WEAPONIZED COURTS: THE NEED FOR UNIFORM VEXATIOUS LITIGANT LAW REFORM

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Ironically, our court systems, which should be a place of justice and help for the wronged, have become another forum for abusers to attack their victims. This unfortunate reality is the result of vexatious litigators—"legal bullies" who use meritless claims as a means to harass others in repeated self-represented lawsuits. The harm these claimants do extends far beyond merely clogging the courts with frivolous claims, often causing financial and emotional devastation for defendants and for the litigants themselves, whose actions can stem from underlying mental illnesses. Vexatious litigants typically target the vulnerable, such as victims of domestic violence.

Courts have historically attempted to end this abuse through broad sanctioning power but have had limited success, partially due to an unresolved circuit split concerning the interpretation of 28 U.S.C. § 1927. Further, without systems in place to track vexatious litigants, an individual who is sanctioned in one court can carry on their pursuits in another venue. As a result, twelve states have enacted statutes specifically addressing vexatious litigation. These statutes instruct courts to enjoin vexatious litigants from filing in the state again unless they receive court authorization or post security. Most of these states also publicize registries of vexatious litigants which facilitate courts quickly identifying them and stopping their floodgates of litigation.

While these statutes are more effective than prior legislative efforts, they are often over- or underutilized due to their varied and sometimes hazy definitions of who qualifies as a vexatious litigant. Additionally, since only a dozen states have enacted such laws, vexatious litigants

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can carry on their abusive tactics in other state or federal courts. Accordingly, this Article advocates for each state and the federal government to create vexatious litigant statutes that uniformly define who qualifies as a vexatious litigant using a modified version of the Texas Vexatious Litigant Statute's definition. Further, utilization of vexatious litigant lists in every jurisdiction, reformation of in forma pauperis *laws, standardized templates, and better educating the judiciary on this topic also present important opportunities for needed change.*

Introduction

In an ideal world, access to justice means that any person, no matter their background or wealth level, can be heard and helped when they have been wronged.[1] In our imperfect world, however, this aspiration can be marred.[2] Our courts, which should be a forum for help and redress, can instead be weaponized as a tool for harassment and abuse through what is known as "vexatious litigation."[3] Vexatious litigants are a small, yet persistent, genre of primarily unrepresented claimants who relentlessly pursue "real or imagined grievances, regardless of cost and consequence" in a series of dozens, hundreds, or even thousands of cases.[4] These lawsuits lack a viable basis in the law and are intended to harass and inconvenience defendants.[5] Vexatious litigants have been aptly described as people who wage an endless "campaign of litigation terror" or are, more simply put, "legal bullies."[6] These individuals almost always appear *pro se*, which is in large part due to self-represented parties being unrestrained by the code of ethics which curtails lawyers from representing abusive clients.[7]

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1. *See What is Access to Justice*, Tex. Access to Just. Comm'n, https://www.texasatj.org/what-access-justice [https://perma.cc/73T7-EHAM] (describing access to justice and its integral nature to American society).

2. *See* Deborah L. Rhode, Access to Justice 14–16 (2004) (criticizing the disparity between the heralded American principle of "[e]qual justice under the law" and the broken American legal system).

3. *See* Antionette Bonsignore, *Domestic Violence Survivors Battle Within the Courts: Confronting Retaliatory Litigation*, Truthout (June 22, 2012), https://truthout.org/articles/domestic-violence-survivors-battle-within-the-courts-confronting-retaliatory-litigation/ [https://perma.cc/TV8F-3UZD] ("[T]he very legal system that a victim once believed would protect her from that abuser essentially becomes another weapon that can cause emotional and financial devastation.").

4. *See* M.W.D. Rowlands, *Psychiatric and Legal Aspects of Persistent Litigation*, 153 Brit. J. Psychiatry 317, 317 (1988) (defining vexatious litigants and discussing them from a psychiatric perspective); *see also infra* note 193 (explaining that, due to the lack of uniform systems for declaring claimants to be vexatious, the number of vexatious litigants has yet to be quantified despite how frequently they plague our court systems).

5. *See Litigation*, Black's Law Dictionary (12th ed. 2024) (legally defining vexatious litigation).

6. *See In re* Kinney, 201 Cal. Rptr. 3d 471, 478 (Ct. App. 2011) (quoting *In re* Shieh, 21 Cal. Rptr. 2d 886, 893 (Ct. App. 1993)) (describing vexatious litigants); Lee W. Rawles, *The California Vexatious Litigant Statute: A Viable Judicial Tool to Deny the Clever Obstructionists Access?*, 72 S. Cal. L. Rev. 275, 275–76 (1998) (same); *see also* Bridgette Toy-Cronin, *Vexatious or Vulnerable: Permitted Roles for Litigants in Person in Civil Courts*, 34 Soc. Legal Stud. 188, 194 (2024) ("Vexatious litigants are truly persistent litigants who leave no stone unturned, will not cease litigation, and who use the court process in a way that is abusive towards the defendants, and also abusive to the professional players in the system.").

7. *See* Gerard J. Kennedy, *The Alberta Court of Appeal's Vexatious Litigant Order Trilogy: Respecting Legislative Supremacy, Preserving Access to the Courts, and*

The rights to be heard and to represent oneself are not absolute and can be limited in these extraordinary situations of abusive litigation.[8] However, due to the lack of uniformity in how different courts and legislatures have addressed this problem, vexatious litigation plagues harassed victims, overburdened courts, and even vexatious litigants themselves. Further, this issue has been exacerbated in the past few decades by the uptick in unrepresented lawsuits that has resulted from easily accessible online legal information and the creation of e-filing processes.[9] Accordingly, this Article exists to propose a uniform approach to vexatious litigation that can be adopted by each state and the federal government.

Part I begins by detailing the widespread damage vexatious litigants can cause that makes reform so imperative. The defendants they target can suffer long-term economic and emotional damage. Worse, vexatious litigants tend to harass already vulnerable populations, including victims of domestic violence. Vexatious litigation also places an enormous toll on court systems, overburdening the already limited judicial resources. As a result, other plaintiffs with actually plausible and often time-sensitive concerns are harmed by delayed justice.[10] Moreover, vexatious litigants themselves can suffer from being allowed to continue their crusades.[11] Psychologists have found frequent links

Hopefully Not to a Fault, 58 ALTA. L. REV. 739, 742 (2021) (bearing in mind that despite vexatious litigants being self-represented, most are not vexatious, as these types of litigants are rare). Most state statutes limit the definition of "vexatious litigators" to "those proceeding *pro se*." *See infra* Part II. The few lawyers who occasionally file abusive or harassing claims are threatened with disbarment if they repeat this behavior. *See infra* note 110 and accompany text (describing these ethical limitations that govern lawyers' behavior).

8. *See* McKaskle v. Wiggins, 465 U.S. 168, 184 (1984) ("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."); Michael J. Mueller, *Abusive Pro Se Plaintiffs in the Federal Courts: Proposals for Judicial Control*, 18 U. MICH. J.L. REFORM 93, 142, 150 (1984) (clarifying that although the right to proceed *pro se* exists to protect court access for individuals who cannot afford counsel, "no right exists to use this status as a weapon against defendants and the court").

9. *See* Mitchell Levy, *Empirical Patterns of Pro Se Litigation in Federal District Courts*, 85 U. CHI. L. REV. 1819, 1821 (2018) (describing how reforms such as electronic filing systems have increased court accessibility for *pro se* litigants); Jens Dammann & Henry Hansmann, *Globalizing Commercial Litigation*, 94 CORN. L. REV. 1, 4 (2008) (remarking on the ease of access litigants have to geographically distant courts due to advances in telecommunications and transportation).

10. *See infra* Section I.B.

11. *See infra* Section I.C.

between vexatious litigation and mental illness, and unwell litigants can quickly bankrupt and isolate themselves.[12]

Because unrepresented claimants account for almost all vexatious litigation and vexatious litigation laws typically only pertain to litigants proceeding *pro se*, Part II discusses what self-represented litigation looks like.[13] Statistically, *pro se* litigants are highly unlikely to win their cases, and their claims typically involve a select few legal issues which include family law and prisoner rights.[14] Additionally, many of these *pro se* litigants have unique backgrounds, such as belonging to the radical domestic terrorist group known as "Sovereign Citizens" or being incarcerated.[15] Finally, another common theme among these filers is indigency, as self-represented litigants are often allowed to file petitions without first paying filing fees by proceeding *in forma pauperis*.[16]

Next, Part III provides a landscape of the laws currently used to curtail vexatious litigation.[17] Courts have both inherent and statutory powers, such as those prescribed in Rule 11 of the Federal Rules of Civil Procedure ("FRCP"),[18] to sanction participants engaged in litigation abuse.[19] There is also an ongoing circuit split as to whether 28 U.S.C. § 1927, a federal statute that addresses abusive or frivolous litigation, applies to self-represented parties or only to attorneys.[20] Only twelve states have enacted statutes that specifically address *pro se* vexatious litigation.[21] These states' methods for determining who is a vexatious litigant vary widely, with some approaches giving judges large discretion in making this finding and others limiting judges to systematic reviews of parties' prior abusive litigation histories.[22] Once an individual has been named vexatious, these statutes allow courts to address this behavior through measures such as ordering a prefiling injunction, requiring the vexatious litigant to post security before continuing a claim or commencing a new action, or adding them to a public list of vexatious litigants.[23]

12. *See infra* notes 101–04 and accompanying text.
13. *See infra* Part II.
14. *Id.*
15. *See infra* Section II.C.
16. *See infra* Section II.D.
17. *See infra* Part III.
18. As used in this Article, "Rule 11" refers to both federal Rule 11 guidelines for sanctions and their state counterparts.
19. *See infra* Section III.B.
20. *Id.*
21. *See infra* Section III.C.
22. *Id.*
23. *Id.*

Part IV addresses the flaws with these current approaches and proposes legislative and nonlegislative solutions.[24] The most widespread approach to dealing with vexatious litigation—broad sanctioning power—is particularly problematic.[25] Due to the ambiguities as to whether § 1927 pertains to *pro se* litigants at all, this statute is rarely invoked. Rule 11 and the courts' inherent powers have also poorly combatted vexatious litigation because these methods do not deter litigants who are unable to pay monetary sanctions or who simply take their claims to nearby jurisdictions to avoid court-specific injunctions. Moreover, the lack of clarity and consistency in these rules can result in non-vexatious litigants being unfairly categorized as vexatious. Accordingly, a uniform system for dealing with vexatious litigators in which courts are fully aware of a party's history of frivolous or abusive claims poses a much stronger solution than court-specific sanctions. This Article proposes that the Texas Vexatious Litigant Statute's three-step approach to identifying vexatious litigants presents a workable model for other states and the federal government to adopt.[26] In conjunction with this, each jurisdiction should maintain a list of vexatious litigants that courts within or outside that jurisdiction can use to quickly identify vexatious parties.[27] Finally, this Article ends by suggesting supplemental ideas to aid reform such as limiting *in forma pauperis* usage, streamlining processes for judges to use when drafting orders regarding vexatious litigants, and better educating judges on vexatious litigation and intertwined concepts such as mental health, domestic violence, and unique groups such as Sovereign Citizens.[28]

I. The Widespread Victims of Vexatious Litigation

A. Harassed Defendants

"I'll take him when you least expect it!"[29] Charlotte found herself in an untenable situation: pregnant after a brief relationship with a man who was physically, emotionally, and financially abusive, and also intent on being awarded full custody of their son.[30] After she gave birth,

24. *See infra* Part IV.
25. *See infra* Section IV.A.
26. *See infra* Section IV.B.
27. *See infra* Section IV.C.
28. *See infra* Sections IV.D and IV.E.
29. "Lucas" and "Charlotte" are pseudonyms used by the journalist reporting this story. Emilie Munson, *The Legal Assault*, Greenwich Time, https://www.greenwichtime.com/local/article/THE-LEGAL-ASSAULT-12347425.php [https://perma.cc/9R9F-XTSX] [hereinafter Munson, *Legal Assault*].
30. *See id.* (documenting disturbing instances of the abuse, including Lucas shoving Charlotte, threatening her, and taking all the money from a joint bank account intended for their baby's expenses).

Lucas attempted to follow through on his threat to take their son—over and over and over again.[31] Lucas filed over fifty-six motions in a Connecticut family court, in addition to nine restraining orders, multiple complaints, and several appeals in his newfound form of abuse: legal harassment.[32] Charlotte reported that this "legal stalking" cost her more than $515,000 and took over her life.[33]

Connecticut, along with thirty-seven other states and the federal government,[34] has not codified a prefiling injunction solution to specifically address vexatious litigants like Lucas.[35] Instead, Connecticut statutory law merely provides that a victim of abusive litigation can be awarded additional damages.[36] Generally, Connecticut allows judges some leeway in using sanctions or orders to control litigants, but judges also have to adhere to the mandate of due process.[37] Additionally, without a standardized statewide vexatious litigant protocol, judges are often uninformed of litigants' prior actions in other courts.[38] Accordingly, Charlotte's "happy ending" to Lucas's litigation abuse was a Connecticut Superior Court judge using his discretionary powers to block Lucas from filing new restraining order applications, but only

31. Emilie Munson, *Woman, Advocates, Seek End to 'Stalking' Through Court System*, CT Post, https://www.ctpost.com/local/article/Woman-advocates-seek-end-to-stalking-13417249.php [https://perma.cc/4NP8-B54L] [hereinafter, Munson, *Stalking*].

32. *See id.* Lucas' behavior is unfortunately a well-documented problem. The Connecticut Coalition Against Domestic Violence's Executive Director noted that "[t]he circumstance of abusers using the court system to continue to harass, stalk, threaten, intimidate emotionally, manipulate, [and] cause emotional harm to their ex-partner is extremely common, and it is a challenge that we grapple with on a daily basis." *Id.*; *see also* Emma Fitch & Patricia Easteal, *Vexatious Litigation in Family Law and Coercive Control: Ways to Improve Legal Remedies and Better Protect the Victims*, 7 Fam. L. Rev. 103, 103 (2017) (highlighting research demonstrating that shared characteristics exist between domestic violence offenders and vexatious litigants, such as coercion and control).

33. *See* Munson, *Legal Assault*, *supra* note 29 (detailing how Charlotte lost her job due to constant court hearings, missed out on parenting time, and experienced constant anxiety); Munson, *Stalking*, *supra* note 31 (same); *see also* Ada Tonkonogy, *The Law of Equitable Distribution: When Is Domestic Violence More Than Just a Factor in Divorce?*, 36 J.C.R. & Econ. Dev. 557, 568 (2023) (employing vexatious litigation's frequently employed definition, "stalking by way of the court").

34. *See infra* Section III.B, Section III.C, and Appendix A.

35. *See* Christopher Reinhart, Conn. Off. Legis. Rsch., 2008-R-0101, Vexatious Litigation and Sanctions Against Attorney (2008), https://www.cga.ct.gov/2008/rpt/2008-r-0101.htm [https://perma.cc/EU3F-6BFM] (noting that no provision of Connecticut law exists that relates to prejudgment remedies).

36. *See* Conn. Gen. Stat. § 52-568 (2024) (providing for "double damages" when no probable causes exists and for "treble damages" when a litigant both does not have probable cause and exhibits "a malicious intent unjustly to vex and trouble such other person").

37. *See* Munson, *Stalking*, *supra* note 31.

38. *See id.* ("When presented with only one thorny action amid a forest of lawsuits, it can be difficult for a judge to see the whole picture of a litigant's behavior.").

in family court.[39] Charlotte, now too familiarized with this process, understood that Lucas could continue to harass her in other courts due to Connecticut's lack of a uniform system to handle vexatious litigants and expressed her desperate desire for a legitimate end to this abuse.[40]

Unfortunately, Charlotte's case is not a rarity.[41] Vexatious litigation is particularly prevalent in family law cases, as abusers use the courts to continue their harassing and control-seeking behaviors when physical access to their victims has been cut off.[42] Particularly, abusers often fight for custody, like in Charlotte's case, as a means to intimately harm their victims and to regain physical access to them through shared custody or child visitation rights.[43] In these custody battles, abusers use tactics that extend far beyond typical vexatious litigant behaviors that drains their victims' time and financial resources. Domestic abusers also take strategic steps such as making false domestic violence allegations that endanger victims' rights to see their children and even threatening retaliation against victims and their loved ones.[44] Immigrant victims of domestic abuse are particularly at risk of retaliatory litigation due to financial constraints, language barriers, limited knowledge of the American legal system, and most abhorrent of all, abusers' exploitation

39. *Id.*

40. *See id.* ("I would like to see that the person who has caused me so much fear and distress and anxiety and loss of my time with my son, my personal time and my work time, I would like to see that person be sanctioned and be restrained from continuing to behave that way.").

41. *See, e.g.*, Kara Bellew, *Silent Suffering: Uncovering and Understanding Domestic Violence in Affluent Communities*, 26 WOMEN'S RTS. L. REP. 39, 44–45 (2005) (retelling stories of women facing litigation abuse).

42. *See, e.g.*, Leah J. Pollema, *Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies*, 75 UMKC L. REV. 1107, 1118 (2007) (finding that abusive litigation is "particularly prevalent" in family law cases due to their unique, personal, and emotionally charged nature); Fitch & Easteal, *supra* note 32, at 103, 105 (reporting that Australia is faced with more vexatious litigants in family law cases than in all other cases combined).

43. *See* Ashley Beeman, *The Need for More States to Adopt Specific Legislation Addressing Abusive Use of Litigation in Intimate Partner Violence*, 20 SEATTLE J. SOC. JUST. 825, 831–32 (2022) (describing the common weaponization of children by abusers); *see also* Sarah Harper, Damned & Damned: Examining Vexatious Litigation and the Vexatious Litigant Statute in Florida Courts, 19–20 (October 9, 2023) (Ph. D. dissertation, University of South Florida) (available at https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=11245&context=etd [https://perma.cc/P998-EDGH]) (explaining that abusers often seek control through the court system when restraints such as injunctions or incarceration have physically separated them from their victims).

44. *See* Beeman, *supra* note 43, at 832–33 (discussing how these tactics are particularly effective when judges are not adequately trained on domestic violence issues and therefore isolate victims even further).

of the vulnerability and fear that comes from immigrant status.[45] Children are also frequent casualties in these courtroom wars as they suffer incredible emotional damage from being used as pawns during important years in their development.[46] Research shows "[t]he level and intensity of parental conflict" is "the single best predictor of a poor outcome" for a child post-divorce.[47] Unfortunately, many abusers are ultimately victorious as this financial and emotional devastation can necessitate victims to make concessions in custody arrangements and asset division, which can in turn also compel victims to return to their abusers in order to protect their children.[48]

The adverse effects of vexatious litigation are far-reaching.[49] Studies have documented the emotional toll it has on defendants, which includes serious psychological stress, depression, and triggered mental health episodes.[50] Even worse, vexatious litigants often threaten violence against their victims and even those who are merely part of the legal proceedings.[51] Defendants also suffer financially as they often must choose between the lose-lose options of paying legal counsel to

45. *See id.* at 834–35 (relating the vulnerability of immigrant status and the ease with which abusers can exploit it); George F. Phelan et al., *Culture and the Immigrant Experience: Navigating Family Courts*, 32 J. Am. Acad. Matrim. L. 89, 94 (2019) (discussing how abusers in family law cases "use immigration status and fear of separation from children and community as a powerful form of abuse to coercively control victims").

46. *See* Peggy Malpass, *The Intersection of Health and Legal Issues in a Family Break-Up*, 5 J. Paediatrics & Child Health 214, 214 (2000) (detailing how children are the key sufferers in prolonged family law cases).

47. *See* Linda D. Elrod, *Reforming the System to Protect Children in High Conflict Custody Cases*, 28 Wm. Mitchell L. Rev. 495, 496–97 (2001) ("Qualitative and quantitative research conducted over the past thirty years demonstrates that highly conflicted custody cases are detrimental to the development of children, resulting in perpetual emotional turmoil, depression, lower levels of financial support, and a higher risk of mental illness, substance abuse, educational failure, and parental alienation.").

48. *See* David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 Seattle J. Soc. Just. 429, 449–50 (2015) (interviewing survivors and their attorneys who explained how many victims concede to seemingly end the abuse but ultimately suffer from their abusers' resulting increased control).

49. *See, e.g.*, Deborah L. Neveils, *Florida's Vexatious Litigant Law: An End to the Pro Se Litigant's Courtroom Capers?*, 25 Nova L. Rev. 343, 348 (2000) (describing how one vexatious litigant's propensity to sue her neighbors depreciated the property value of her neighborhood's homes).

50. *See, e.g.*, Fitch & Easteal, *supra* note 32, at 108.

51. *See* Paul E. Mullen & Grant Lester, *Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour*, 24 Behav. Sci. L. 333, 346 (2006); *see also* Gary M. Caplan & Hy Bloom, *Litigants Behaving Badly: Querulousness in Law and Medicine*, 44 Advoc.'s Q. 411, 458 (2015) (highlighting that violence has been too long ignored as one of the potential outcomes of vexatious litigation).

defend them or simply giving the vexatious plaintiff a settlement to go away.[52] The countless hours wasted dealing with these frivolous suits is another serious consideration.[53] Publicity can also be an unexpected consequence, as reporters can get wind of sensational, although frivolous, lawsuits and damage innocent defendants' reputations.[54]

While family law is a prime outlet for the abusive nature of vexatious litigants, it is displayed in many other kinds of civil cases as well. Plaintiffs can be particularly incentivized to sue corporations as factors such as cost of litigation and bad publicity can compel companies to settle.[55] Even small businesses are targets, and the vast amount of Americans with Disabilities Act ("ADA") litigation is a key example of this.[56] While much of the substantial ADA litigation stems from the important goal of advocating for businesses to comply with standards that aid accessibility, vexatious litigants prey upon establishments they deem likely to settle and are merely looking for cash settlements rather than for businesses to correct violations.[57] Small businesses and the

52. *See* Neveils, *supra* note 49, at 348 (outlining these two options that defendants face and warning that settling can incentivize vexatious litigants to continue their ways).

53. *See* John W. Wade, *On Frivolous Litigation: A Study of Tort Liability and Procedural Sanctions,* 14 Hofstra L. Rev. 433, 433 (1986) (listing inconvenience and time taken away from work as some of the unfair costs that victims of groundless litigation must pay).

54. *See In re* Martin-Trigona, 9 F.3d 226, 230 n.1 (2d Cir. 1993) (noting publicity as one "mischievous consequence" of uncontrolled vexatious litigation and giving an example of reporters choosing to publish allegations brought by a vexatious litigant against movie stars despite knowing full well of their absurdity).

55. *See* Douglas C. Buffone, *Predatory Attorneys and Professional Plaintiffs: Reforms are Needed to Limit Vexatious Securities Litigation*, 23 Hofstra L. Rev. 655, 655–56, 677–78 (1995) (discussing vexatious suits by shareholders who bring meritless suits in order to profit off settlement).

56. *See* Lauren Markham, *The Man Who Filed More Than 180 Disability Lawsuits*, N.Y. Times (July 21, 2021) https://www.nytimes.com/2021/07/21/magazine/americans-with-disabilities-act.html?fbclid=IwY2xjawGjMPpleHRuA2FlbQIxMAABHV7cOrlwAcfMvrdT2uwhNUSWo-vlp1DORgICxszVhqe8KbCom9KeDuQjRQ_aem_daZuOYD00htGgfOzAMWBhA [https://perma.cc/E9YC-YA62] (describing the onslaught of ADA cases after Title III of the ADA was enacted, which required businesses to be accessible and make reasonable modifications when necessary).

57. *See, e.g.*, Evelyn Clark, *Enforcement of the Americans with Disabilities Act: Remedying "Abusive" Litigation While Strengthening Disability Rights*, 26 Wash. & Lee J.C.R. & Soc. Just. 689, 710–13 (2020) (distinguishing between the two types of serial ADA litigants and emphasizing that those with the goal of settling do not further compliance); Helia Garrido Hull, *Vexatious Litigants and the ADA: Strategies to Fairly Address the Need to Improve Access for Individuals with Disabilities*, 26 Corn. J.L. & Pub. Pol'y 71, 85–88 (2016) (citing Molski v. Mandarin Touch Rest., 347 F. Supp. 2d 860, 868 (C.D. Cal. 2004)) (noting that a California court declared a serial ADA litigator to be vexatious because, although his claims were meritorious when viewed individually, when viewed in the aggregate his hundreds of claims were a scheme to circumvent the goals of the ADA).

dreams of their owners can quickly be extinguished by these claims.[58] Equally important is the damage it causes to the disability movement as a whole and skepticism it increases of an already vulnerable community.[59]

In summary, defendants who suffer from vexatious litigation are extremely varied.[60] The types of harm they suffer are also diverse and extreme, from incredible financial costs to unquantifiable emotional harm.[61] However, it is also important to look beyond defendants themselves in assessing the damage done and acknowledge other victims such as family members on both sides, employees of shut-down businesses, and an idea more fully discussed in the next section: people with legitimate claims.

B. Victims of Delayed Justice

Access to justice regardless of economic status is a critical privilege afforded to the American people.[62] But *unfettered* access, no matter the validity of a claim, can endanger everyone's right to a fair and speedy trial.[63] In the 2023 fiscal year, U.S. district courts had a total of 702,433 pending civil and criminal cases.[64] Putting this into context, there are a total of 677 authorized active U.S. district judge positions.[65]

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58. *See, e.g.*, sources cited *supra* note 57 (telling the stories of small businesses struggling or closing down due to serial ADA litigants).

59. *See* Garrido Hull, *supra* note 57, at 82 ("Serial ADA access litigation is troubling and threatens to set back advancements made in the societal perspective of individuals with disabilities and the enforcement of their rights under the ADA.").

60. *See supra* notes 41–59 and accompanying text. The diversity of the claims and defendants involved reflects the unique backgrounds of vexatious litigants. *See* LAW REFORM COMM., PARLIAMENT OF VICTORIA, INQUIRY INTO VEXATIOUS LITIGANTS 33–35 (2008) (highlighting the diversity of thirteen vexatious litigants studied in Australia, including small business owners, farmers, unemployed persons, a builder, a composer, a musician, and a prisoner).

61. *See supra* notes 41–59 and accompanying text.

62. *See* Francis J. Larkin, *The Legal Services Corporation Must Be Saved*, 34 JUDGES' J. 1, 1 (1995) ("Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.").

63. *See* United States v. McCullough, No. S-89-0251, 2006 WL 2796453, at *1–2 (E.D. Cal. Sept. 18, 2006) (highlighting "the tension between unfettered access and abusive access" in explaining that the goals of justice are compromised when a vexatious litigant consumes a court's resources).

64. *See Federal Judicial Caseload Statistics 2023*, U.S. COURTS, https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2023 [https://perma.cc/FA8E-4ZW2] (reporting statistical data regarding the work of federal courts).

65. *Status of Article III Judgeships—Judicial Business 2023*, U.S. COURTS, https://www.uscourts.gov/statistics-reports/status-article-iii-judgeships-judicial-business-2023 [https://perma.cc/5VUU-H8B2]. Additionally, as of September 2023, the United States Courts reported 404 senior district court judges.

Accounting for workload voluntarily taken on by senior status judges, on average, a federal judge should see around 900 active cases per year—an incredibly vast amount.[66]

Pro se litigation comprises a large portion of these cases.[67] Between 2000 and 2019, 27% of all federal civil cases had at least one self-represented party.[68] In one study of non-prisoner *pro se* litigant federal filings, researchers found that in the sample of claims they studied over half were not meritorious enough to survive preliminary motions such as motions to dismiss for failure to state a claim, even under the more lenient standards afforded to unrepresented parties.[69] With limited resources, judges find it enormously frustrating[70] when they are forced to devote significant time to dismissing clearly frivolous cases.[71]

While harassed defendants, judges, and lawyers are important stakeholders in this issue, it is important not to overlook another

66. *See FAQs Federal Judges*, U.S. COURTS, https://www.uscourts.gov/faqs-federal-judges#:~:text=Senior%20judges%2C%20who%20essentially%20provide,the%20federal%20courts'%20workload%20annually [https://perma.cc/T9MB-YLHS] (explaining that senior judges only account for approximately 15% of the workload completed by all district court judges, as they are judges past the age of retirement who voluntarily choose to take on cases). Furthermore, these numbers very conservatively estimate the number of cases federal judges end up presiding over because federal courts experience between sixty to ninety vacancies per year. *Status of Article III Judgeships*, *supra* note 65.

67. *See* Jona Goldschmidt, *Who Sues the Supreme Court, and Why? Pro Se Litigation and the Court of Last Resort*, 8 IND. J.L. & SOC. EQUAL. 181, 182 (2020) (noting that *pro se* litigation in both state and federal courts has been increasing over the last few decades).

68. *See Just the Facts: Trends in Pro Se Civil Litigation from 2000 to 2019*, U.S. COURTS (Feb. 11, 2021), https://www.uscourts.gov/news/2021/02/11/just-facts-trends-pro-se-civil-litigation-2000-2019 [https://perma.cc/L4WT-9L3Z] [hereinafter U.S. COURTS, *Pro Se Civil Litigation*] (observing *pro se* litigant trends).

69. *See* Spencer G. Park, *Providing Equal Access to Equal Justice: A Statistical Study of Non-Prisoner Pro Se Litigation in the United States District Court for the Northern District of California in San Francisco*, 48 HASTINGS L.J. 821, 822–23 (1997) (conducting a statistical study of *pro se* litigants to help provide empirical data to support the often-anecdotal topic of *pro se* litigation).

70. *See* John B. Snyder, *Barbarians at the Gate?: The Law of Frivolity as Illuminated by Pro Se Tax Protest Cases*, 54 WAYNE L. REV. 1249, 1250 n.1, 1267–68 (2008) (explaining that courts "bemoan" the burdens caused by frivolous lawsuits and providing case examples); *See* Harper, *supra* note 43, at 11 (acknowledging that judges "informally lament the obstacles or frustrations" caused by vexatious litigation). Judges are far from alone in their frustration, as frivolous lawsuits contribute to public outrage regarding the judicial system. Neveils, *supra* note 49, at 349.

71. *See* James E. Ward, *Rule 11 and Factually Frivolous Claims—The Goal of Cost Minimization and the Client's Duty to Investigate*, 44 VAND. L. REV. 1165, 1178 n.114 (1991) ("The time the court takes to determine that the claim is frivolous is costly."); Neveils, *supra* note 49, at 348 (detailing the vast amount of work and delays caused for judges and their personnel by vexatious litigants); *see also* U.S. COURTS, *Pro Se Civil Litigation*, *supra* note 68 ("Pro se cases require extra court resources for processing.").

group of stakeholders: petitioners with legitimate claims.[72] Already overburdened court systems are further taxed by these frivolous and abusive lawsuits.[73] This means that petitioners with legitimate claims have to wait even longer to get the justice they deserve.[74]

To give an example of the congestion vexatious litigation causes, the Texas state court system declared approximately 100 litigants as vexatious between 2019–2024.[75] Each of these claimants directly contributed to delays in Texas courts. While 100 persons being officially named as vexatious may seem small compared to the number of claimants in Texas, it is essential to not underestimate the impact each one can have.[76] Vexatious litigants are not only characterized by their filing of *nonsensical* claims, but also by their obsessive, relentless, and unceasing pursuit of *countless* claims.[77] One researcher listed the traits common among all vexatious or hyperlitigious individuals as: "relentless activity, outstanding tenacity, personal elation, abuse of logic, intellectual and often physical resilience, and graphomania."[78]

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72. *See* Esther Rosenfeld et al., *Confronting the Challenge of the High-Conflict Personality in Family Court*, 53 FAM. L.Q. 79, 103–04 (2019) (exemplifying how judges and lawyers are not immune from the toll of vexatious litigation by recounting incidents such as one litigant posting photos of judges and attorneys with their children in online attacks).

73. *See supra* notes 64–71 and accompanying text.

74. *See* Neveils, *supra* note 49, at 349 ("Litigants with legitimate legal matters are delayed or postponed while clerks and judges deal with the frivolity and tying up of court resources by vexatious litigants."); Wolfe v. George, 486 F.3d 1120, 1126 (9th Cir. 2007) (holding California's vexatious litigation statutory system to be "rationally related" to the legitimate purpose of preventing these litigants from filling the court's calendar and taking time away from litigants with plausible cases); Zavodnik v. Harper, 17 N.E.3d 259, 264 (Ind. 2014) ("Every resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants.").

75. *List of Vexatious Litigants Subject to a Prefiling Order*, TEXAS JUD. BRANCH, https://www.txcourts.gov/judicial-data/vexatious-litigants [https://perma.cc/WY3N-AR2M]. See Appendix A for an explanation of how Texas defines the criteria for being named a vexatious litigant.

76. *See, e.g.*, Mullen & Lester, *supra* note 51, at 335 (estimating that "unusually persistent complainants" in Australia constitute less than 1% of complainants but consume between 15–30% of the resources of the agencies where they bring their complaints); Donald J. Netolitzky, *The Grim Parade: Supreme Court of Canada Self-Represented Appellants in 2017*, 59 ALTA. L. REV. 117, 118 (2021) (reporting that 20–30% of all new candidate appeals at the Supreme Court of Canada are brought by *pro se* plaintiffs and almost all are eventually dismissed).

77. *See* Robin Miller, Annotation, *Validity, Construction, and Application of State Vexatious Litigant Statutes*, 45 A.L.R. 6th 493 § 3.5 (2009) (explaining that the purpose behind vexatious litigant statutes is to circumvent the "persistent and obsessive litigant who constantly has a pending number of groundless actions").

78. *See* Adam C. Coffey et al., *I'll See You in Court . . . Again: Psychopathology and Hyperlitigious Litigants*, 45 J. AM. ACAD. PSYCH. & L. 62, 64 (2017) (addressing vexatious litigation from a mental health perspective); *see also Graphomania*, MERRIAM

No better illustration of the devastation even one litigant can cause exists than the tale of Jonathan Lee Riches. A convicted fraudster, Riches once proudly declared that he "flush[es] out more lawsuits than a sewer," and has backed this claim up by filing over 5,000 lawsuits.[79] His bizarre allegations range from suing actress Anne Hathaway for failing to visit him in federal prison to bringing an action against President Barack Obama for trading hummus and P.F. Chang noodles for nuclear weapons.[80] His myriad of unpredictable targets include Plato, Paul Revere, the Eiffel Tower, the Ming Dynasty, and Skittles.[81] Incredibly proud of his pursuits, upon his release Riches planned to open up a "lawsuit 101 shop" to teach the art of *pro se* lawsuits and to sell t-shirts with his face and the caption "Watch what you do or I'll sue you."[82]

How was Riches able to continue filing thousands of lawsuits without being stopped? As one of the many judges who has dealt with him aptly analogized, Riches's litigation strategy was like a bully finding new playgrounds after being banned.[83] If a court declared Riches vexatious and enjoined him from bringing suit without first being granted leave, Riches "remained undeterred" and merely sought a new venue in a new county or state. This sort of behavior is possible due to lack of cooperation and uniform standards between courts regarding

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WEBSTER, https://www.merriam-webster.com/medical/graphomania [https://perma.cc/5K6D-X2VC] (defining graphomania as "a compulsive urge to write").

79. Thomas Clouse, *Man Sues Book Over Most-litigious Crown*, SPOKESMAN-REV. (May 23, 2009), https://www.spokesman.com/stories/2009/may/23/man-sues-book-over-most-litigious-crown/ [https://perma.cc/GD2B-LW8G]; *see also* Michael Brick, *America's Most Prolific Jailhouse Lawyer and His Many Fans*, NEW REPUBLIC (July 12, 2013), https://newrepublic.com/article/113739/jonathan-lee-riches-jailhouse-lawyer-turned-internet-celebrity [https://perma.cc/965Z-96DP] (reporting on Riches's schemes such as his role in helping to develop phishing in the early 2000s and his convictions for fraud and conspiracy); *In re* Profiler Prod. Liab. Litig., No. MDL 06-1748-GPM, 2010 WL 3613928, at *2 (S.D. Ill. Sept. 8, 2010) (bringing attention to Riches's extensive frivolous litigation history which amounts to well over 5,000 lawsuits in federal and state courts).

80. *See* Riley Yates, *Inmate Known for His Torrent of Lawsuits Targets Mass-Murder Case*, THE TIMES (June 20, 2014), https://www.timesonline.com/story/news/state/2014/06/20/inmate-known-for-his-torrent/18471342007/ [https://perma.cc/VYS2-K7RZ] (recounting some of Riches's outlandish claims); Beau Hodai, *King of the Crazy Suit*, IN THESE TIMES (Aug. 11, 2010), https://inthesetimes.com/article/king-of-the-crazy-suit [https://perma.cc/2FKN-9J5E] (same).

81. *See* Brick, *supra* note 79 (observing that the broad range of defendants Riches sued shows he is far from being a run-of-the-mill conspiracist); Clouse, *supra* note 79 (listing Riches's most memorable lawsuits).

82. *World's Most Litigious Man Suing Guinness Book of World Records?*, ABC NEWS (May 12, 2009) https://abcnews.go.com/Business/LegalCenter/story?id=7677327&page=1 [https://perma.cc/U5ZM-LCUW].

83. *See* Riches v. Karpinski, No. 08-CV-346-BBC, 2008 WL 2564785, at *2 (W.D. Wis. June 25, 2008) (making this comparison).

vexatious litigation.[84] Compounding the problem of Riches changing venues, many courts were unable to enjoin him until he had already filed hundreds of claims.[85]

While stories like Riches's, and those from other similar litigants, may seem amusing on first glance, their contributions to congested court systems have a sobering and far-reaching ripple effect.[86] The consequences for plaintiffs with legitimate claims often amount to much more than inconvenience and include personal bankruptcy, businesses closing, and wronged plaintiffs feeling forced to settle for less than their claims' worth in order to pay for urgent daily necessities, hospital bills, or to keep businesses afloat.[87] Unfortunately, "[j]ustice delayed is often justice denied," and these vexatious and persistent litigators who clog our courts are one contributing factor to denied justice for petitioners with legitimate claims.[88]

C. The Vexers as Victims Too

The relentless nature of vexatious litigants affects more than defendants, overworked judges, and legitimate plaintiffs; the litigants themselves often end up destroying their own lives in the process of

84. *See, e.g.*, *id.* at *1–2 (detailing Riches's federal claim history).

85. *Id.*

86. *See* Riches v. Gibson, No. 1:07CV1884 LJO GSA, 2008 WL 111115, at *1 (E.D. Cal. Jan. 9, 2008) (quoting Order of the Court, Riches v. Simpson, 6:07cv1504-Orl-31KRS (M.D. Fla. Sep. 24, 2007) ("It is not clear whether these outlandish pleadings are products of actual mental illness or simply a hobby akin to short story writing. Whatever their origin, and though they are amusing to the average reader, they do nothing more than clog the machinery of justice, interfering with the court's ability to address the needs of the genuinely aggrieved. It is time for them to stop."); *see also* Jessica K. Phillips, *Not All Pro Se Litigants are Created Equally: Examining the Need for New Pro Se Litigant Classifications Through the Lens of the Sovereign Citizen Movement*, 29 GEO. J. LEGAL ETHICS 1221, 1222, 1227–28 (calling attention to the contributions *pro se* litigants make to our backlogged justice system and reminding that *pro se* litigants with legitimate claims are also adversely affected by delays).

87. *See* David Hittner & Kathleen Weisz Osman, *Federal Civil Trial Delays: A Constitutional Dilemma*, 31 S. TEX. L. REV. 341–42 (1990) (illustrating the effects of these "catastrophic delays"); Henry Ellenbogen, *Justice Delayed*, 14 U. PITT. L. REV. 1, 2–3 (1952) (portraying the practical realities of delayed justice and emphasizing that these consequences regularly happen and are not extreme examples); Melvin M. Belli, *The Law's Delays: Reforming Unnecessary Delay in Civil Litigation*, 8 J. LEGIS. 16, 17 (1981) (describing real costs, such as hospital, doctor, and food bills, that must be paid while a litigant awaits justice).

88. *See* Belli, *supra* note 87, at 16 (highlighting delayed justice as one of the most critical problems with trial practice); Jeanne M. Unger, *The Vexatious Litigant: Awarding Attorney's Fees as a Deterrent to Bad Faith Pleading*, 1985 DET. C.L. REV. 1019, 1042 (1985) (advocating that judges use individualized sanctions in vexatious litigation cases as a means to lighten the burden on overtaxed court systems).

their pursuits.[89] One such example is Dorothy Squires, a popular singer in Britain in the 1940s and 1950s best known for her rocky marriage to Roger Moore, the fourth James Bond.[90] After a bitter divorce from Moore, Squires became involved in a series of lawsuits.[91] One friend described her victory in a libel case as the worst thing that ever happened to her, remarking, "as gambling addicts say winning on their first trip to the casino got them hooked, so it was with Dorothy." [92] Her "voracious appetite for litigation" in response to any perceived slight and her inability to accept any adverse ruling escalated to the point that the British court systems declared her to be vexatious and limited her from filing new lawsuits.[93] But by the time this limitation had been set, the damage had already been done. Squires went bankrupt, was abandoned by her friends and family, and had to take extreme measures to avoid homelessness, such as breaking into the home from which she was evicted during her seventies, all as a result of her quixotic pursuit of justice.[94]

Squires is just one example[95] of many vexatious litigants who inadvertently end up destroying their own lives in their attempts to better them.[96] Financial ruin, like Squires experienced, is one of the

89. *See* Coffey et al., *supra* note 78, at 69 ("Hyperlitigious people often live unhappy, frustrated, difficult lives in which they obsess continuously about their pending lawsuits.").

90. *See* Nick Talevski, Rock Obituaries: Knocking on Heaven's Door 611 (2010) (including an obituary for Dorothy Squires among 1,000 obituaries of famous musicians); Alexandra Schonfeld & Zoey Lyttle, *From Connery to Craig, All the Actors Who've Played James Bond*, People (March 19, 2024), https://people.com/actors-who-have-played-james-bond-8610980 [https://perma.cc/UH78-ZHFN] (listing the actors who played James Bond).

91. *See* Niel Prior, *Dorothy Squires: The Llanelli Singer Who Married Roger Moore*, BBC (Apr. 14, 2018), https://www.bbc.com/news/uk-wales-43747113 [https://perma.cc/KGZ7-SXVG] (recounting the story of Squires's career and personal life on the 20th anniversary of her death).

92. *Id.*

93. Johnny Tudor, My Heart is Bleeding: The Life of Dorothy Squires 130–31 (The History Press 2017) (describing Squires's history of litigation).

94. *See id.* at 157, 161–79 (detailing Squires's plight); Prior, *supra* note 91 (same).

95. *See, e.g.*, Mullen & Lester, *supra* note 51, at 338–39 (documenting the change in circumstances of a querulous litigant during a five-year span in which such litigant's life evolved from being a moderately successful small business owner and family man to being faced with his business failing, bankruptcy, marriage crumbling, and alienation from friends as a result of his obsessive litigious behavior).

96. *See* Larry H. Strasburger, *The Litigant-Patient: Mental Health Consequences of Civil Litigation*, 27 J. Am. Acad. Psychiatry L. 203, 204 (1999) ("There is an inherent irony in the judicial system in that individuals who bring suit may endure injury from the very process through which they seek redress.").

most obvious outcomes of vexatious litigation.[97] This ruin stems not only from the expenses associated with litigation, but also often from petitioners losing their jobs due to the all-consuming nature of their many ongoing cases.[98] A somewhat less obvious outcome is the emotional toll of this lifestyle, which has an enormous impact on both vexatious litigants themselves and their family members.[99] The loss of integral family and personal relationships, such as Squires experienced when her pursuits led to her isolation in her old age, are yet another cost that these plaintiffs frequently pay.[100]

Advancements in our understanding of mental health have led many medical and psychiatric experts to believe that this pursuit of justice at the expense of all other aspects of life is often linked to underlying psychological behaviors, conditions, or disorders.[101] Researchers believe that paranoid personality disorder, paranoia, and schizophrenia are often exhibited in vexatious litigators.[102] However, the medical community has agreed that "querulous paranoia" is the most accurate way to psychologically diagnose this abusive litigative behavior as it mirrors the legal concept of vexatious litigation.[103] The hallmark of this condition, which is classified as a "delusional disorder," is a complete focus on a quest for a personal vision of justice that subordinates

97. *See* Coffey et al., *supra* note 78, at 69 (highlighting that vexatious litigants often face financial devastation).

98. *See* Christopher Adam Coffey, Litigation Overdone, Overblown, and Overwrought: A Mixed Methods Study of Civil Litigants 48 (2019) (Ph. D. dissertation, University of Alabama) (ProQuest) (reporting in a study of vexatious litigants that the financial distress they experienced often was compounded by occupational difficulties, such as being fired from jobs due to preoccupation with court appearances and filings).

99. *See id.* at 1–2, 49–51 (interviewing vexatious litigants in an attempt to study the impact their pursuits had on themselves and others and reporting that the litigants compared their emotional distress to PTSD and that their families became frustrated with them).

100. *See* Mullen & Lester, *supra* note 51, at 335–36 (counting the financial, personal, and societal costs that come with being an unusually persistent complainant).

101. *See* Caplan & Bloom, *supra* note 51, at 459 (disparaging the failure of the current legal response to vexatious litigation to incorporate these advances in our understanding of mental health and research studies).

102. *See* Rowlands, *supra* note 4, at 317–20 (listing the four psychiatric diagnoses most likely to be associated with vexatious litigation).

103. *See* Narelle Bedford & Monica Taylor, *Model No More: Querulent Behavior, Vexatious Litigants and the Vexatious Proceedings Act 2005 (QLD)*, 24 J. JUD. ADMIN. 46, 47 (2014) (citation omitted) (explaining that "'querulous' is the preferred nomenclature of psychologists"); Benjamin Lévy, *From Paranoia Querulans to Vexatious Litigants: A Short Study on Madness Between Psychiatry and the Law (Part 2)*, 26 HIST. PSYCHIATRY 36, 38 (2015) (defining vexatious litigation as the legal equivalent of querulous paranoia).

everything else in life.[104] Unless these individuals are stopped, their obsessive behaviors not only escalate but ultimately result in personally devastating and often irrecoverable damage.[105] Thus, vexatious litigants themselves join harassed defendants and legitimate plaintiffs as the primary victims of vexatious litigation.

II. Who Are *Pro Se* Litigants?

Armed with a better understanding of the problems that arise from vexatious litigation, it is next necessary to understand how vexatious litigation relates to the concept of self-representation. First, it is important to clarify that rules concerning vexatious litigation only concern those proceeding *pro se* or *pro per*[106] in civil suits, which means that claimants represent themselves instead of employing the services of attorneys.[107] This section will explore patterns among[108] these litigants, such as their win/loss ratios, the types of legal issues they raise, the unique populations they represent, such as incarcerated individuals, and their financial status. Lawyers are curtailed from engaging in excessive frivolous litigation by the rules of ethics and the many possible disciplinary outcomes, such as disbarment, suspensions,

104. *See* Justo E. Pinzón-Espinosa et al., *Vexatious Litigant Vs. Paranoia Querulans: A Systematic Review*, 64 Eur. Psychiatry 381, 382 (2021), https://www.cambridge.org/core/journals/european-psychiatry/article/vexatious-litigant-vs-paranoia-querulans-a-systematic-review/DE2E9F6BBB3EF2DFBDCED405434A4A6B [https://doi.org/10.1192/j.eurpsy.2021.1023] (classifying querulous paranoia); Mullen & Lester, *supra* note 51, at 338 (highlighting its key clinical feature).

105. *See* Mullen & Lester, *supra* note 51, at 338–39 (contending that vexatious litigants gradually expand their grievances to more issues and against more parties, resulting in the devastation they personally cause and experience reaching far beyond financial and social problems and extending to "their very existence").

106. *See Pro Per*, Legal Info. Inst., https://www.law.cornell.edu/wex/pro_per [https://perma.cc/PUB5-ZAQC] (defining *pro per* as "synonymous with the more commonly used term *pro se*").

107. *See* Robert Bacharach & Lyn Entzeroth, *Judicial Advocacy in Pro Se Litigation: A Return to Neutrality*, 42 Ind. L. Rev. 19, 19 (2009) (noting that these laws uniquely apply to self-represented individuals); People v. Harrison, 112 Cal. Rptr. 2d 91, 97 (Ct. App. 2001) (explaining that, in creating the California Vexatious Litigation Statute, the legislature expressly limited its scope to civil cases and excluded criminal cases); *see also* Donald H. Zeigler & Michele G. Hermann, *The Invisible Litigant: An Inside View of Pro Se Actions in the Federal Courts*, 47 N.Y.U. L. Rev. 157, 159 (1972) (likening self-representation to patients functioning as their own doctors).

108. *See* Taliaferro v. Hoogs, 46 Cal. Rptr. 147, 151 (Dist. Ct. App. 1965) (explaining that California rules restricting *pro se* plaintiffs from vexatiously litigating are not discriminatory because *pro se* litigants are not subject to the rules and disciplinary measures designed to prevent attorneys from engaging in lawsuits that are meritless or intended to harass others). For a further discussion of sanctions courts can impose when an attorney is acting vexatiously, see Kevin J. Henderson, *When is an Attorney Unreasonable and Vexatious?*, 45 Wash. & Lee L. Rev. 249 (1988).

and disciplinary sanctions. However, individuals proceeding *pro se*[109] are neither bound by these rules nor subject to most of the disciplinary options imposed on attorneys.[110] Laws regarding vexatious litigation therefore fill in this gap. Their purpose is to create a deterring effect for self-represented claimants that is similar to the disciplinary outcomes that befall attorneys who file meritless or harassing claims. Second, because almost all vexatious lawsuits are brought by *pro se* litigants, it is important to identify patterns among these unique types of unrepresented filers to better understand both the people bringing these claims and the legal claims they are likely to pursue.

A. Their Cases Have Poor Outcomes

Self-represented individuals rarely win their cases. A study of civil cases in federal district courts between 1998–2017 showed that *pro se* plaintiffs won a mere 4% of the time.[111] In contrast, wins are split at an almost 50-50 ratio when both parties are represented.[112] When considering these numbers, it is important to not automatically attribute lack of counsel as the explanation for these losses.[113] Filings by self-represented individuals are held to "less stringent standards than formal pleadings drafted by lawyers."[114] Further, attorneys will generally take on cases they deem winnable on a contingency basis, but will not accept suits that they will most likely lose or, even worse, that will subject them to sanctions for being delusional or absurd.[115] Moreover, research has

109. *See* Frank O. Carroll, *"Vex My Soul": A Primer on Vexatious Litigants*, HOUS. L. REV. 231, 235–36 (2016) (explaining that the Texas Vexatious Litigant Statute only applies to plaintiffs proceeding *pro se* due to these professional constraints not being applicable to those representing themselves).

110. *See* Chris Colby, *There's a New Sheriff in Town: The Texas Vexatious Litigants Statute and Its Application to Frivolous and Harassing Litigation*, 31 TEX. TECH L. REV. 1291, 1320 (2000) (contending that not holding parties proceeding *pro se* accountable to these standards would be giving them an unfair advantage).

111. *See* Levy, *supra* note 9, at 1838 (additionally reporting that *pro se* defendants only won 14% of cases).

112. *Id.*

113. *See id.* at 1838–39 ("Though dramatic, these numbers do not necessarily imply that their lack of access to counsel worsens case outcomes for *pro se* litigants.").

114. *See id.* at 1837–38 (quantifying how rarely self-represented individuals prevail in federal court); JEFRI WOOD, FED. JUD. CTR., PRO SE CASE MANAGEMENT FOR NONPRISONER CIVIL LITIGATION 101–02 (2016) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)) (discussing the leniency shown to *pro se* litigants and the discretion afforded to judges in interpreting the standard *pro se* such litigants should be held to because "there is not universal agreement on just how 'less stringent' those standards should be").

115. *See* Levy, *supra* note 9, at 1839 (theorizing that attorneys' judicious approach to taking on cases is the most likely explanation for low *pro se* win rates); Sean Munger, *Bill Clinton Bugged My Brain: Delusional Claims in Federal Courts*, 72 TUL.

refuted the idea that the overwhelming amount of claimants proceeding *pro se* do so solely because they are unable to afford counsel.[116] Several studies of non-prisoner *pro se* plaintiffs have found that a significant number of these petitioners could have afforded counsel but *chose* not to employ attorneys.[117] Thus, *pro se* plaintiffs almost always lose their cases, but not necessarily because they cannot access counsel.

B. They Gravitate Towards a Handful of Legal Issues

Pro se litigation generally centers around a set few of key issues. The majority of actions brought by non-prisoner *pro se* plaintiffs are civil rights claims, which are especially time-consuming.[118] In particular, employment discrimination cases are a favorite type of suit.[119] Similarly, the majority of prisoner petitions are either civil rights claims or habeas corpus petitions.[120] Family law cases also very frequently involve *pro se* litigants, with some reports estimating that 80% to 90% of such cases have at least one self-represented party.[121] While *pro se* litigants do indeed gravitate towards issues that affect their rights or family units,

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L. REV. 1809, 1820 (1998) (emphasizing "the unmistakable logical conclusion that no reasonable attorney would accept a case whose factual basis is clearly the stuff of fantasy," so delusional claimants are forced to proceed *pro se*).

116. *See* Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537, 1573 (2005) (highlighting that this unsupported belief is the driving force behind many advocates arguing for greater assistance and more leniency for self-represented individuals).

117. *See id.* at 1571–74 (citing one study that found that almost half of surveyed *pro se* litigants had funds sufficient to hire counsel and another which reported this number to be 22%). Surveyed plaintiffs have reported a variety of reasons for choosing to proceed without an attorney, including a belief that their case was simple, a desire to spend their money differently or save money, self-confidence in their own abilities, dislike of lawyers, and being advised by attorneys to represent themselves. *Id.*

118. *See* U.S. COURTS, *Pro Se Civil Litigation*, *supra* note 68 (noting that the majority of these *pro se* claims involved civil rights); Park, *supra* note 69, at 848–49 (conveying that prevalent *pro se* civil rights claims take more work and time than average cases).

119. *See* Levy, *supra* note 9, at 1840 (charting the nature of cases brought by *pro se* litigants in federal district courts between 1998–2017 and listing civil rights cases as comprising 32% of all cases involving a *pro se* plaintiff and employment discrimination as accounting for 19% of the total cases brought by *pro se* plaintiffs).

120. *See* Levy, *supra* note 9, at 1836 n.78.

121. *See* Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 376 (2005) (reporting on these statistics); *see also* Lynn Mather, *Changing Patterns of Legal Representation in Divorce: From Lawyers to Pro Se*, 30 J.L. & SOC'Y 137, 142 (2003) (stating that both spouses are represented in fewer than half of divorce cases in the United States).

it is important to remember that they bring all kinds of other claims as well.[122]

C. They Often Are Part of Special Groups

Pro se litigants, and thus accordingly vexatious litigants, often belong to distinct populations. Two of the largest of these groups are the Sovereign Citizen Movement and the prisoner population. "Sovereign Citizens" comprise a unique and large portion of *pro se* litigants.[123] According to the FBI, "[s]overeign citizens are anti-government extremists who believe that even though they physically reside in this country, they are separate or 'sovereign' from the United States. As a result, they believe they don't have to answer to any government authority, including courts, taxing entities, motor vehicle departments, or law enforcement."[124] Although they have many problematic and criminal tactics, their most frequently employed strategy is to engage in "paper terrorism" by filing countless frivolous and harassing lawsuits and creating fraudulent documents.[125] When filing these claims, Sovereign Citizens benefit from the leniency afforded *pro se* litigants and are able to prolong their cases as long as possible to further their ultimate goal of protesting against the judiciary and the U.S. government as a whole through their often vexatious series of lawsuits.[126]

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122. *See* Park, *supra* note 69, at 831–32 (finding in a survey of *pro se* plaintiffs that, while a large majority argued civil rights issues, "[a]lmost every major category of claim was represented").

123. *See* Phillips, *supra* note 86, at 1221–22, 1225 (reporting that Sovereign Citizens' membership was estimated to total 300,000 in 2011 but that the group has been rapidly growing as a result of technological advances and social media).

124. *Domestic Terrorism: The Sovereign Citizen Movement*, FED. BUREAU OF INVESTIGATION (Apr. 13, 2010) https://archives.fbi.gov/archives/news/stories/2010/april/sovereigncitizens_041310/domestic-terrorism-the-sovereign-citizen-movement [https://perma.cc/77MT-JCE3]; *see also* Michelle Theret, *Sovereign Citizens: A Homegrown Terrorist Threat and Its Negative Impact on South Carolina*, 63 S.C. L. REV. 853, 854 (2012) ("The list of violent events perpetrated by sovereign citizens has become so extensive that the Federal Bureau of Investigation labeled the movement as a domestic terrorist threat.").

125. *See Domestic Terrorism*, *supra* note 124 (listing clogging of the courts; harassing, threatening, and impersonating public officials; committing violent crimes; creating fake documents, driver's license and checks; and refusing to pay taxes as examples of Sovereign Citizen behavior); Marissa Bryan, *Sovereign Citizens: A Response in Absence of Direction*, 17 CHARLESTON L. REV. 247, 256 (2022) ("Sovereign citizens are notorious for their copious and repetitive filings, which consume the already backlogged court system and waste limited judicial resources.").

126. *See* Phillips, *supra* note 86, at 1222, 1227, 1234 (describing how Sovereign Citizens delay dockets with "mountains of filings" and strategize together through various networks).

Prisoners are another unique type of *pro se* filer.[127] Between 2000 and 2019, the federal courts reported that incarcerated individuals were responsible for 69% of the civil *pro se* caseload and that 91% of all prisoner filings involved self-represented plaintiffs or defendants.[128] In regards to the federal civil caseload as a whole, "*pro se* prisoners file approximately 17–18% of federal civil cases, while less than one percent of U.S. adults are incarcerated."[129] These prisoners, of course, seek to challenge their own convictions, but they additionally bring many claims concerning violations of civil rights and inadequate conditions of confinement.[130] While many of these claims have merit, others are frivolous and concern "petty discomforts and inconveniences" instead of substantive rights or inhumane living conditions.[131] Further, the Sovereign Citizen movement has spread to prisons, which has resulted in prisoners engaging in paper terrorism tactics.[132] Although, as described below, there have been attempts to limit frivolous self-represented prisoner litigation, it continues to extensively burden our court system.[133] The number of these suits is not the only reason for how burdensome they are—how difficult the pleadings are to read due to their length and illegibility also plays a substantial factor.[134]

127. *See* Carter v. Ingalls, 576 F. Supp. 834, 835 (S.D. Ga. 1983) ("The study of prisons and the *pro se* litigants who inhabit them is like the study of astronomy or even science fiction. The explorer of the world of prisons and *pro se* plaintiffs embarks upon a fantastic voyage into another world, even another galaxy, far, far away.").

128. *See* U.S. Courts, *Pro Se Civil Litigation*, *supra* note 68.

129. Rebecca Wise, *Five Proposals to Reduce Taxation of Judicial Resources and Expedite Justice in Pro Se Prisoner Civil Rights Litigation*, 52 U. Tol. L. Rev. 671, 676 (2021).

130. *See* Zeigler & Hermann, *supra* note 107, at 160, 162 ("Few of these men seriously assert their innocence, but almost all evince a strong belief that they have not been treated fairly by the state or federal government (or their agents) at some stage of the criminal process.").

131. *See* Jon O. Newman, *Pro Se Litigation: Looking for Needles in Haystacks*, 62 Brook. L. Rev. 519, 519–20 (1996) (contending that "the vast majority [of prisoner lawsuits] are dismissed as frivolous" and comparing the task of identifying legitimate cases to finding needles in haystacks); Molly Guptill Manning, *Trouble Counting to Three: Circuit Splits and Confusion in Interpreting the Prison Litigation Reform Act's "Three Strikes Rule," 28 U.S.C. § 1915(g)*, 28 Corn. J.L. & Pub. Pol'y 207, 212–13 (2018) (highlighting examples of trivial prisoner claims that were prevalent when the Prison Litigation Reform Act was first introduced).

132. *See* Charles E. Loeser, Comment, *From Paper Terrorists to Cop Killers: The Sovereign Citizen Threat*, 93 N.C. L. Rev. 1106, 1127 (2015) (citation omitted) ("The sovereign citizen movement is 'thriving' in prisons, where sovereign ideologues are 'successfully indoctrinat[ing] fellow prisoners.'").

133. *See* Wise, *supra* note 129, at 684 (contending that "the disorganization, illegibility, and length" of *pro se* prisoner petitions is a more impactful problem than the number of litigators).

134. *See id.* at 684–85 (describing how these pleadings are usually handwritten, lack structure, do not follow grammatical rules, and can comprise hundreds of pages).

Accordingly, both Sovereign Citizens and prisoners greatly contribute to the burden of frivolous *pro se* litigation.

D. They Frequently Proceed In Forma Pauperis

Many *pro se* filers are indigent.[135] Accordingly, unrepresented litigants often begin their lawsuits by petitioning to proceed *in forma pauperis* ("IFP").[136] The federal IFP statute, 28 U.S.C. § 1915, allows a litigant whom the court deems incapable of paying federal court filing fees to proceed without doing so.[137] State courts have their own IFP laws that function similarly.[138]

While IFP statutes help provide meaningful access to the courts to those who would otherwise be barred financially, they also widen the door to abuse through vexatious litigation.[139] When it enacted the federal IFP statute in 1915, Congress recognized the law's potential for abuse given that IFP litigants would no longer be economically deterred from bringing frivolous complaints, so Congress accordingly included a safeguard in § 1915(e)(2).[140] Under this section, courts have discretion to dismiss a case or appeal filed IFP at any time if an applicant falsely alleged poverty or the applicant's case "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief."[141]

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135. *See* Zeigler & Hermann, *supra* note 107, at 159 ("The typical pro se litigant is indigent.").

136. *See* Neveils, *supra* note 49, at 349.

137. *See* Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L.J. 1478, 1492 (2019); *see also* Marissa A. Smith, *America, Land of the Fee: A Constitutional Analysis of Federal Filing Fees*, 107 CORN. L. REV. 593, 601 (2022) (quoting Adkins v. E.I. DuPont de Nemours Co., 335 U.S. 331, 339 (1948)) (explaining that the standard for being awarded IFP status is informal and courts award it to applicants who may lack the ability to provide themselves or their dependents with the basic necessities of life if they had to pay the filing fee).

138. *See* Hammond, *supra* note 137, at 1510–14 (remarking that although federal and state IFP statutes have the same purpose of granting fee waivers to those in financial need, state courts use a variety of different approaches to determine need).

139. *See* Jody L. Sturtz, Comment, *A Prisoner's Privilege to File In Forma Pauperis Proceedings: May It Be Numerically Restricted?*, 1995 DET. C.L. REV. 1349, 1351 (1995) (emphasizing that the constitutional right of access to the courts would be meaningless for financially indigent litigants without solutions like IFP statutes).

140. *See* Julia Colarusso, *Out of Jail . . . but Still Not Free to Litigate—Using Congressional Intent to Interpret 28 U.S.C. Sec. 1915(b)'s Application to Released Prisoners*, 58 AM. U. L. REV. 1533, 1541 (2009) (identifying Congress's realization that IFP laws take away economic deterrents against frivolous lawsuits).

141. 28 U.S.C.A. § 1915(e)(2). The Supreme Court has elaborated that "frivolous" can refer to a claim that is either legally or factually frivolous. *See* Neitzke v. Williams, 490 U.S. 319, 324 (1989) (noting that neither this section nor its legislative history clearly define "frivolous" and stating that it not only encompasses "inarguable legal conclusion[s]" but also "fanciful factual allegation[s]").

Despite this attempt to curtail frivolous or malicious filings by requiring pleadings to meet these standards, litigants have continued to abuse the IFP system with repetitive frivolous claims.[142]

Concerned about the extensive problem of frivolous and vexatious litigation in regards to prisoners in particular, Congress enacted the Prison Litigation Reform Act ("PLRA") in 1996. The PLRA modified § 1915 in two key ways.[143] First, prisoners filing IFP are now required to eventually pay filing fees on a payment plan.[144] Second, Congress added the "three strikes" rule, which bars prisoner litigants from proceeding IFP if, on three or more prior occasions, they brought an action or appeal that was dismissed on the basis of being frivolous, being malicious, or for failing to state a claim.[145] Unless a prisoner qualifies for the "imminent danger of serious physical injury" exception[146] to this rule,

142. *See* Colarusso, *supra* note 140, at 1541; Sturtz, *supra* note 139, at 1361 ("The Federal In Forma Pauperis Statute has unquestionably provided an excellent opportunity for prisoners to file meritless and frivolous lawsuits in federal court against such persons, requiring the expenditure of scarce state funds to defend against these lawsuits, which are rarely found to have merit.").

143. *See* Melissa Benerofe, *Collaterally Attacking the Prison Litigation Reform Act's Application to Meritorious Prisoner Civil Litigation*, 90 Fordham L. Rev. 141, 144 (2021) (recognizing the PLRA as Congress's response to the costly problem of frivolous prisoner suits); Joseph T. Lukens, *The Prison Litigation Reform Act: Three Strikes and You're Out of Court—It May Be Effective, but Is It Constitutional?*, 70 Temp. L. Rev. 471, 494–95 (1997) (explaining that, although prisoner litigants are not alone in their misuse of the IFP system with frivolous claims, they "are among the chief abusers" due to the vast amount of prisoners, their daily relationship with the government, and the boredom that comes with incarceration); Erin Schiller & Jeffrey A. Wertkin, *Frivolous Filings and Vexatious Litigation*, 14 Geo. J. Legal Ethics 909, 917–18 (2001) (highlighting how these two changes in particular impacted frivolous prisoner litigation).

144. *See* John Boston, *The Prison Litigation Reform Act*, *in* A Jailhouse Lawyer's Manual 348, 349 (Columbia Hum. Rts. L. Rev. ed., 2024) (explaining that IFP status is still important to prisoner litigation as it allows an incarcerated individual to file their case before paying the entire fee and comes with other benefits such as U.S. Marshal service of process and waiver of some appeal fees).

145. *See id.* at 357–58 (citing 28 U.S.C. § 1915(g)).

146. *See* B. Patrick Costello Jr., *"Imminent Danger" Within 28 U.S.C. §1915(g) of the Prison Litigation Reform Act: Are Congress and Courts Being Realistic?*, 29 J. Legis. 1, 4–6, 18 (2002) (advocating for Congress to amend the wording of this exception to provide clearer guidance on what constitutes "imminent danger," as neither the statutory text nor legislative history provide adequate guidance). Jonathan Lee Riches quickly learned to successfully navigate around this rule and began to constantly claim he was in imminent danger. *See* Jonathan Lee Riches, Nothing Is Written in Stone: A Jonathan Lee Riches Companion 218–88, 336 (2018) (providing examples of preliminary injunctions filed by Riches in which he claimed to face "imminent danger").

after receiving three strikes, they are no longer allowed to file an action IFP.[147]

Because the PLRA only concerns litigation brought by prisoners, non-prisoner litigants are not subject to these changes. Unlike prisoners, non-prisoners can access the full benefits of the IFP process without ever having to pay filing fees. They are also not subject to the three strikes rule and can file any number of frivolous claims without risking their ability to proceed IFP.[148]

Regardless of the PLRA's attempts to limit usage of IFP status, and thereby limit frivolous filings, many self-represented litigants, and particularly incarcerated individuals, proceed IFP today. In an attempt to quantify this phenomenon, a group of researchers analyzed all cases filed in federal district courts between 2016–2017.[149] Out of 386,700 civil cases filed, 163,000 (roughly 42%) of filers did not have lawyers and prisoners accounted for 106,000 of these cases (approximately 65%).[150] Of these 163,000 *pro se* cases, researchers were able to determine that at least 40% of litigants applied for IFP status.[151] In addition, judges granted IFP petitions for 86% of the non-prisoner applications and 80% of the prisoner applications.[152] Thus, despite Congress's efforts, a substantial number of *pro se* litigants proceed IFP.

* * *

To conclude, the existing data regarding *pro se* litigation reveals patterns that can correlatively be seen in vexatious litigation. These characteristics include low win rates, centralization around a few key legal issues, litigants belonging to unique populations such as the Sovereign Citizen movement or the incarcerated, and frequent usage of the IFP system due to indigency.

147. *See* Boston, *supra* note 144, at 357–58; *see also* Lucien v. DeTella, 141 F.3d 773, 775 (7th Cir. 1998) (clarifying that this new provision never takes away a prisoner's right to be heard solely based on indigency, but it may have this effect when this indigence is combined with a pattern of frivolous litigation).

148. *See* Molly Guptill Manning, *Access Denied: How 28 U.S.C. Sec. 1915(g) Violates the First Amendment Rights of Indigent Prisoners*, 19 SEATTLE J. SOC. JUST. 455, 474–75 (2021) (calling into question this double standard and highlighting examples of non-prisoner IFP litigants being permitted to apply for IFP in dozens of frivolous claims).

149. Judith Resnik et al., *Lawyerless Litigants, Filing Fees, Transaction Costs, and the Federal Courts: Learning from SCALES*, 119 NW. UNIV. L. REV. 109, 134 (2024).

150. *Id.*

151. *See id.* at 134 n.101, 134–35 (clarifying that this 40% number is derived from all IFP applications for which judges made decisions, meaning that potentially many more litigants applied but their cases ended before a judge made decisions regarding their applications).

152. *See id.* at 135–36 (excluding habeas petitions when counting granted prisoner IFP applications because habeas petitioners are only subject to a $5 waivable fee).

III. Laws Addressing Vexatious Litigation

Vexatious litigation is a problem that far predates our country's court systems.[153] Accordingly, lawmakers have long realized the need to deter frivolous and abusive litigation.[154] However, their efforts have been ineffective and uncoordinated, leading to a patchwork of inconsistent rules across jurisdictions.[155] Before discussing potential reforms, it is important to first understand these current measures that courts are authorized to take to punish and curb vexatious litigation.

A. Inherent Authority

Both federal and state courts have inherent authority to ensure that cases are handled quickly and orderly.[156] Inherent authority contrasts from statutory authority in that it is not explicitly derived from written rules of law but instead stems from broad powers granted courts by the Constitution, and ultimately common law English courts that long predate the United States.[157] This inherent "authority includes the ability to fashion an appropriate sanction for conduct which abuses the

153. *See* Wade, *supra* note 53, at 433 ("The problem of frivolous civil litigation has plagued the common law since the court system became mature and, indeed, prior to that time."). One of the earliest recorded accounts of vexatious litigation is the story of a horse trader named Hans Kohlhase. *See* Rowlands, *supra* note 4, at 322–23. Allegedly, a Saxon nobleman stole some of Hans's horses and agreed to return them if Hans would pay for the feed they ate while the nobleman had them, which Hans refused to do. *1540: Hans Kohlhase, Horse Wild*, Executed Today, (March 22, 2019) https://www.executedtoday.com/2019/03/22/1540-hans-kohlhase-horse-wild [https://perma.cc/K4FY-SHY8]. Hans spent years bringing many lawsuits, declaring a feud, and even ignoring Martin Luther's pleas for him to stop seeking revenge. *Id.* Eventually, Hans was executed for his querulous behavior. *See* Rowlands, *supra* note 4, at 323.

154. *See* Edmund R. Manwell, *The Vexatious Litigant*, 54 Calif. L. Rev. 1769, 1772 (1966) ("Attorneys and judges have long sought solutions to the problem of groundless litigation.").

155. *See* Mullen & Lester, *supra* note 51, at 334 (discussing that vexatious litigant laws, such as the first one recorded in Prussia in 1793, have long attempted to curtail abusive litigation but are becoming "increasingly ineffective").

156. *See* Link v. Wabash R. Co., 370 U.S. 626, 629–31 (1962) (clarifying that this power does not arise from statutory law but is inherent and apparent in state court, federal district court, and even U.S. Supreme Court opinions); *see also* Adam Behar, *The Misuse of Inherent Powers When Imposing Sanctions for Discovery Abuse: The Exclusivity of Rule 37*, 9 Cardozo L. Rev. 1779, 1787 (1988) (citation omitted) (explaining that the courts' inherent powers are derived from their duties to uphold the Constitution and laws and is authority that is "reasonably necessary for the administration of justice").

157. *See* J. D. Page & Doug Sigel, *The Inherent and Express Powers of Courts to Sanction*, 31 S. Tex. L. Rev. 43, 46–47 (1990) (describing this authority as "simply the essence of judicial power" and noting its "ancient roots"); Charles M. Yablon, *Inherent Judicial Authority: A Study in Creative Ambiguity*, 43 Cardozo L. Rev. 1035, 1051 (2022) (outlining the origins of inherent authority).

judicial process."[158] Sanctioning power exists to "'protect[] the due and orderly administration of justice'" and to respond to "abusive litigation practices."[159] This inherent authority encompasses a wide variety of sanctions that range from monetary fines to prefiling injunctions.[160] Precedent has clearly established that this inherent power extends to *pro se* litigants.[161] In practical effect, courts rarely utilize this unwritten power of sanctioning and typically only do so in cases that are obviously brought in bad faith to deliberately harass or delay.[162]

B. Statutory Authority

Courts also possess statutory authority to sanction. These statutes illustrate already existent powers and supplement the courts' broader inherent right to sanction, but do not limit or replace it.[163] The two

158. Goodyear Tire & Rubber Co. v. Haeger, 581 U.S. 101, 107 (2017) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 44–45, (1991)); Samuel I. Ferenc, *Clear Rights and Worthy Claimants: Judicial Intervention in Administrative Action Under the All Writs Act*, 118 COLUM. L. REV. 127, 128, 140 (2017) (quoting 28 U.S.C. § 1651) (courts have also interpreted the All Writs Act which "authorizes federal courts to 'issue all writs necessary'" as giving inherent authority for injunctions and relief in vexatious litigant cases).

159. *See* Roadway Express, Inc. v. Piper, 447 U.S. 752, 764, 765 (1980) (citation omitted).

160. *See* Nora Freeman Engstrom, *Retaliatory RICO and the Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 684 (2017) (quoting GREGORY P. JOSEPH, SANCTIONS: THE FEDERAL LAW OF LITIGATION ABUSE § 1(E) (5th ed. 2013)) (describing the court's inherent powers as "staggeringly broad"); Page & Sigel, *supra* note 157, at 48 (listing "monetary penalties, default judgment, and dismissal" as examples of the many types of sanctions authorized by inherent power). For a discussion of how federal courts are split on the standard to use when using inherent powers to issue prefiling injunctions in cases of vexatious litigation, see Samantha Rust, *The Vexatious Litigant Problem*, 62 HOUS. L. REV. 453, 466–71 (2024).

161. *See* Douglas W. Dahl II, *Bad Faith*—Perry v. Gold & Laine, P.C.*: Can Pro Se Litigants Be Sanctioned Under 28 U.S.C. § 1927?*, 29 AM. J. TRIAL ADVOC. 219, 219 (2005) (noting that both inherent powers and Rule 11 clearly authorize sanctioning *pro se* litigants).

162. *See* Neal H. Klausner, *The Dynamics of Rule 11: Preventing Frivolous Litigation by Demanding Professional Responsibility*, 61 N.Y.U. L. REV. 300, 310–11 (1986) (remarking that its rare usage has made this potentially powerful inherent authority ultimately ineffective). This reluctance to use sanctions does not merely stem from the ease of pointing to readily crafted sanctions rather than explaining the somewhat ambiguous concept of inherent authority. *See* Yablon, *supra* note 157, at 1036–42 (marveling on the "frustratingly vague" and "murk[y,]" and yet extensive and powerful, concept of inherent authority). Instead, the Supreme Court has directly advised that when it comes to sanctions, judges should exercise inherent authority "'with great caution'" and only rely on it when "neither the statute nor the Rules" are up to the task." Chambers v. NASCO, Inc., 501 U.S. 32, 43, 50 (1991) (citation omitted).

163. *See* Page & Sigel, *supra* note 157, at 46–47, 51 (explaining that statutory law merely illustrates and supplements this inherent authority courts already possess); *Chambers*, 501 U.S. at 46 (emphasizing that the inherent right is broader and "extends

federal sanction statutes most relevant to vexatious litigation are 28 U.S.C. § 1927 and Rule 11.[164]

1. 28 U.S.C. § 1927

28 U.S.C. § 1927 is the only federal statutory law that specifically mentions vexatious conduct in legal proceedings. It states:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.[165]

This section only authorizes monetary sanctions.[166] Its primary goal is deterrence of, as opposed to punishment for, behavior that intentionally causes needless delay.[167]

Unlike courts' inherent sanction powers, there is considerable debate as to whether this statute extends to *pro se* litigants.[168] There is currently a circuit split among the Federal Courts of Appeals as to whether "other person[s] admitted to conduct cases" includes *pro se*

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to a full range of litigation abuses" and is therefore not displaced by statutory sanctions); Robert B. Tannenbaum, *Misbehaving Attorneys, Angry Judges, and the Need for a Balanced Approach to the Reviewability of Findings of Misconduct*, 75 U. CHI. L. REV. 1857, 1859 (2008) (noting that a judge could even use this inherent power to sanction conduct that could also be sanctioned through statutory rules).

164. *See Sanctions in Civil Litigation (Federal)*, THOMSON REUTERS PRACT. L. LITIGATION, https://next.westlaw.com/Document/I65dfe64ab2f211e598dc8b09b4f043e0/View/FullText.html [https://perma.cc/3VH7-5EHK] (listing 28 U.S.C. 1927, FRCP 11, FRCP 26, and FRCP 37 as the most commonly employed sanctions in federal civil litigation). FRCP 26 and 37 are utilized less frequently in vexatious litigant cases because they are used during the discovery process and frivolous cases typically do not advance this far. *See id.* (summarizing these statutes).

165. 28 U.S.C. § 1927; *see also* Pierce Schultz, *A Game of Telephone: Why § 1927 Should Not Apply to Pro Se Litigants*, 2 CTS. & JUST. L.J. 215, 216 n.10 (2020) (quoting Oliveri v. Thompson, 803 F.2d 1265, 1273 (2d Cir. 1986)) (highlighting that courts only invoked this statute seven times in the first 150 years of its existence but have utilized it much more since Congress amended it in 1980 to include attorney's fees).

166. *See* Henderson, *supra* note 108, at 251 (recognizing that this sanctioning power only extends to fining violators for the cost of delay).

167. *See* Vincent J. Margiotta, *Affirming Firm Sanctions: The Authority to Sanction Law Firms under 28 U.S.C. § 1927*, 86 FORDHAM L. REV. 265, 278 (2017) (quoting Beatrice Foods Co. v. New Eng. Printing & Lithographing Co., 899 F.2d 1171, 1177 (Fed. Cir. 1990)) (describing deterrence as § 1927's "uncontested principal purpose").

168. *See* Jessica A. Winn, *A Firm Law for Sanctions: Taking a Stance on Whether 28 U.S.C. § 1927 Should Apply to Law Firms*, 73 WASH. & LEE L. REV. 2135 (2016) (discussing the controversies concerning to whom this statute applies and advocating for the inclusion of law firms within its scope).

litigants.[169] The Ninth Circuit has held that this language does apply to *pro se* litigants, but the decision did not provide an explanation of the rationale behind this conclusion.[170] Nonetheless, other courts have since agreed with the Ninth Circuit and explained that this interpretation is based on a plain reading of the text. A self-represented claimant seems to fall within a plain reading of "a person admitted to conduct" a case in federal court other than an attorney.[171]

On the other hand, the Second Circuit disagreed with this stance, arguing that the term "admitted" seems to describe someone proceeding "in a lawyer-like capacity" with "lawyer-like credentials."[172] The court additionally supported this idea by citing that the prior version of this statute was phrased as "any attorney, proctor, or other person admitted;" it elaborated that "other person" again implied someone acting in a "lawyer-like capacity."[173] Further, it contended that *pro se* plaintiffs appear by right and do not need to gain the approval of "admittance" that the statute refers to.[174]

Despite the clear conflict between these interpretations of § 1927, the Supreme Court has yet to weigh in on this split.[175]

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169. *See* Kelsey Whitt, *The Split on Sanctioning Pro Se Litigants under 28 U.S.C. § 1927: Choose Wisely When Picking a Side, Eighth Circuit*, 73 Mo. L. Rev. 1365, 1371 (2008) (explaining that, although scholars believe this phrase limits this section's applicability to attorneys, the circuits remain split); *see also* Dahl, *supra* note 161, at 224–25 (citing cases that have decided this issue).

170. *See* Wages v. I.R.S., 915 F.2d 1230, 1235–36 (9th Cir. 1990) (briefly stating that "Section 1927 sanctions may be imposed upon a *pro se* plaintiff").

171. *See, e.g.*, Hamilton v. Collier, 711 F. Supp. 3d 676, 685–86 (S.D. Tex. 2024) (emphasizing that once an IFP *pro se* litigant chooses to represent himself, he makes himself subject to the FRCP, which include this statute); *see also* McCully v. Stephenville Indep. Sch. Dist., No. 4:13-CV-702-A, 2013 WL 6768053, at *2 (N.D. Tex. Dec. 23, 2013) (agreeing with the Ninth Circuit and adding that "[t]o interpret the statute otherwise would be to attribute to Congress serious oversight in their drafting of § 1927 because there is no logical reason why a *pro se* litigant would not be included within the scope of the statute").

172. Sassower v. Field, 973 F.2d 75, 80 (2d Cir. 1992); *see also* Schultz, *supra* note 165, at 224 (2020) (explaining that the *Sassower* court's reasoning is supported by a tool of statutory construction called *ejusdem generis*, which instructs that "catchall phrases" that follow specifics, such as the one at issue in this statute, are limited to the same classes specifically mentioned).

173. *Sassower*, 973 F.2d at 80; *see also* Schultz, *supra* note 165, at 224–25 (giving the historical context of this original statute and explaining that, at its inception in 1813, some states had numerous types of lawyers such as counselors or barristers and that Congress intended "other persons" to be a catch-all term to cover all kinds of attorneys).

174. Sassower, 973 F.2d at 80 (citing Motion Picture Patents Co. v. Steiner, 201 F. 63, 64 (2d Cir. 1912)). Other courts have made the additional argument that this section "must be 'strictly construed' because it is 'penal in nature.'" *See, e.g.*, Meidinger v. Healthcare Indus. Oligopoly, 391 F. App'x 777, 779 (11th Cir. 2010) (quoting Peterson v. BMI Refractories, 124 F.3d 1386, 1396 (11th Cir. 1997)).

175. *See* Dahl, *supra* note 161, at 119 n.3 (noting this silence).

2. Rule 11

In contrast, Rule 11 sanctions are not limited to attorneys and unequivocally apply to *pro se* plaintiffs.[176] At its original inception in 1938, Rule 11 primarily served to stop frivolous litigation by requiring that a pleading had good grounds and was not "interposed for delay."[177] However, historically judges rarely invoked this version of the rule due to its glaring ambiguities regarding when a sanction was warranted and what kinds of sanctions were appropriate.[178] Because of this ineffectiveness and increasing concern over the abuse of the judicial system by frivolous proceedings, Congress made significant amendments to Rule 11 in 1983 that extended its scope to apply to all filings and included much stricter standards in an attempt to give this "paper tiger" teeth.[179] The original Rule 11 merely stated that a certification pleading must have "good grounds." The 1983 version clarified this language with a two-prong requirement. First, filings had to be "well grounded in fact" and "warranted by law," and second, they could not be "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."[180] Moreover, these amendments explicitly identified *pro se* litigants as being subject to these potential sanctions as well.[181]

Congress made its most recent substantive amendment to Rule 11 in 1993, when it instructed that judges are no longer mandated to

176. *See* Nancy Burger-Smith, *Avoiding Sanctions Under Federal Rule 11: A Lawyer's Guide to the "New" Rule*, 15 WM. MITCHELL L. REV. 607, 627 (1989) (remarking on courts' uniform interpretation of the Rule 11 amendments as expanding these sanctions to apply to *pro se* litigants as well); Eric J. R. Nichols, *Preserving Pro Se Representation in an Age of Rule 11 Sanctions*, 67 TEX. L. REV. 351, 356–57 (1988) (noting that courts can now reach *pro se* parties through the amended Rule 11).

177. *See* Melissa Lee Nelken, *Sanctions under Amended Federal Rule 11—Some "Chilling" Problems in the Struggle Between Compensation and Punishment*, 74 GEO. L.J. 1313, 1315 (1986) (describing Rule 11's underlying goals of both ensuring attorney integrity and limiting baseless pleadings).

178. *See* Ward, *supra* note 71, at 1173–74 (describing the shortcomings of Rule 11 in its original form that led to its ineffectiveness).

179. *See* Kimberly A. Stott, *Proposed Amendments to Federal Rule of Civil Procedure 11: New, but Not Necessarily Improved*, 21 FLA. ST. U. L. REV. 111, 117–18 (1993) (listing Rule 11's new three core requirements as (1) certification, (2) reasonable inquiry into both law and facts, and (3) legitimate purpose).

180. *See* Nichols, *supra* note 176, at 355 (quoting FED. R. CIV. P. 11).

181. *See* FED. R. CIV. P. 11 advisory committee's note to 1983 amendment (noting that Rule 11 standards also apply to "unrepresented parties, who are obliged themselves to sign the pleadings"); *see also* Donalda Gillies, *Who's Afraid of the Sanction Wolf: Imposing Sanctions on Pro Se Litigants*, 11 CARDOZO L. REV. 173, 201–02 (1989) (contending that Rule 11 was amended to ensure that parties as well as counsel can be sanctioned).

sanction conduct when warranted but may choose whether to or not.[182] Another important change was the addition of a "safe harbor" period that gives parties twenty-one days to correct a filing before being sanctioned.[183] Additionally, this amendment clarified that judges may impose sanctions *sua sponte* instead of only as a result of a party motion.[184] Courts may also choose from a wide variety of monetary and nonmonetary sanctions.[185]

As a result of these changes, judges now have a vast amount of discretion when enforcing Rule 11 sanctions.[186] This discretion has resulted in remarkably varied usage of the rule.[187] Additionally, most states have their own sanction provisions modeled after the amended Rule 11. Thus, state litigants are also subject to similarly unpredictable disciplinary measures.[188]

C. State Vexatious Litigant Statutes

Some states have decided that broad sanctioning powers are insufficient to deal with the unique and overwhelming problem of

182. *See* William W. Schwarzer, *Rule 11: Entering a New Era*, 28 LOY. L.A. L. REV. 7, 21 (1994) (highlighting this change from mandatory to permissive language in Rule 11(c)).

183. *See* Cynthia A. Leiferman, *The 1993 Rule 11 Amendments: The Transformation of the Venomous Viper into the Toothless Tiger?*, 29 TORT & INS. L.J. 497, 502–03 (1994) (disparaging the safe harbor provision as lowering the risk for litigants submitting improper filings by likening it to allowing a thief to avoid charges by returning items stolen within twenty-one days).

184. *See* Theodore C. Hirt, *A Second Look at Amended Rule 11*, 48 AM. U. L. REV. 1007, 1020–21 (1999) (quoting FED. R. CIV. P. 11 advisory committee's note, *reprinted in* 146 F.R.D. 583, 592 (1993)) (explaining that these *sua sponte* sanctions should only arise "in situations that are akin to a contempt of court").

185. *See* FED. R. CIV. P. 11 advisory committee's note to 1993 amendment ("The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities . . . etc."); *see also* Edward D. Cavanagh, *Mandating Rule 11 Sanctions? Here We Go Again!*, 74 WASH. & LEE L. REV. ONLINE 31, 33–34 (2017) (explaining that the 1993 version of Rule 11 gives courts "broad discretion in determining the appropriate penalties for a Rule 11 transgression" and authorizes both monetary and nonmonetary sanctions).

186. *See* Alan E. Untereiner, *A Uniform Approach to Rule 11 Sanctions*, 97 YALE L.J. 901, 921 (1988) ("Because amended Rule 11 gives the trial judge almost total discretion to determine whom to sanction and what sanction is 'appropriate,' sanctions under the Rule have varied widely.").

187. *See id.* at 911 ("[S]imilarly situated violators could receive different types of sanctions depending upon the presiding judge's preferences.").

188. *See* Byron C. Keeling, *Toward a Balanced Approach to Frivolous Litigation: A Critical Review of Federal Rule 11 and State Sanctions Provisions*, 21 PEPP. L. REV. 1067, 1094 (1994) (stating that almost every state has a parallel version of Rule 11).

vexatious litigation.[189] California, a hotbed of vexatious litigation,[190] was the first to enact a law specifically addressing *pro se* vexatious litigation in 1963.[191] Despite the longstanding and pervasive problem vexatious litigation presents, in the over sixty years since, only eleven more states have developed their own rules or statutes combatting vexatious litigation.[192] Although California's statute exists as a blueprint for other states to follow, these rules share only a few similarities and are incongruous in important respects.[193] The critical component of these statutes is how they determine a litigant to be vexatious.[194] Although California's Vexatious Litigant Law provides a potential template, states have extremely varied approaches to making this determination.[195] These approaches can be categorized into three groups: (1) descriptive methods, (2) numerosity methods, and (3) multi-route methods.

1. Descriptive Methods

Arizona, Ohio, Michigan, and Nevada all descriptively define who is a vexatious litigant by identifying their common qualitative characteristics, as opposed to using quantifiable measures or conditions.[196] Ohio and Michigan both characterize a vexatious

189. *See* Schiller & Wertkin, *supra* note 143, at 931 ("[I]t is clear that states continue to view frivolous litigation as a problem in the courts, and are willing to adopt new and different approaches in an attempt to eliminate frivolous behavior.").

190. *See* Am. Tort Reform Found., Judicial Hellholes 2024-2025: California (2025), https://www.judicialhellholes.org/hellhole/2024-2025/california [https://perma.cc/B3ZV-S4FP] (naming California as one of the nation's top "judicial hellholes" due to extensive lawsuit abuse and serial plaintiffs in particular).

191. *See* Schiller & Wertkin, *supra* note 143, at 920 (highlighting that California implemented our "nation's first vexatious litigant statute").

192. *See* Rebecca Green, *FOIA-Flooded Elections*, 85 Ohio St. L.J. 255, 283 n.162 (2024) (listing the eleven states that followed California's lead).

193. *See* Schiller & Wertkin, *supra* note 143, at 920 (remarking on "the differences among the interpretations and applications of these statutes"); *infra* Appendix A (providing a chart listing the relevant statutes for these states and describing how each state classifies a litigant as vexatious). The lack of uniformity in how different jurisdictions and judges define vexatious behavior contributes to the issue of quantifying the exact extent of this problem. *See* Rawles, *supra* note 6, at 277–80 (acknowledging the lack of data available on vexatious litigation but explaining that anecdotal stories of meritless actions clogging judicial dockets and needlessly expending our judicial resources are anything but scarce).

194. *See* Colby, *supra* note 110, at 1317–18 (christening the criteria for vexatiousness as the "heart and soul" of the Texas Vexatious Litigant Statute).

195. *See* Appendix A (comparing the different ways each state defines "vexatious litigant").

196. *See* Jeanne Frazier Price, *Wagging, Not Barking: Statutory Definitions*, 60 Clev. St. L. Rev. 999, 1010–13 (2013) (explaining that statutes *descriptively* define a term when "they provide examples or synonyms of the word defined" as opposed to *prescriptively* giving a set of conditions to be met); Alvin Stauber, *Litigious Paranoia:*

litigant as a *pro se* claimant who "habitually, persistently, and without reasonable cause engages in vexatious conduct."[197] The Ohio legislature further defines this conduct as behavior "obviously" intended to "harass or maliciously" injure another party and that cannot be supported by good faith or existing law.[198] Michigan adds that a vexatious litigant is someone who "habitually, persistently, and without reasonable cause" engages in conduct such as purposefully causing delay, arguing without a belief that the issue argued has merit, or filing documents "grossly lacking in the requirements of propriety."[199] Similarly, Arizona provides that vexatious litigants are individuals who engage in behavior such as repeatedly filing for harassing purposes, unreasonably causing delay, bringing actions that lack "substantial justification," having previously been sanctioned for abusive conduct, making excessive and repetitive requests for information, or submitting duplicative filings or requests that the court has already ruled on.[200]

Nevada's approach is descriptive as well, but it supplements its pertinent statutes with case law. Nevada has only statutorily defined a vexatious litigant in its wills and estates code.[201] This statute describes such a person as an individual acting *pro se* who files harassing or repetitive documents against someone who is trying to enforce his or her rightful claim to a decedent's estate.[202] Additionally, Nevada courts may "consider" litigants' history of meritless or harassing pleadings, but the statute does not quantitatively define how many prior abusive cases are determinative.[203] Supreme Court Rule 9.5 requires Nevada to maintain a list of vexatious litigants that encompasses every court and jurisdiction.[204] However, this rule does not define the term "vexatious litigant." The Nevada Supreme Court added more clarity to this rule in *Jordan v. State* by describing that qualifying conduct must go beyond "litigiousness" and "must not only be repetitive or abusive, but also

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Confronting and Controlling Abusive Litigation in the United States, the United Kingdom, and Australia, Int'l Rev. Bus. Rsch. Papers 11, 15 (2009) (highlighting that unlike other states such as Florida, Hawaii, Texas, and California, Ohio does not specify any numerical requirement to consider, such as prior cases filed or a time period of past litigation history).

197. Ohio Rev. Code Ann. § 2323.52(A)(3) (West 2025); Mich. Ct. R. 7.216(C)(3) (2025).

198. § 2323.52(A)(2) (West).

199. Mich. Ct. R. 7.216(C)(1) (2025).

200. Ariz. Rev. Stat. Ann. § 12-3201(E)(1) (2016).

201. Nev. Rev. Stat. § 155.165 (2024).

202. *Id.*

203. *Id.*

204. *See* Nev. Sup. Ct. R. 9.5.

be without arguable factual or legal basis, or filed with the intent to harass."[205]

2. Numerosity Methods

Florida and New Hampshire both use "numerosity methods," meaning that they solely use quantifiable records of prior vexatious history to determine whether someone is a vexatious litigant.[206] New Hampshire defines a vexatious litigant as "an individual who has been found by a judge to have filed [three] or more frivolous lawsuits which the judge finds, by clear and convincing evidence, were initiated for the primary purpose of harassment."[207] Unlike other states, New Hampshire does not limit qualifying suits to those within a certain amount of recent years or only within New Hampshire courts and does not explicitly say that these litigants must be proceeding *pro se*.[208] Florida limits the definition of vexatious litigant to those who have conducted five or more civil (non-small claims) *pro se* Florida cases in the prior five years, all of which have been finally determined against them.[209]

3. Multi-Route Method

The remaining six states with vexatious litigant laws, California, Hawaii, Idaho, North Dakota, Texas, and Utah, create three to five distinct definitions of the term "vexatious litigant."[210] These states all include a numerical history of prior, unsuccessful *pro se* litigation as one route to designating a litigant as vexatious. However, they differ in assessing this history, ranging from considering only the prior three years to up to seven years of litigant activity and varying between three and five cases as the minimum threshold.[211] Additionally, all six states include a *pro se* petitioner continuing to relitigate the same claims, facts, or issues that have already been determined as another possible means to meet the standard for vexatiousness.[212] All of these

205. *See* Marshal S. Willick, *Vexatious Litigants: The Evolution of What to Do about Them*, Nev. Law., Mar. 2022 (citing Jordan v. State, 100 P.3d 30 (Nev. 2005)) (describing the four factors that the *Jordan* opinion created for Nevada courts to use in determining whether to limit a vexatious litigant's access to the court).

206. *See* Carroll, *supra* note 109, at 236 (dubbing the assessment of a vexatious litigant's pattern of vexatious behavior as the "numerosity method"); Fla. Stat. § 68.093 (2025); N.H. Rev. Stat. Ann. § 507:15-a (2024).

207. § 507:15-a.

208. *Id.*

209. § 68.093.

210. *See* Appendix A.

211. *Id.*

212. *Id.*

states but Utah provide that a litigant can be deemed vexatious based on the claimant already being declared to be vexatious in another state or federal court.[213] Additionally, each of these states except Texas allow for judges to qualitatively define vexatious litigants, permitting someone to earn this title based on frivolous or delaying tactics in any single suit.[214] California adds that a *pro se* plaintiff suing in disregard of a restraining order can be designated as vexatious, and Utah also provides that vexatious litigants can include individuals who purport to use powers of a court that is not authorized by the United States or a foreign nation which the United States recognizes.[215]

4. Steps Courts Can Take

Most of these twelve states prescribe two primary steps a court can take *sua sponte* or upon motion of a party once a litigant has been declared vexatious.[216] First, a court can issue a prefiling order which requires vexatious litigants to obtain leave before filing new litigation in the state.[217] Second, courts can require vexatious litigants to furnish security to cover defendants' costs before continuing with litigation or when bringing new suits.[218] Further, nine of these states publish lists of vexatious litigants on their courts' websites.[219]

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213. *Id.* California, Hawaii, Idaho, and Texas qualify this by adding that the other jurisdictions' determinations must have been based on the same or similar claims. *Id.* North Dakota also allows its courts to use declarations of vexatiousness in disciplinary proceedings. N.D. SUP. CT. ADMIN. R. 58.

214. *See* Appendix A.

215. CAL. CIV. PROC. CODE § 391(b)(5) (West 2023); UTAH R. CIV. P. 83(a)(1)(D).

216. *See* Miller, *supra* note 77, at § 2 (highlighting these two routes as the primary remedies state vexatious litigant statutes provide). While most states provide these two measures, others give judges more discretion, such as Utah also including a catch-all phrase that allows judges to "take any other action reasonably necessary to curb the vexatious litigant's abusive conduct." UTAH R. CIV. P. 83(b)(6).

217. *See* Schiller & Wertkin, *supra* note 143, at 922 ("If such an order is issued, the litigant must obtain leave from the presiding judge in the instant litigation before filing any additional claims.").

218. *See id.* at 921 (explaining that, through this process, if a plaintiff is unable to post security, the case will be dismissed, but if the litigation continues and the defendant wins, the defendant will receive a court-determined amount of this security).

219. *List of Vexatious Litigants*, ARIZ. JUD. BRANCH, https://www.azcourts.gov/Vexatious-Litigants/List-of-Vexatious-Litigants [https://perma.cc/MB96-G2BZ]; *Vexatious Litigant List*, JUD. COUNCIL OF CAL. https://www4.courts.ca.gov/12272.htm [https://perma.cc/Y4BE-B3YS]; *Clerk's Office*, FLA. SUP. CT., https://supremecourt.flcourts.gov/the-court/clerk [https://perma.cc/2DCU-J7UD]; *Alphabetical List of "Vexatious Litigants,"* HAW. STATE JUDICIARY, https://www.courts.state.hi.us/wp-content/uploads/2024/10/Vexatious-Litigant-Index-and-Alpha-Combined-Vacate-Melanie-Saure-aka-Hadassah-Vas-ADA.pdf [https://perma.cc/H75X-PMP3]; *Roster of Idaho's Vexatious Litigants*, STATE IDAHO JUD. BRANCH SUP. CT., https://isc.idaho.gov/main/vexatious-litigants [https://perma.cc/Z6AG-FLVQ]; *Vexatious Litigant List*,

IV. Suggestions for Reform

As a reminder, by no means does this Article advocate for an eradication of the *pro se* plaintiff's right to be heard.[220] Instead, all of the reforms proposed below only seek to declare litigants to be vexatious when they demonstrate a *pattern* of filing frivolous or abusive claims, which should in turn lead to less nonvexatious litigants being misappropriately designated as vexatious.[221] Our federal and state civil procedure rules governing dismissal already adequately deal with one-time petitioners who fail to state a coherent claim.[222] Further, under the systems proposed, a vexatious litigant is not precluded from bringing legitimate claims but instead is subject to court-screening processes requiring them to seek leave to proceed or post security.[223]

A. General Sanction Powers Are Not Enough

As discussed above, the only federal statutory sanction that *may* relate to this issue is § 1927.[224] Problematically, however, it remains unclear whether this statute addresses *pro se* litigants at all due to the aforementioned circuit split.[225] Thus, this statute rarely functions to curtail vexatious litigation, as many circuit courts avoid using this

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Sup. Ct. Nev., https://nvcourts.gov/aoc/administration/judicial_council/vexatious_litigant_list [https://perma.cc/G5BP-SGKN]; *Roster of Vexatious Litigants*, Off. State Ct. Adm'r, https://www.ndcourts.gov/legal-resources/rules/ndsupctadminr/58 [https://perma.cc/7ACU-TUJP]; *Vexatious Litigators Under R.C. 2323.52*, Sup. Ct. Oh & Oh Jud. Sys., https://www.supremecourt.ohio.gov/opinions-cases/office/vexatious-litigators-local/ [https://perma.cc/S7W8-HMDS]; *Vexatious Litigators Under S.Ct. Prac.R. 4.03*, Sup. Ct. Oh & Oh Jud. Sys. https://www.supremecourt.ohio.gov/opinions-cases/office/vexatious-litigators-supreme-court/ [https://perma.cc/MDW6-39Q3]; *List of Vexatious Litigants Subject to a Prefiling Order*, *supra* note 75.

220. *See* Munger, *supra* note 115, at 1851 ("Nonetheless, we must not lose sight of the goals and values of an equality-based justice system. . . . If claims that describe bizarre, fantastic-seeming, or patently ridiculous allegations are to be thrown out of court, it must be for the right reasons.").

221. *See* Kerry Franich, *Extracting the Thorn from Your Client's Side: Pro Per Litigants and the California Vexatious Litigant Statutes*, Orange Cnty. Law., Nov. 2008, at 38, 41 (explaining how laws such as the California Vexatious Litigant Statute "are not designed to combat every lawsuit that contains an obvious defect"); Wood, supra note 114, at 140 (reminding that courts must take care to differentiate between the vexatious and the "inept").

222. *See* Suja A. Thomas, *Frivolous Cases*, 59 DePaul L. Rev. 633, 635–36 (2010) (describing how courts can eliminate frivolous cases through summary judgment or dismissal).

223. *See* Mayer v. Bristow, 740 N.E.2d 656, 666 (Ohio 2000) (clarifying that the Ohio Vexatious Litigant Statute is "designed to prevent vexatious litigators from gaining direct and unfettered access" to the courts but does not "preclude vexatious litigators from proceeding forward on their legitimate claims").

224. *See supra* Section III.B.1.

225. *See supra* notes 168–75 and accompanying text.

statute as they have no interest in weighing in on this split.[226] Given that it has declined to do so for the thirty-four years that this split has existed, the Supreme Court weighing in on this issue has become an increasingly unlikely outcome.

Revitalizing the use of inherent sanction power under § 1927 or Rule 11 should not be the focus of vexatious litigant law reform. As exemplified in Rule 11, whether and what sanctions are awarded is a widely discretionary determination, and unfortunately often comes down to individual judges' preferences instead of a standardized application of law.[227] To illustrate this quandary, one research study gave 300 federal judges ten hypothetical cases to evaluate what sanctions were appropriate.[228] Concerningly, the judges were almost evenly divided on whether to award sanctions at all for six of these ten cases.[229]

Moreover, general sanctioning power fails to effectuate the three primary purposes of sanctions—to punish, to compensate, and to deter—when it comes to vexatious litigants.[230] As to punishment, rules regarding *pro se* litigants must be carefully crafted to not only prevent abuse of the judicial system, but also the reverse: abuse *by* the judicial system. General sanctioning power often falls short of this necessary punitive balance on both sides. On the one hand, imposing sanctions is an unpopular task, and judges can often be reluctant to do so.[231] Legislators have also shown an aversion to punishment, as evidenced by actions such as the 1993 revision of Rule 11, which allows those

226. *See, e.g.*, Alexander v. United States, 121 F.3d 312, 316 (7th Cir. 1997) (deciding to seek authority other than § 1927 to protect itself from a vexatious litigant "rather than choose sides unnecessarily" in the circuit split); Inst. for Motivational Living, Inc. v. Doulos Inst. for Strategic Consulting, Inc., 110 F. App'x 283, 287 (3d Cir. 2004) (declining to resolve this issue); Meidinger v. Healthcare Indus. Oligopoly, 391 F. App'x 777, 780 (11th Cir. 2010) (making the assumption that the statute could in theory apply to *pro se* litigants in determining abuse of discretion but declining to decide the issue).

227. *See supra* notes 186–88 and accompanying text (emphasizing how discretionary courts' Rule 11 powers are).

228. *See* Deborah L. Rhode, *Frivolous Litigation and Civil Justice Reform: Miscasting the Problem, Recasting the Solution*, 54 DUKE L.J. 447, 450 (2004) (citing SAUL M. KASSIN, AN EMPIRICAL STUDY OF RULE 11 SANCTIONS 11–15 (1985)).

229. *Id.*

230. *See* Keeling, *supra* note 188, at 1135 ("The federal and state courts have at various times identified three main purposes for sanctions awards and, especially, fee awards: (1) deterring frivolous filings, (2) punishing lawyers and litigants who pursue frivolous filings, and (3) compensating the victims of frivolous filings.").

231. *See* Virginia Kendall, *When Judges Impose Sanctions*, 46 LITIGATION 5, 6 (2020) (finding that nearly all of the judges interviewed for this piece expressed a "distaste" for sanctions and that attorneys are frustrated with the lack of sanctions imposed).

deserving of sanctions twenty-one days to remedy their filings.[232] Moreover, unlike attorneys, *pro se* litigants do not face the threat of state bar action or loss of professional licensure, so judges have fewer effective means of punishment at their disposal.[233] On the other hand, thinly-veiled prejudice that judges often have when it comes to self-represented parties makes widely discretionary disciplinary rules like Rule 11 dangerous when it comes to applying them to *pro se* litigants.[234] Impartiality can be increasingly difficult when self-represented claimants, and abusive and vexatious litigants in particular, shift their attacks towards judges themselves.[235] Likewise, despite courts affording *pro se* petitioners leniency when admitting their initial complaints, judges may not always extend this leniency when addressing the same filings for possible sanctions.[236] Accordingly, when using general sanction powers, judges often fail to effectuate the goal of punishment or overzealously pursue it when dealing with vexatious litigants.

Regarding the goal of compensating victims, as can be surmised by the number of applicants who are awarded IFP status, many *pro se* litigants are "judgement-proof" due to their inability to actually pay monetary sanctions imposed against them.[237] Further, Rule 11, which

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232. *See* Schiller & Wertkin, *supra* note 143, at 911 (highlighting how adding in a safe harbor period particularly evinces deterrence being prioritized over punishment).

233. *See* Nichols, *supra* note 176 at 370 (emphasizing that the stakes are often much higher for attorneys, so sanctions are less effective at deterring *pro se* litigants from abusive behavior).

234. *See* Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 Lewis & Clark L. Rev. 439, 448–49 (2009) (commenting on judges' propensity to view self-represented litigants as "crazies" or "weirdos" seeking to fulfill personal vendettas); *see also* Levy, *supra* note 9, at 1820 (citing David Lat, *The Backstory Behind Judge Richard Posner's Retirement*, Above the Law (Sept 7, 2017), https://abovethelaw.com/2017/09/the-backstory-behind-judge-richard-posners-retirement/ [http://perma.cc/AW74-5TQ6]) (recounting famed 7th Circuit Judge Richard Posner's abrupt resignation due to his beliefs that other 7th Circuit judges were treating *pro se* plaintiffs unfairly, did not like them, and "didn't 'want to do anything with them'").

235. *See* Robert J. Pushaw Jr., *The Inherent Powers of Federal Courts and the Structural Constitution*, 86 Iowa L. Rev. 735, 765 (2001) (describing the difficulty "even the best-tempered judges" can experience in maintaining impartiality as one of the reasons judges often arbitrarily exercise sanctioning power); *see also* Richard M. Zileinski, *Vexatious Litigation: A Vexing Problem*, Boston Bar Assoc. (Sept. 12, 2012), https://bostonbar.org/journal/vexatious-litigation-a-vexing-problem [https://perma.cc/8SLD-JPA] (remarking how often vexatious litigants shift their vitriol towards judges, court personnel, and attorneys involved in their cases).

236. *See* Gillies, *supra* note 181, at 222–24 (exposing the inconsistency of assuming a litigant to be ignorant of the law when admitting pleadings yet later sanctioning him for it, but distinguishing this situation from consistent filers who have more knowledge than the average *pro se* litigant and have already been warned).

237. *See* Fla. Sen., Senate Staff Analysis and Economic Statement, CS/SB 154, at 1 (1999), https://www.flsenate.gov/Session/Bill/2000/154/Analyses/20000154SJU_SB0154.ju. [https://perma.cc/E5XS-G3D5] (explaining the necessity of this bill because

is employed much more frequently than § 1927, heavily prioritizes deterrence as its primary objective above all others.[238] This intention is evidenced by subsection (c)(4) of Rule 11 requiring monetary sanctions to be limited to what is necessary to deter bad conduct from repeating, but not necessarily requiring compensation for all expenses that resulted from the improper conduct.[239] Thus, not only are vexatious litigants often unable to pay monetary sanctions, but judges are specifically instructed to prioritize deterrence over compensation, meaning that vexatious litigants' victims typically are left without adequate compensation.

As to deterrence, in the vexatious litigant context, it is the most important of these three objectives because without effective prefiling injunctions, litigants are free to continue their paper assault.[240] Given the relentless nature of these vexatious litigants, wide judicial discretion in deciding *what* sanctions to award means that judges can merely impose monetary fees as opposed to prefiling injunctions that actually stop a vexatious litigant from continuing to file more suits by necessitating court-permission or security.[241] Further, these monetary sanctions often fail to further the goal of deterrence because, unlike lawyers, self-represented individuals are often unaware that sanctions are a potential consequence of their actions due to their lack of knowledge about the law.[242] Additionally, as discussed above, many vexatious litigants are judgment-proof, meaning that the potential of receiving a fine they have no ability to pay would be unlikely to impact their decision to bring suit.

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sanctions are "mostly ineffective" in their deterrence goals regarding *pro se* litigants due to them being "collection proof").

238. *See* Jeremy D. Spector, *Awarding Attorney's Fees to Pro Se Litigants under Rule 11*, 95 MICH. L. REV. 2308, 2311–12 (1997) (listing punishment and compensation as secondary goals and reiterating that both Rule 11's drafters and the Supreme Court have consistently stressed deterrence as its primary purpose).

239. *See* Peter Montecuollo, *Making the Best of an Imperfect World: An Argument in Favor of Judicial Discretion to Reduce Sec. 1927 Sanction Awards*, 62 U. KAN. L. REV. 223, 234 (2013) (citing FED. R. CIV. P. 11(c)(4)) (inferring that this limitation means that Rule 11 allows for merely partial payment of damages that arise from bad conduct so long as it still suffices to be painful enough to incentivize an end to bad behavior).

240. *See* Manwell, *supra* note 154, at 1774, 1791 (recognizing injunctive sanctions as the most effective at protecting courts and defendants from plaintiffs "continu[ing] to file claims forever" if they only face monetary repercussions); *see also In re* Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984) (defending the reasonability of widespread prefiling injunctions as courts "need not wait until a vexatious litigant inundates each federal district court with meritless actions to condition access to that court upon a demonstration of good faith").

241. *See* Colby, *supra* note 110, at 1304 (praising the Texas Vexatious Litigator statute for "provid[ing] courts and attorneys with a procedure to deter any actions of an abusive plaintiff *before* his lawsuit is filed").

242. *See* Gillies, *supra* note 181, at 226.

However, where these sanctions fall the shortest in effectuating deterrence is in their limited scope. As the Florida legislature recognized in creating their statutory system specifically addressing vexatious litigation, *pro se* litigants who are merely sanctioned from filing in one court can simply move on to the next.[243] This principle is exemplified in Riches's story, as he accomplished his astounding feat of filing thousands of lawsuits in both state and federal courts by playing the role of a bully finding a new playground every time he faced a sanction or order.[244] This shortcoming is also why Charlotte was so unsatisfied with her "happy ending" of a judge using discretionary powers to issue an order stopping her abusive ex-husband from filing cases in one particular family court: She justifiably feared he would just move to another court given the lack of statutory vexatious litigant laws in Connecticut.[245] A uniform system where the state or federal government has access to information regarding which claimants have a pattern of litigation abuse and a standard method for responding to it is the only just manner in which to truly curtail the vexatious litigant.[246] Otherwise, all that a sanctioned vexatious litigant must do to continue their abusive pursuits is to find a new venue.

B. Widespread Adoption of Uniform Vexatious Litigant Statutes

Accordingly, the time has come for the federal government and the states to adopt uniform vexatious litigant laws.[247] Most states that have already enacted such laws have correctly understood that a judge should respond to vexatious litigation by issuing a prefiling injunction.[248] Specifically, this injunction should require a litigant to either obtain

243. *See* Neveils, *supra* note 49, at 352.
244. *See supra* notes 83–85 and accompanying text.
245. *See supra* notes 39–40 and accompanying text.
246. *See* Leslie Lee, *Giving Disabled Testers Access to Federal Courts: Why Standing Doctrine Is Not the Right Solution to Abusive ADA Litigation*, 19 VA. J. SOC. POL'Y & L. 319, 357–58 (2011) (explaining that forum shopping and the limitations of general sanctioning power demand that vexatious litigation standards be modified to "be more widespread" and that a "centralized system for identifying and tracking vexatious litigants is necessary"); L. Paul Hudgins, *Vexatious and Frivolous Lawsuits: Attorney Sanctions in Michigan*, 8 T. M. COOLEY L. REV. 657, 678 (1991) (contending that amendments to existing vexatious litigation statutes that promote "uniformity in application and enforcement" are the only way to limit vexatious litigation and promote deterrence).
247. *See In re* Martin-Trigona, 737 F.2d 1254, 1262 (2d Cir. 1984) (emphasizing that federal courts have "an obligation to protect and preserve the sound and orderly administration of justice throughout that system" when upholding a prefiling order against a vexatious litigant that applied to all federal district courts).
248. *See supra* Section III.B.4.

court permission or post security before continuing an action or filing a new claim in the state.[249]

The more controversial and fundamental question to be resolved is how each jurisdiction should define the term "vexatious litigant."[250] The Texas Vexatious Litigant Statute provides the most workable model to use in devising a uniform definition, as it provides three methods for courts to determine a *pro se* litigant to be vexatious: numerosity, relitigation, and previous determination.[251] This statute does not provide a descriptive method.

To understand the merits of this three-definition approach, it is important to first highlight why states should abandon descriptive definitions, which many states employ and four solely use.[252] The descriptive approach too widely opens the door to judge discretion.[253] Under a descriptive definition of who constitutes a vexatious litigant, a claimant can be branded as vexatious for abusive or meritless behavior in merely *one* legal action, which compromises the goal of combatting *serial* abuses of the legal system.[254] As discussed above, judges typically order prefiling injunctions when a claim rises to the statutory definition of vexatious litigation. Prefiling injunctions are "an extreme remedy, and should be used only in exigent circumstances."[255] This necessitates that the courts exercise caution when naming an individual as a vexatious

249. *Id.*

250. *See supra* Sections III.B.1–3 (comparing the approaches states employ in defining a vexatious litigant).

251. *See* Carroll, *supra* note 109, at 236 (naming these three methods). Statutes based on the Texas Vexatious Litigant Statute are also likely to withstand contentions that they violate *pro se* litigants' constitutional rights to due process, as California's Vexatious Litigant Statute, which is constructed more broadly, has withstood such challenges. *See* Neveils, *supra* note 49, at 360–63 (citing Taliaferro v. Hoogs, 46 Cal. Rptr. 147 (Dist. Ct. App. 1965)) (predicting that the Florida Vexatious Litigant Statute's relatively narrow definition of who qualifies as a vexatious litigant will result in less constitutional criticisms given that California courts have upheld the California Vexatious Litigant Statute as constitutionally valid).

252. *See supra* Section III.B.

253. *See* Price, *supra* note 196, at 1011–12, 1011 n.51 (instructing that statutory descriptive definitions create "fuzzy" categories that do not use clear boundaries and therefore make it more difficult to determine when less prototypical examples fall within a definition).

254. *See, e.g.*, Farley v. Farley, No. 02AP-1046, 2003 WL 21405558, at *9 (Ohio Ct. App. June 19, 2003) (noting that the Ohio Vexatious Litigant Statute, which uses the descriptive approach to defining vexatious litigant, clearly indicates that a single action can be enough for a court to determine a litigant vexatious).

255. *See In re* Oliver, 682 F.2d 443, 445–46 (3d Cir. 1982) (quoting Hardwick v. Brinson, 523 F.2d 798, 800 (5th Cir. 1975)) (contrasting the extremity of prefiling injunctions with the reminder that no one has the right "to abuse the judicial process").

litigant and use precise definitions instead of hazy descriptors.[256] While taking away qualitative definitions may seem to be widening the door for abuse instead of closing it, in actuality, judges may be more likely to apply laws that are systematic and do not call for an individual judge's determination on what constitutes "abusive" behavior.[257]

1. Numerosity Method

Instead, the numerosity method gives judges a clear standard for deciding when a litigant's behavior is truly vexatious instead of just personally aggravating. Texas's numerosity method allows a court to find a *pro se* plaintiff vexatious if they have conducted (in courts other than small claims court) at least five self-represented lawsuits in the prior seven years that "have been (A) finally determined adversely to the plaintiff; (B) permitted to remain pending at least two years without having been brought to trial or hearing; or (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure."[258]

The wording of Texas's numerosity approach boasts several key advantages. First, Texas correctly allows all civil actions (other than those heard in small claims courts) to be considered in assessing a vexatious litigant's history of litigation.[259] Texas does not attempt to limit cases that can be counted to actions heard in Texas courts but instead explicitly considers claims brought in any state or federal court.[260] By expanding the cases that can be counted to include ones in all jurisdictions, courts can immediately enjoin court-hopping vexatious litigants such as Jonathan Lee Riches by not having to wait until they

256. *See id.* at 445 (quoting Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980), *cert. denied*, 449 U.S. 829 (1980)) ("The First Circuit, in affirming the imposition of a proscription against a litigious plaintiff, emphasized that such injunctions should 'remain very much the exception to the general rule of free access to the courts,' and that 'the use of such measures against a *pro se* plaintiff should be approached with particular caution.'"); Gerard J. Kennedy, *The Federal Courts' Advantage in Civil Procedure*, 102 Canadian Bar Rev. 75, 98 (2024) (highlighting the need for care when labeling a litigant as vexatious because petitioners' behavior rising to the level of vexatious is a rarity instead of a normality).

257. *See* Rawles, *supra* note 6, at 301 (diagnosing one pitfall of the California Vexatious Litigant Statute as judges' reluctance to employ it due to its "perceived severity"); Schiller & Wertkin, *supra* note 143, at 928 (describing California courts' hesitance to utilize the California Vexatious Litigant Statute given that judges have found it to be too harsh).

258. Tex. Civ. Prac. & Rem. Code Ann. § 11.054(1) (West 2013).

259. *Id.* (counting all cases heard in "courts other than small claims court").

260. *See id.* § 11.001(2) (West) (defining litigation).

file five cases within their own jurisdiction.[261] Likewise, it does not carve out specific issues from being counted, unlike Florida's exclusion of family law, which seems patently unwise due to the overwhelming potential for abuse in family court.[262]

Texas's law also differs from some other vexatious litigant statutes by not mandating that a claim reach the final judgment phase before it can be counted. Allowing courts to include cases that remain pending[263] is rooted in a court's inherent authority to dismiss actions where litigants lack due diligence in continuing their claims.[264] A court including these cases in the scope of its analysis can help stop plaintiffs such as Sovereign Citizens who strategically delay proceedings as long as possible.[265] Additionally, counting actions that have been dismissed as frivolous or groundless provides a much more accurate picture of a petitioner's filing history, as many truly vexatious litigants' pleadings lack the substance to be heard on the merits.[266]

2. Relitigation Method

Texas's second definition of a vexatious litigant is a plaintiff who, after their litigation has been finally determined against them,

> repeatedly relitigates or attempts to relitigate, *pro se*, either: (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or (B) the cause of action,

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261. *See supra* notes 83–85, 243–44 and accompanying text; Rawles, *supra* note 6, at 302 (describing how some vexatious litigants "forum shop" by simply bringing the same claim again in a new jurisdiction after losing a case).

262. *See* Harper, *supra* note 43, at 7 (expressing concern over the Florida Vexatious Litigant Statute's omission of family law from numerosity determinations due to the documented effects of "secondary victimization" that domestic abuse victims experience in family court and the high percentage of unrepresented litigants in these courts); FLA. WORKGROUP ON SANCTIONS FOR VEXATIOUS & SHAM LITIG., FINAL REPORT AND RECOMMENDATIONS 32 (2022), https://www-media.floridabar.org/uploads/2022/08/Report-of-the-Workgroup-on-Sanctions-for-Vexatious-and-Sham-Litigation-1.pdf [https://perma.cc/GED5-ZJ7E] (recommending that the Florida Vexatious Litigant Statute no longer exclude family law cases).

263. *See* Appendix A (including information on which states do not include pending cases within their definitions of qualifying actions).

264. *See* Colby, *supra* note 110, at 1325.

265. *See supra* note 125 and accompanying text (explaining how Sovereign Citizens purposefully delay proceedings).

266. *See* Victor D. Quintanilla et al., *The Signaling Effect of* Pro Se *Status*, 42 L. & SOC. INQUIRY 1091, 1094 (2017) (highlighting that studies show "*pro se* parties are three times more likely to have their cases dismissed on the pleadings"); *see also* FLA. WORKGROUP ON SANCTIONS FOR VEXATIOUS & SHAM LITIG., *supra* note 262, at 31 (recommending again that Florida follow the lead of states such as Texas and expand the definition of action to include all cases "adversely determined" instead of only those that reach final judgment).

> claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.[267]

This definition targets claimants who attempt to repeatedly relitigate the same claims against the same people. This method allows a court to protect victims like Charlotte, who face litigation not from an individual who sues everyone and anyone in their path, but instead from one who ceaselessly targets a particular individual.[268] Attorneys and judges can identify vexatious litigants faster using this approach than with the numerosity method because it does not require a laborious search of an individual's litigation history in multiple jurisdictions, but instead only a recounting of one defendant's encounters with that person.[269]

Interestingly, this language, which mirrors the California Vexatious Litigant Statute, does not numerically define how many attempts of relitigation satisfy this requirement. Instead it merely uses the word "repeatedly."[270] Considering that the California legislature purposefully chose not to numerically define this requirement, unlike the numerosity method, California courts have interpreted "repeatedly" as "referring to a past pattern or practice on the part of the litigant that carries the risk of repetition in the case at hand."[271] Given the relative ease of assessing a single defendant's experience with a vexatious litigant, allowing more judicial discretion for this definition to determine whether the offending party is likely to harass the defendant again makes sense, particularly due to the need to protect victims of domestic violence from litigation

267. Tex. Civ. Prac. & Rem. Code Ann. § 11.054(2) (West 2013).

268. *See supra* notes 29–33 and accompanying text.

269. *See* Colby, *supra* note 110, at 1329 (remarking on this approach's efficiency because a defendant's dialogue with the court can replace a search for five or more qualifying lawsuits); Carroll, *supra* note 109, at 237 (noting that this requirement is both more easily satisfied and allows an attorney to know immediately if she should contend that her client is facing vexatious litigation). *Pro se* plaintiffs are particularly prone to using the tactic of repetitively litigating against the same party. *See* Manwell, *supra* note 154, at 1788 n.98 (explaining that self-represented individuals use this tactic more than represented litigants due to both a lack of knowledge of legal principles and their intentions to harass the other party).

270. *See* Cal. Civ. Proc. Code § 391(b) (West 2023); Holcomb v. U.S. Bank Nat'l Ass'n, 29 Cal. Rptr. 3d 578, 585 (Ct. App. 2005) ("Unlike section 391, subdivision (b)(1), which employs specific numerical benchmarks, such as 'five cases,' 'seven years,' and 'two years,' the Legislature chose to employ the term 'repeatedly' in subdivision (b)(2).").

271. *Holcomb*, 29 Cal. Rptr. 3d at 585 (ascribing meaning to the legislature's lack of specificity with this adverb).

abuse. Additionally, given the prolific nature of vexatious litigants, this determination is often not a difficult one for a judge to make.[272]

3. Previous Determination Method

The third and final approach the Texas Vexatious Litigation Statute offers to determine which individuals are vexatious evaluates whether "the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence."[273] This method is similar to the numerosity approach, in that it allows a court to look to vexatious history in other jurisdictions, but is even more streamlined, as a court or attorney does not have to sift through a litigant's entire history and can simply rely on another jurisdiction naming an individual vexatious.[274] Accordingly, it offers greater efficiency for the courts and readier aid for victimized defendants.

However, given the landscape of vexatious litigant law, I propose that this approach could be improved in two key ways. First, I contend that the phrase "by a state or federal court in an action or proceeding" should be modified to instead say "by a state or federal court which defines vexatious litigant in a substantially similar manner to either of the two definitions given in Section 11.054(1) or 11.054(2)."[275] As discussed above, other states' approaches to defining vexatious litigants, particularly those that use qualitative approaches, could result in parties being unfairly named vexatious.[276] Through adopting any state or federal court's determination, Texas is accepting their methodology of determining vexatiousness; by narrowing this definition to only encompass compatible definitions of who qualifies as a vexatious litigant, this issue can be avoided.

Second, I recommend that the phrase "based on the same or substantially similar facts, transition, or occurrence" be omitted.[277] As exemplified by Jonathan Lee Riches, who sued everyone from Larry King for being a "Voodoo witch doctor" who stole his identity to Barry

272. *See* Morton v. Wagner, 67 Cal. Rptr. 3d 818, 825 (Ct. App. 2007), *modified on denial of reh'g* (Dec. 7, 2007) ("While there is no bright-line rule as to what constitutes 'repeatedly,' most cases affirming the vexatious litigant designation involve situations where litigants have filed dozens of motions either during the pendency of an action or relating to the same judgment.").

273. Tex. Civ. Prac. & Rem. Code Ann. § 11.054(3) (West 2013).

274. *See* Carroll, *supra* note 109, at 237 (highlighting the ease of this method for attorneys).

275. § 11.054(3) (West).

276. *See supra* notes 252–57 and accompanying text.

277. § 11.054(3) (West).

Bonds for selling steroids to nuns and cracking the Liberty Bell with a bat, vexatious litigants can be extremely creative.[278] By restricting acceptance of prior determinations to actions that mirror past suits, courts can take longer to identify the more creative vexatious litigants.[279] Courts should be able to adopt another jurisdiction's determination of vexatiousness so long as that jurisdiction used a substantially similar approach in making their decision, even if the subject matter of the prior litigation is completely unrelated to the lawsuit at hand.

C. Implementing More Vexatious Litigant Lists

In addition to clearly defining the term "vexatious litigant," each state and the federal government should maintain a centralized list of vexatious litigants like the nine states that already do so.[280] This is perhaps the most important step to ensuring that these petitioners do not merely file in a new court when thwarted by one court.[281] Without these lists, courts have much more difficulty in applying the previous-determination method. Instead of having to scour countless court records, judges and attorneys could quickly identify vexatious litigants using centralized lists.[282] This not only promotes judicial efficiency, but also allows courts to limit the amount of devastation or harassment defendants experience by being able to look up in these online databases vexatious litigants who have attempted to continue their harassment in a new jurisdiction in a few mere moments.[283]

D. Expansion of the PLRA

While clearly defined vexatious litigant statutes and maintained registries would profoundly improve the landscape of *pro se* litigation,

278. *See* RICHES, *supra* note 146, at 44, 55 (anthologizing Riches's most memorable suits).

279. Using this standard can also lead to unnecessary ambiguity and open the door to appeals. For example, some Texas courts have confusingly held that whether proceedings are substantially similar "is determined by the *gist* of the vexatious litigation." *See* Connor v. Hooks, No. 03-19-00198-CV, 2021 WL 833971, at *6 (Tex. App. Mar. 5, 2021) (emphasis added) (quoting Newby v. Quarterman, No. 09-08-00385-CV, 2009 WL 3763790, at *6 (Tex. App. Nov. 12, 2009).

280. *See supra* note 219 and accompanying text.

281. *See* Willick, *supra* note 205, at 17 (lauding Nevada's vexatious litigant list for ensuring "that such litigants can't run from jurisdiction to jurisdiction or court to court still wreaking havoc").

282. *See* Coffey, *supra* note 98, at 5–6 (noting that states who maintain these lists facilitate judges and attorneys being able to quickly recognize vexatious litigants).

283. *See* David Seth Morrison, *Code Harassment Needs a Texas-Sized Solution*, 8 TEX. A&M J. PROP. L. 141, 175 (2022) (remarking upon the ease Texas judges enjoy in stopping legal harassment at its inception via the simple procedure of looking up a litigant on Texas's public vexatious litigant list).

another statutory remedy is also necessary. Congress (and likewise the states who have adopted similar statutes) needs to reform the PLRA to temper improper use of IFP status.[284] Although both non-prisoner and prisoner *pro se* litigants can benefit from the IFP process through § 1915, the PLRA's "three strike rule," which curtails abuses of IFP litigation, only applies to incarcerated litigants.[285] This is a significant shortcoming, given both the many non-prisoner litigants who abuse IFP status and the speculation that Congress made this decision out of hostility towards incarcerated individuals, rather than out of sympathy for congested courts.[286] The PLRA has significantly reduced vexatious litigation by prisoners and subjecting all indigent *pro se* litigants' pleadings to the same "three strike rule" has the potential to similarly curb non-prisoner vexatious filings.[287] Further, scholars have argued that the rule's seemingly arbitrary selective application to prisoners makes the PLRA unconstitutional.[288] By simply expanding it to also apply to non-prisoners, Congress can use the PLRA to further the rightful goal of deterring all kinds of frivolous litigation and put an end to speculation that it is utilized to further improper purposes.[289]

284. *See* Mueller, *supra* note 8, at 142–43 (1984) (contending that § 1915 "fosters vexatious litigation" and observing that some courts have accordingly interpreted their IFP statutes in various ways to limit abuses of this status).

285. *See supra* notes 145–47 and accompanying text.

286. *See* Manning, *supra* note 148, at 472–79 (highlighting the flaws of the three strikes rule by giving examples of "legions" of non-prisoners who have been able to file many frivolous actions IFP); Julie M. Riewe, *The Least Among Us: Unconstitutional Changes in Prisoner Litigation Under the Prison Litigation Reform Act of 1995*, 47 DUKE L.J. 117, 142–43 (1997) (agreeing with several federal judges that the PLRA's lack of legislative history points towards an improper discriminatory purpose).

287. *See* Beatrice C. Hancock, *Three Strikes and You're Still In: Interpreting the Three-Strike Provision of the Prison Litigation Reform Act in the Eleventh Circuit*, 68 MERCER L. REV. 1161, 1163–64 (2017) (remarking on the PLRA's successful contributions to unclogging federal courts by highlighting that the number of pending prisoner lawsuits was reduced by over 200,000 within a year of the PLRA's enactment); Resnik et al., *supra* note 149, at 135–36 (reporting that out of the 57,000 *pro se* civil cases filed in federal courts approximately 30% of plaintiffs successfully proceeded IFP).

288. *See*, *e.g.*, Riewe, *supra* note 286, at 138–43 ("There is no rational explanation for Congress' failure to apply the filing fee provision of the PLRA to nonincarcerated indigents seeking to proceed [IFP], as they, like indigent prisoners, have no financial deterrent to filing frivolous claims."); Joshua D. Franklin, *Three Strikes and You're Out of Constitutional Rights—The Prison Litigation Reform Act's Three Strikes Provision and Its Effect on Indigents*, 71 U. COLO. L. REV. 191, 202 (2000) (contending that § 1915(g) is not narrowly tailored because it exclusively targets prisoner litigants).

289. *See* Franklin, *supra* note 288, at 194 (criticizing the three strikes provision as "underinclusive in that it attempts to curb frivolous lawsuits by unjustifiably targeting only indigent prisoners").

E. Non-Statutory Reform Suggestions

While the legislature holds the most power to reform vexatious litigant processes, courts and the legal profession as a whole have opportunities to provide supplemental assistance.

1. Template Orders

Part of why vexatious litigation takes such a toll on the court system is because, when naming a claimant as vexatious, judges must expend significant time to craft orders imposing the requisite sanctions.[290] Florida judges recognized that developing a template for judges to use in drafting these orders would not only speed up the process, but also promote consistency and thereby make it more likely that these orders are upheld if appealed.[291] Accordingly, the Florida courts now use template orders both for directing a party to show cause as to why they are not a vexatious litigant and for finding a party to be vexatious and imposing appropriate sanctions.[292] These orders help the court quickly communicate to a litigant why they are being vexatious and require judges to cite to specific cases or rulings when using the numerosity or previous determination methods.[293] Thus, following Florida's lead in making vexatious litigant proceedings more streamlined provides jurisdictions with a non-legislative solution to promote judicial efficiency and fair treatment of *pro se* parties through standardization.[294]

290. *See* Fla. Workgroup on Sanctions for Vexatious & Sham Litig., *supra* note 262, at 24 (surveying judges who reported that drafting these orders and conducting hearings exhausts substantial judicial labor).

291. *Id.*; Memorandum from Chief Justice Carlos G. Muniz, Sup. Ct. of Fla., to Chief Judges of the Trial Courts at 1, 2 (July 18, 2023) (available at https://www-media.floridabar.org/uploads/2023/12/Vexatious-Litigation-Course-Materials.pdf [https://perma.cc/QU8B-26GP]).

292. *See* Memorandum from Chief Justice Carlos G. Muniz, *supra* note 291, at 2.

293. *See id.* at 8–11 (instructing a judge to name prior cases or rulings that contributed to the current finding of vexatiousness).

294. State and federal governments could also consider creating *pro se* specialty courts to promote efficient and routine handling of these cases, similar to courts that some states have already created for issues such as divorce, domestic abuse, and landlord-tenant issues. *See* Justin C. Van Orsdol, *Crying Wolves, Paper Tigers, and Busy Beavers—Oh My!: A New Approach to Pro Se Prisoner Litigation*, 75 Ark. L. Rev. 607, 655–58 (2022) (suggesting this solution for *pro se* prisoner litigation in particular).

2. Education

Moreover, judges, attorneys, and lawmakers should be better educated on the topic of vexatious litigation.[295] In particular, we need to ensure that the legal field is aware of the advances made in understanding the mental health issues and psychological conditions linked to vexatious litigation.[296] Given that a significant proportion of vexatious litigants struggle with mental health, it is vital for courts and legislatures to be equipped with knowledge that they can take into consideration when developing laws and processes for curtailing vexatious litigation.[297] Further, vexatious litigants suffering from conditions such as querulous paranoia often have recognizable symptoms that are evident in their speech, behavior, and filings which can help educated judges recognize signs of vexatious litigation sooner.[298] Utilizing an increased understanding of the potential psychological behaviors of vexatious litigants and the consequences they personally suffer due to their actions can better help us to not only protect their numerous victims and speed up processes for courts, but also to stop the devastating harm they do to themselves before it is irrecoverable.[299]

Similarly, education about unique and large subgroups of vexatious litigants is also critical.[300] Domestic violence is frequently linked to vexatious litigation, and our legal system has historically been undertrained on this topic, resulting in discoverable instances of abuse

295. *See* Ward, *supra* note 48, at 457 (finding through a survey that domestic abuse survivors and judges "rarely demonstrated that they recognized abusive litigation when it was occurring in their courtrooms," but in situations where they did identify it, victims' outcomes improved).

296. *See supra* notes 102–05 and accompanying text.

297. *See* Didi Herman, *Hopeless Cases: Race, Racism and the Vexatious Litigant*, 8 INT'L J.L. CONTEXT 27, 33 (2012) (finding in vexatious litigation research that 7.5% of the 190 individuals studied had "documented histories of mental health problems"). An awareness of mental health issues that often are the root cause of vexatious litigation can allow courts and legislatures to consider creative solutions, such as implementing court-mandated mental health assessments and treatment plans, into vexatious litigant management procedures. *See* Coffey et al., *supra* note 78, at 70 (suggesting the transfer of these criminal law practices to the vexatious litigant context).

298. *See* Caplan & Bloom, *supra* note 51, at 431–32, 434–35 (listing examples of "red flags" that can help identify vexatious litigants).

299. *See id.* at 459 (criticizing current responses to vexatious litigation as based in antiquated thinking and laws that do not account for advances in psychiatry, and expressing hope that courts utilize these advances and more actively work to stop vexatious litigation).

300. *See* Harper, *supra* note 43, at 152–53 (recommending this training and education regarding vexatious litigators generally as well as regarding specific subgroups such as Sovereign Citizens).

going undetected.[301] Likewise, courts that are trained to spot patterns in the practices of Sovereign Citizens can more successfully identify these litigants and end their abusive litigation sooner, particularly given Sovereign Citizens' tendency to use repetitive language and shared ideas that are easily recognizable.[302]

Conclusion

Vexatious litigation is not a new issue—it has plagued court systems for centuries.[303] It is also not a phenomenon that is going away anytime soon, but rather one that is becoming increasingly easier to participate in as society advances. With the dawn of the internet, smartphones, and generative artificial intelligence, obsessive litigants now have unlimited information at their fingertips to pursue their grievances.[304] The newfound ease of electronic filing and convenient transportation systems have also made forum shopping and quickly spreading a wide geographical net of lawsuits much more attainable.

In combatting this established problem, this Article does not advocate for legislatures to give courts radically new powers. Instead, in the midst of the many individualized and arbitrary measures courts currently use, it calls for a uniform standard that judges can use to sanction plaintiffs in a consistent and predictable manner.[305] In the law's current state, the most persistent of plaintiffs are almost impossible to stop, as they take advantage of the glaring lack of systems in place to track them and of jurisdictions that have not adopted clear processes to identify them and halt their harassment.

The urgency of this issue is too often mistakenly downplayed by the singular focus on how it affects judicial efficiency.[306] While the

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301. *See* Ward, *supra* note 48, at 462–63 (discussing the need for this training and how it should be easily linked to vexatious litigation education); Fitch & Easteal, *supra* note 32, at 114 (stressing the importance of better educating lawyers and judges on domestic violence in the context of vexatious litigation given victims' tendency to not disclose abuse but that asking the right questions can expose it).

302. *See* Bryan, *supra* note 125, at 260–61 (discussing the success experts on the Sovereign Citizen Movement have seen through training police and judges to quickly identify Sovereign Citizens).

303. *See supra* notes 154–55 and accompanying text.

304. *See* Caplan & Bloom, *supra* note 51, at 458 (warning that unprecedented advances in technology widen the door to vexatious litigation).

305. *See* Neveils, *supra* note 49, at 356 (explaining that the Florida Vexatious Litigant Statute is not novel, but instead "simply codifies the sanctions that the courts have already been using haphazardly").

306. *See, e.g.*, Rust, *supra* note 161, at 456–62 (repeatedly drawing attention to the problem vexatious litigation creates for congested courts but, by merely mentioning

clogging of court systems obviously matters, it is important not to lose sight of the countless individuals affected by the ripple effect of vexatious litigation. Innocent defendants are robbed of their money, dignity, time, child custody, and even personal safety.[307] Plaintiffs with legitimate claims suffer further harm while waiting for their cases to be heard in congested courts, losing their businesses, homes, and negotiating power.[308] Mentally unwell vexatious litigants squander their own livelihoods in chasing their quixotic pursuits in front of judges who are not trained to recognize symptoms of mental illness and can let bias impact how they use their remarkably discretionary sanctioning power.[309] Reformation of vexatious litigation law has the potential to help restore our courts to places of justice for these individuals, as opposed to weapons of destruction in the hands of unrestrained abusive litigants.

costs to defendants, only scratching the surface of considering how it affects other stakeholders).

307. *See supra* Section I.A.

308. *See supra* Section I.B.

309. *See supra* Section I.C; notes 227–31, 297–302 and accompanying text; *see also* Swank, *supra* note 116, at 1548–49 (finding that how vexatious litigators themselves are affected is overlooked due to a narrow focus on the burden they place on courts).

APPENDIX A: STATE VEXATIOUS LITIGANT LAW DEFINITIONS OF "VEXATIOUS LITIGANT"

State	Statute	Definition of Vexatious Litigant
Arizona	Ariz. Rev. Stat. Ann. § 12-3201	"A *pro se* litigant is a vexatious litigant if the court finds the *pro se* litigant engaged in . . . (a) Repeated filing of court actions solely or primarily for the purpose of harassment. (b) Unreasonably expanding or delaying court proceedings. (c) Court actions brought or defended without substantial justification. (d) Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the *pro se* litigant. (e) A pattern of making unreasonable, repetitive and excessive requests for information. (f) Repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation."
California	Cal. Civ. Proc. Code § 391	A "vexatious litigant" is a person who: (1) In the prior seven years has brought in courts other than small claims courts at least five *pro se* lawsuits "that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing."

		(2) After a suit has been finally decided, continues to repeatedly relitigate *pro se* "either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined." (3) In any *pro se* suit, continues to engage in frivolous tactics that cause delay. (4) "Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." (5) Continues to commence lawsuits in disregard of a restraining order.
Florida	Fla. Stat. § 68.093	A person who has in the past five years conducted five *pro se* civil cases (excluding small claims) that have been finally determined against them.

Hawaii	Haw. Rev. Stat. Ann. § 634J-1 to -7	A "vexatious litigant" is a person who: (1) In the prior seven years has brought in courts other than small claims courts at least five *pro se* lawsuits "that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." (2) After a suit has been finally decided, continues to repeatedly relitigate *pro se* "either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined." (3) In any *pro se* suit, continues to engage in frivolous tactics that cause delay. (4) "Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence."

Idaho	Idaho Admin. R. 59	A "vexatious litigant" is a person who: (1) In the prior seven years has brought in courts other than small claims courts at least five *pro se* lawsuits "that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing." (2) After a suit has been finally decided, continues to repeatedly relitigate *pro se* "either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined." (3) In any *pro se* suit, continues to engage in frivolous tactics that cause delay. (4) "Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence."

Michigan	Mich. Ct. R. 7.216 Mich. Ct. R. 7.316	A vexatious litigant is a person who "habitually, persistently, and without reasonable cause" files a case that is vexatious because: (a) "the matter was filed for purposes of hindrance or delay or is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court."
Nevada	N.H. Rev. Stat. Ann. § 507:15-a	A vexatious litigant is a person "found by a judge to have filed 3 or more frivolous lawsuits which the judge finds, by clear and convincing evidence, were initiated for the primary purpose of harassment."
North Dakota	N.D. Sup. Ct. Admin. R. 58.	A "vexatious litigant" is a person who: (1) In the prior seven years has brought in courts other than small claims courts at least five *pro se* lawsuits "that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing."

		(2) After a suit has been finally decided, continues to repeatedly relitigate *pro se* "either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined." (3) In any *pro se* suit, continues to engage in frivolous tactics that cause delay. (4) "Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence." (5) Has been declared vexatious in a disciplinary proceeding.
Ohio	Ohio Rev. Code Ann. § 2323.52	A vexatious litigant is any person proceeding *pro se* "who has habitually, persistently, and without reasonable grounds" and engages in conduct that "obviously serves merely to harass or maliciously injure another party" or is not warranted by existing law or supported by good faith.

Texas	Tex. Civ. Prac. & Rem. Code Ann. § 11.001 –11.054	"A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:" (1) In the prior seven years, the plaintiff has conducted in courts other than small claims at least five *pro se* lawsuits that have been determined against them, allowed to remain pending for at least two years without going to trial or hearing, or determined to be frivolous or groundless; (2) After a suit had been finally decided, the plaintiff continued to repeatedly relitigate *pro se* "either (A) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (B) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined; or" (3) The plaintiff "has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence."

Utah	Utah R. Civ. P. 83	A "vexatious litigant" is *pro se* individual who: (1) In the prior seven years has conducted at least five claims in courts other than small claims courts and does not have at least two suits finally determined in his or her favor. (2) After a suit has been finally decided, "two or more additional times relitigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined." (3) In any *pro se* suit, continues to engage in frivolous tactics that cause delay. (4) Purports to use the power of a court that is not authorized by the U.S. government or its authority or by a foreign nation recognized by the U.S.