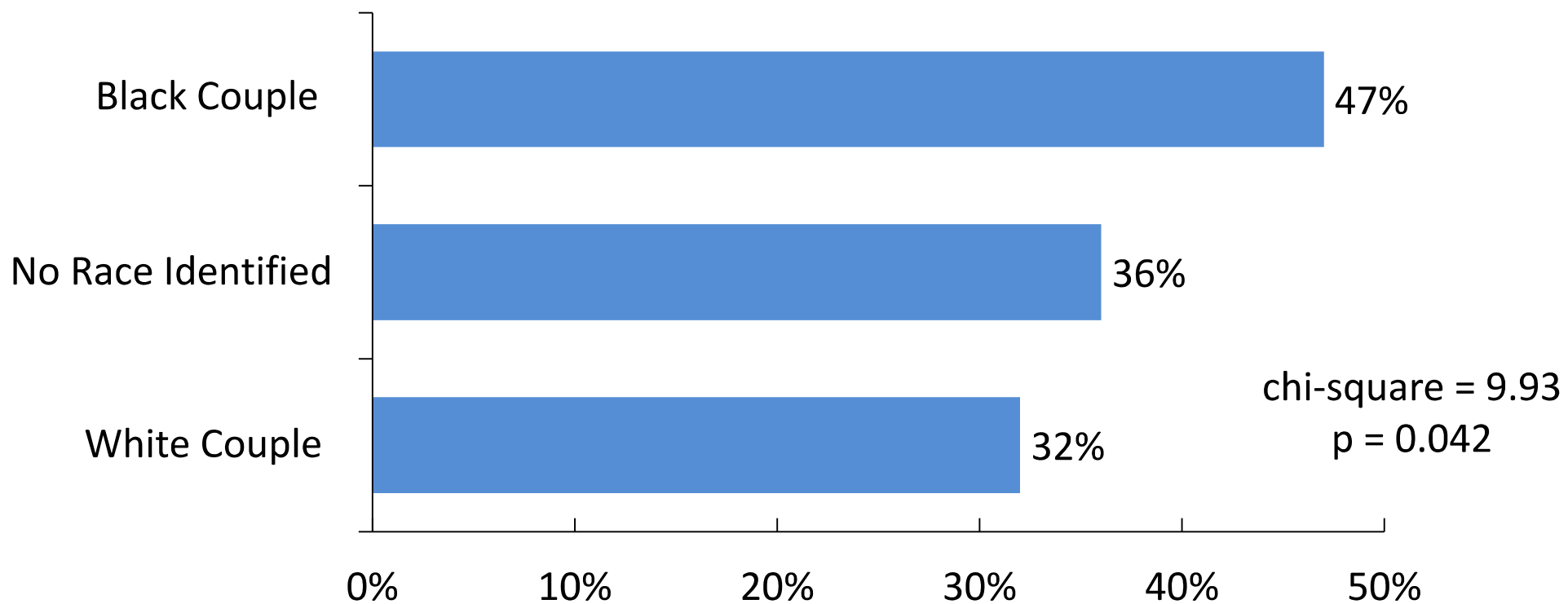
Attorney Perception of "Competence"

- Reggie & Latisha:
  - Want to file chapter 7 = 4.89
  - Want to file chapter 13 = 5.31

- Todd & Allison
  - Want to file chapter 7 = 5.36
  - Want to file chapter 13 = 4.32

Attorney Perception of Values

- Reggie & Latisha:
  - Want to file chapter 7 = 5.38
  - Want to file chapter 13 = 6.12

- Todd & Allison
  - Want to file chapter 7 = 6.42
  - Want to file chapter 13 = 5.56

Study 4: Paying for Bankruptcy

- Divide cases into three categories
  - Chapter 7
  - "No money down 13" (no upfront payment)
  - "Traditional 13" (some or all of attorney fee upfront)
- Use data from Consumer Bankruptcy Project, 2013-14
  - 1,600 individual chapter 7 and 13 cases
    - Court records; written questionnaires (29% response rate)

Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *"No Money Down" Bankruptcy*, 90 So. Cal. L. Rev. 1055 (2017)

"No Money Down" by Race
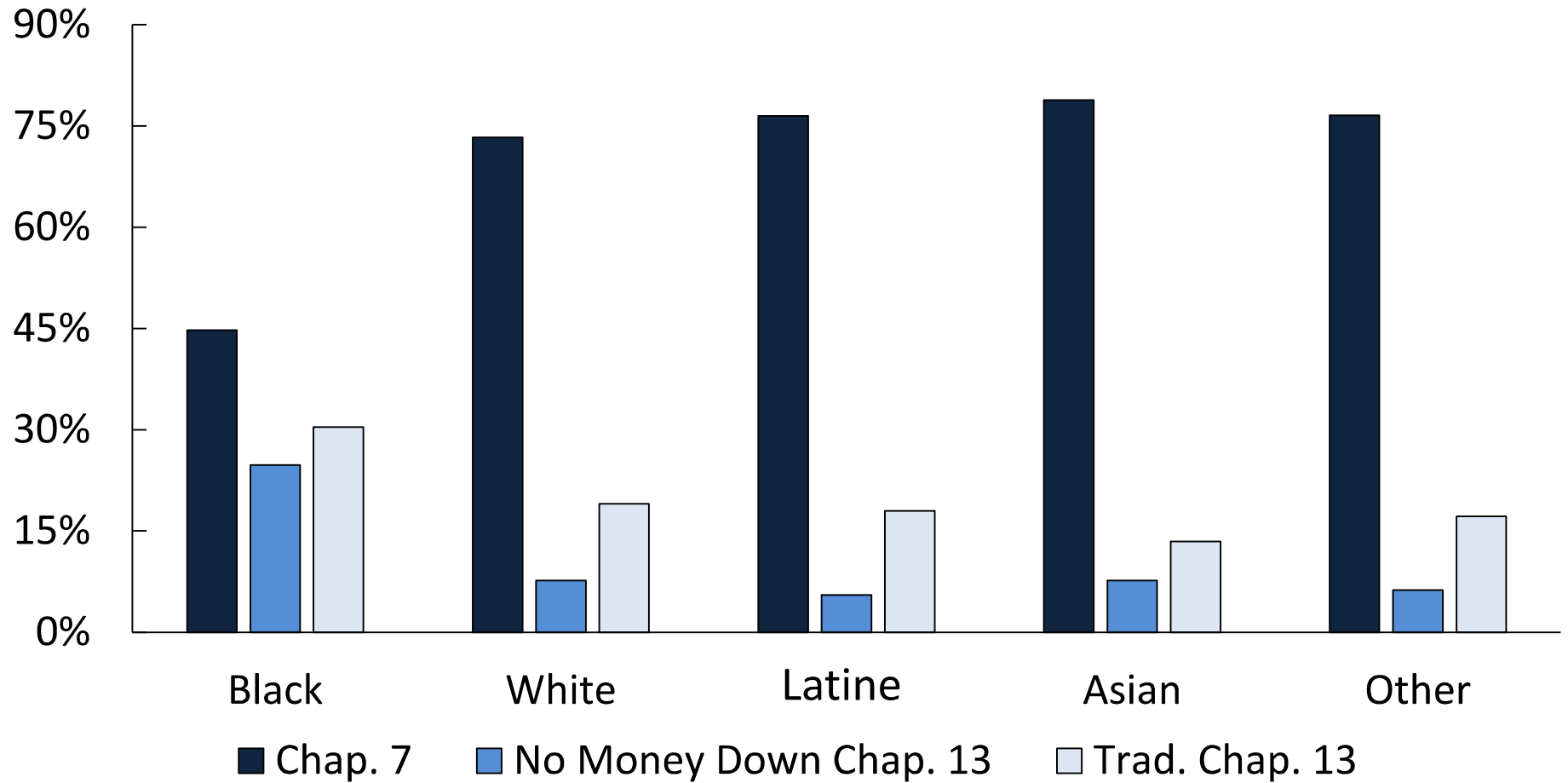
Legend: ■ Chap. 7 ■ No Money Down Chap. 13 □ Trad. Chap. 13

Controlling for Other Things

Variables of interest

District 13 rate

Black household

Controls

Prior bankruptcy	Priority debts (ln)	Bachelors' degree or higher
Foreclosure reason for bkr.	Secured debt/total debt (ln)	Dependents under 18
Homeowner	Tried to "work with" creditors	Lived with spouse/partner
Monthly income (ln)	Tried to refinance debs	Female head of household
Total assets (ln)	Borrowed from family/friends	Age in years

Base case = chapter 7

Controlling for Other Things

Variables of interest

District 13 rate

Black household

Controls

Prior bankruptcy	Priority debts (ln)	Bachelors' degree or higher
Foreclosure reason for bkr.	Secured debt/total debt (ln)	Dependents under 18
Homeowner	Tried to "work with" creditors	Lived with spouse/partner
Monthly income (ln)	Tried to refinance debs	Female head of household
Total assets (ln)	Borrowed from family/friends	Age in years

Base case = chapter 7

■ more likely to file trad. or NMD 13   ■ more likely to file trad. 13

■ less likely to file trad. or NMD 13

Predicted Probabilities

Probability of Filing Type of Case

Chapter 13 Rate in District

Legend:
- Chap 7s, Black
- Chap 7s, Not Black
- Trad 13, Black
- Trad 13, Not Black
- NMD 13, Black
- NMD 13, Not Black
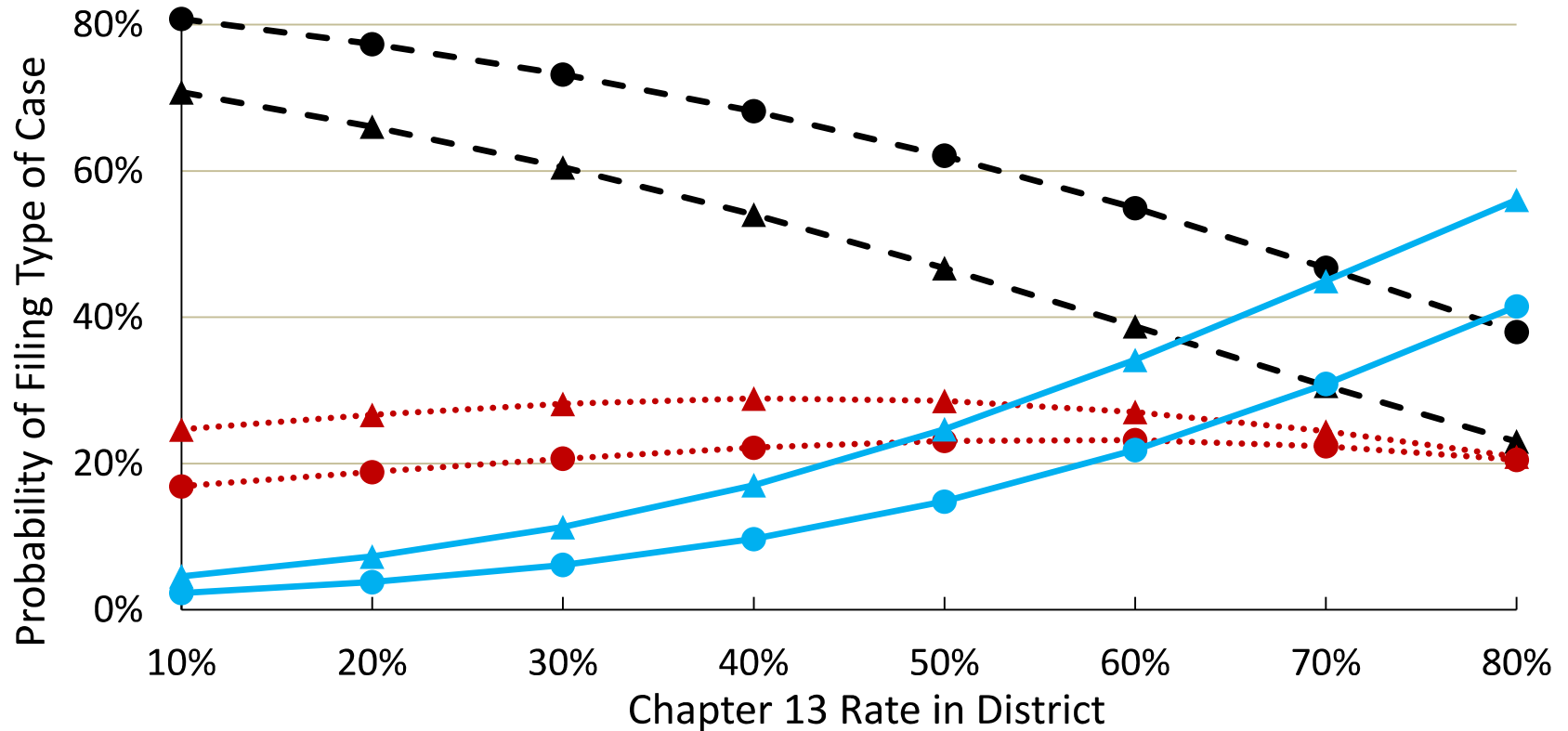
Study 5: Big Data Approach

Robert M. Lawless & Angela Littwin, *Local Legal Culture from R2D2 to Big Data*, 96 Tex. L. Rev. 1352 (2018)

Observations By Year

2012 -- 1,135,295

2013 --   998,371

2014 --   871,977

2015 --   784,090

2016 --   564,061

Three Sets of Regressions

Case Characteristics

Real property (ln)

Personal property (ln)

Secured debts (ln)

Priority debts (ln)

Unsecured debts (ln)

Income (ln)

Filing fee pmt method

Prior bankruptcy

Joint filing

Pro se filing

Filing Year

Neighborhood Characteristics

Black % in zip

Latine % in zip

Mean income in zip

(Mean income in zip)^2

Fringe lending in zip

% renter-occupied in zip

Local Legal Culture

Judicial district effects

Regression 1

Case Characteristics

Real property (ln) `[green]`
Personal property (ln)
Secured debts (ln) `[green]`
Priority debts (ln) `[green]`
Unsecured debts (ln) `[red]`
Income (ln) `[green]`
Filing fee pmt method `[red]`
Prior bankruptcy `[green]`
Joint filing `[red]`
Pro se filing `[red]`
Filing Year `[green]`

Neighborhood Characteristics

Black % in zip
Latine % in zip
Mean income in zip
$(\text{Mean income in zip})^2$
Fringe lending in zip
% renter-occupied in zip

Local Legal Culture

Judicial district effects

`[green]` More likely to file chapter 13 and statistically significant (5%)

`[red]` Less likely to file chapter 13 and statistically significant (5%)

Regression 2

Case Characteristics	Neighborhood Characteristics	Local Legal Culture
Real property (ln)	Black % in zip	Judicial district effects
Personal property (ln)	Latine % in zip	
Secured debts (ln)	Mean income in zip	
Priority debts (ln)	(Mean income in zip)^2	
Unsecured debts (ln)	Fringe lending in zip	
Income (ln)	% renter-occupied in zip	
Filing fee pmt method		
Prior bankruptcy		
Joint filing		
Pro se filing		
Filing Year		

More likely to file chapter 13 and statistically significant (5%)

Less likely to file chapter 13 and statistically significant (5%)

Regression 3

Case Characteristics

Real property (ln)	🟩
Personal property (ln)	🟩
Secured debts (ln)	🟩
Priority debts (ln)	🟩
Unsecured debts (ln)	🟥
Income (ln)	🟩
Filing fee pmt method	🟥
Prior bankruptcy	🟩
Joint filing	
Pro se filing	🟥
Filing Year	🟩

Neighborhood Characteristics

Black % in zip 🟩
Latine % in zip
Mean income in zip
(Mean income in zip)^2
Fringe lending in zip
% renter-occupied in zip

Local Legal Culture

Judicial district effects

🟩 More likely to file chapter 13 and statistically significant (5%)

🟥 Less likely to file chapter 13 and statistically significant (5%)

"Race & Chapter 13" Literature Examples

Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. Empirical Legal Stud. 393 (2012)

Symposium, *Bankruptcy and Race: Is There a Relation?,* 20 Am. Bankr. Inst. L. Rev. 611 (2012)

Dov Cohen, Robert M. Lawless & Faith Shin, *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, 91 Am. Bankr. L.J. 623 (2017)

Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *"No Money Down" Bankruptcy*, 90 So. Cal. L. Rev. 1055 (2017)

Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, ProPublica, Sept. 27, 2017

Edward R. Morrison & Antoine Uettwiller, *Consumer Bankruptcy Pathologies*, 173 J. Institutional & Theoretical Econ. 174 (2017)

Robert M. Lawless & Angela Littwin, *Local Legal Culture from R2D2 to Big Data*, 96 Tex. L. Rev. 1352 (2018)

Melissa Sanchez & Sandhya Kambhampati, *Driven to Bankruptcy: How Chicago Debt Sends Black Motorists into Bankruptcy*, ProPublica Ill., Feb. 27, 2018

Jacob Steimer, *Shelby County Ranks No. 1 in Bankruptcy, Here's Why*, MLK50, Sept. 5, 2023