A Half Century Post Title VII: Still Seeking Pathways for Women to Organizational Leadership

Cindy A. Schipani
Stephen M. Ross School of Business
University of Michigan

Terry Morehead Dworkin
Indiana University

Aarti Ramaswami
ESSEC Business School

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A Half Century Post Title VII:
Still Seeking Pathways for Women to Organizational Leadership+

By

Terry Morehead Dworkin,* Aarti Ramaswami,** Cindy A. Schipani***

Perhaps the most important of the many 50thanniversaries marked in 2014 is the passage of Title VII of the Civil Rights Act of 1964 (Title VII).1 Title VII greatly broadened the ability of individuals to gain and keep employment by barring discrimination based on race, color, religion, sex, or national origin.2 Although much progress has been made, there is still much to be done. This is especially true in terms of gender discrimination. The anniversary is a good time to take stock, see what has been accomplished, and consider next steps, particularly with regard to overcoming discrimination against the advancement of working women with children.

Part I of this manuscript briefly reviews the effectiveness of Title VII and examines judicial interpretations of the statute as well as additional legislation and regulations adopted to further its implementation. Part II follows with an analysis of our empirical study addressing whether and for which gender cultural similarity with leaders in their organization is related to obtaining and benefiting from mentors and networks. Specifically we examine whether cultural similarity with leaders deflects the negative stereotypes associated with women being married or having dependents. Proposals for reform follow in Part III.

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* Wentworth Professor of Business Law, emerita, Indiana University and Scholar in Residence, Seattle University School of Law.
** Associate Professor, Management, ESSEC Business School, France.
*** Merwin H. Waterman Collegiate Professor of Business Administration and Professor of Business Law, Stephen M. Ross School of Business, University of Michigan. The authors would like to thank Alina Charniauxskaya and Danielle Vera, J.D. Candidates, University of Michigan Law School and Joseph Campbell, J.D. 2014, University of Michigan Law School for helpful research assistance.
1 42 U.S.C. § 2000(e) (1964) (West 2014). This anniversary was preceded 10 years earlier by the 50th anniversary of Brown v. Board of Educ., 347 U.S. 483 (1954), which overruled the separate but equal doctrine and enabled equal access to education. The two main pillars for a decent life in the U.S. were seen to be an education and a job. Brown enabled the former and ten years later, Title VII was seen as enabling the latter. Other 50th anniversaries in 2014 include the beginning of the free speech movement at UC Berkeley, and the Beatles appearance on the Ed Sullivan Show.
I. Title VII: Effectiveness

Title VII’s protection for women from employment discrimination had a significant impact on opportunities and results for women. In 1963, women comprised 38 percent of the workforce. Married women comprised less than a third of the workforce in 1960. Even fewer women with children were employed. Perhaps more importantly, women were effectively excluded from most well-paid, more powerful, and often more interesting occupations prior to 1964. Figures from the last few years show a radically changed landscape. For example, in 2012, 58 percent of the workforce was comprised of women, a 53 percent increase from 1963. Furthermore, the labor force of working mothers has grown by 30 percent, from 54.4 percent in 1962 to 70.5 percent in 2012. There is, however, a significant and stubborn area where women still face significant barriers – top leadership positions. This is most starkly shown in regard to women with children.

A. Women in the Workforce: The Data

Although there are obvious successes, gender discrimination and the glass ceiling are still firmly in place. This can be seen in areas such as the number of discrimination suits being brought, the lack of women in top leadership positions, and pay disparities. For example, in 2013, 46 percent of women said they had faced gender discrimination in the workplace. Furthermore, things are not getting better; the figures are little-changed from a survey in 1997 and only slightly improved from 2000. In 2012, a record number of Title VII sex discrimination cases were filed. Of course, some industries are worse than others. Women do worse in male-dominated, higher-paid professions. The technology industry has recently come under attack for its “boorish” behavior toward women, the lack of women, and the lack of

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3 Of course, cultural and social changes such as the Women’s Movement also had an impact. See e.g., Robert C. Bird, More Than a Congressional Joke: A Fresh Look at the Legislative History of Sex Discrimination of the 1964 Civil Rights Act, 3 WM. & MARY J. WOMEN & L. 137, 146-50 (1997).
7 The main occupations were nursing, teaching, and secretary. Id.
8 U.S. DEP’T OF LABOR, supra note 5.
9 Id.
10 The EEOC defines sex discrimination as treating someone unfavorably based on the person’s sex, but can include treating someone unfavorably based on his or her connection with an organization or group that is generally associated with people of a certain sex. Additionally, sex discrimination also includes gender identity discrimination, usually against the transgendered. EQUAL EMP’T OPPORTUNITY COMM’N, Sex-Based Discrimination, http://www.eeoc.gov/laws/types/sex.cfm (last visited February 14, 2015).
11 The poll was based on 1,000 nationwide phone interviews (300 of which were by cell phone). Colleen McCain Nelson, Poll: Most Women See Bias in the Workplace, WALL ST. J., Apr. 12, 2013, at A4.
12 Id.
funding for women.\textsuperscript{16} Similar complaints are made about the financial sector where less than 20 percent of executives and directors are female, and no women lead the 20 largest securities firms and banks.\textsuperscript{17} An examination of the legal profession also shows significant disparities. Although women make up 45.4 percent of associates in the nation’s major law firms,\textsuperscript{18} they make up only 17 percent of equity partners at the 200 largest law firms.\textsuperscript{19} Female partners also can command less for their work.\textsuperscript{20} Only 14 percent of senior executives at Fortune 500 companies are women, and this percentage has remained unchanged for a decade.\textsuperscript{21} Political leadership shows similar disparities: fewer than 100 women are in Congress,\textsuperscript{22} and under 30 percent of all legislators are female.\textsuperscript{23}

This lack of female leadership is not a problem of supply. By 2014, 88 percent of women had completed high school or more,\textsuperscript{24} and by 2013, 37 percent had completed four years of college.\textsuperscript{25} Indeed, more women than men have received a graduate education.\textsuperscript{26} Eleven percent of women age 25-34 had two or more years of graduate school compared to eight percent of men.\textsuperscript{27}

\begin{footnotes}
\item[15] This issue was recently brought into sharp focus when the CEO of Microsoft, speaking at a meeting celebrating and advocating for women in computing, stated that women should just trust in the system and do not need to ask for raises; good karma will take care of them. This incident occurred despite the fact that there had been recent publicity about pay gaps in the industry. \textit{E.g.}, Nick Wingfield, \textit{Microsoft Chief Sets Off a Furor On Women’s Pay}, N.Y. Times, Oct. 10, 2014, at B1, 7; Janet I. Yu, \textit{More Women Hired at Microsoft}, SEATTLE TIMES, Oct. 4, 2014, at A8; \textit{Where Are the Women? --- Behind Gender Imbalance at Startups}, WALL ST. J., Oct. 10, 2013, at B6 (noting that Twitter lacked any women on its board and this percentage has remained unchanged for a decade.\textsuperscript{\textparagraph{21}} Political leadership shows similar disparities: fewer than 100 women are in Congress,\textsuperscript{\textparagraph{22}} and under 30 percent of all legislators are female.\textsuperscript{\textparagraph{23}}
\item[16] Of the private companies that received venture capital funding during 1997-2011, only 1.3 percent had a female founder and 6.5 percent had a female CEO. Ovide, \textit{supra} note 14.
\item[22] U.S. DEP’T OF LABOR, \textit{supra} note 21; Terry Morehead Dworkin, Aarti Ramaswami & Cindy A. Schipani, \textit{The Role of Networks, Mentors and the Law in Overcoming Barriers to Organizational Leadership for Women with Children}, 20 MICHA. J. GENDER & L. 83, 84 (2013).
\item[27] Id.
\end{footnotes}
Pay disparities tell a similar story. Women with bachelor’s degrees made $931 weekly to the men’s median of $1,246. 28 Those with Master’s degrees were paid $1,122 to men’s $1,545 weekly median salary. 29 Those with professional degrees received $1,413 to men’s $1,578. Overall, in 2013 women’s median weekly salary was $706 to men’s $860. 30 The earnings ratio of women to men in the U.S. is 80.9 percent. 31 Furthermore, the percentage of wage and salary workers with earnings at or below the prevailing federal minimum wage is almost double for women as compared to men. 32 Women with children have even greater disparity. The “motherhood wage penalty” is as much as five percent per child, and motherhood is a significant risk factor for poverty. 33 Since women are now the primary or co-primary wage earners in almost two-thirds of families, such disparities have a broad impact on children as well. 34 The disparity persists even though women accounted for 51 percent of all those employed in management, professional, or related occupations. 35 In 2011, 24.2 percent of CEOs were women but a large number of them were in small, self-started businesses. 36

The cited statistics help show that the employment playing field is still not level. This is true despite the expansion and enhancement of Title VII over the fifty years since its passage, in furtherance of parity.

29 Id.
30 Id. (noting that women with Doctoral degrees had a median weekly salary of $1,413 compared to their male counterparts’ $1,778).
31 U.S. DEP’T OF LABOR, supra note 21, at Table 1.
32 U.S. BUREAU OF LABOR STATISTICS, supra note 28 at 58 (showing weekly median salary data based on 2012 annual averages).
33 U.S. DEP’T OF LABOR, supra note 21, at Table 3.
34 See Julie Manning Magid, Cloaking: Public Policy and Pregnancy 2 (October 2014) (unpublished manuscript) (on file with authors) (citing Professor Stephen Barnard).
35 Id.
36 These statistics are from 2011. The disparities are worse when race is included. Asian and white women are more likely to work in higher paying management, professional, or related occupations than Black or Hispanic women. Magid, supra note 34.
37 See Magid, supra note 34. Even when women owned businesses, they had a more difficult time getting financing and their sales were lower than those of male-owned businesses. Their businesses were also generally smaller. U.S. DEP’T OF COMMERCE, ECON. AND STATISTICS ADMIN WOMEN-OWNED BUSINESSES IN THE 21ST CENTURY 16-20 , (2010), available at http://www.esa.doc.gov/Reports/women-owned-businesses-21st-century. A number of studies have suggested that women-owners of small businesses are denied loans at a higher rate and receive a higher interest rate on loans they receive. See, e.g., Elizabeth Asiedu, James A. Freeman, & Akwasi Nti-Addae, Access to Credit by Small Businesses: How Relevant Are Race, Ethnicity, and Gender? 102 AM. ECON. REV. 3, 532, 533 (2012) (reporting that in 2002, white, female small-business owners had a denial rate of 16 percent compared to white males’ 8.8 percent; and white females’ average interest rate was 6.091 percent compared to 5.677 percent for white males).
B. Expansion of the Coverage of Title VII

1. Protecting Racial Minorities

Title VII has been interpreted and reinterpreted to expand its coverage, contributing significantly to improvements in female employment. The first expansions involved race discrimination cases, with cases centering on women following several years later. Perhaps the most significant interpretation of Title VII was the reasoning of the Supreme Court in the landmark case of \textit{Griggs v. Duke Power Company}, which recognized the theory of disparate impact. When passed, most thought that Title VII only prohibited intentional discrimination. In \textit{Griggs}, the Court greatly expanded the reach of Title VII with adoption of the theory of disparate impact. In doing so, the Court acknowledged that Title VII was not achieving its intended purpose of leveling the playing field to give all people a fair chance at attaining a decent job. The Court noted that in Title VII, Congress required the removal of “artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate . . . on the basis of impermissible classifications.” Further, the Court stated that “absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as ‘built-in head winds’” on protected groups.

Under this theory, showing that a facially-neutral rule or policy produced a relevant numerical disparity for a protected group shifted the burden of proof to the employer to prove that the selection device producing the disparity was both job-related and necessary. Shifting burdens of proof have been an important part of Title VII and the presumptions they allow have worked in favor of protected groups claiming discrimination. For example, height and weight requirements that were routinely used pre-Griggs to select for positions such as firefighters, police officers, and physical therapists, and which kept most women (and some minorities) out of those jobs, could not be used unless the employer could show they were job-related and necessary; most could not.

The EEOC’s Uniform Guidelines on Employee Selection Criteria, establish a method to identify whether there is adverse impact necessary for a disparate impact ruling. Under this


\footnotesize{39} 401 U.S. 424 (1971).

\footnotesize{40} \textit{Id.} at 431.

\footnotesize{41} \textit{Id.} at 432.

\footnotesize{42} Over time, the courts have become more sophisticated about statistical analysis, and showing the required numerical disparity has become more difficult. See, e.g., \textit{Watson v. Ft. Worth Bank & Trust}, 487 U.S. 997 (1988); \textit{Conn. v. Teal}, 457 U.S. 440 (1982).


\footnotesize{44} See, e.g., \textit{Dothard v. Rawlinson}, 433 U.S. 321 (1977); \textit{EEOC v. Dial Corp.}, 469 F.3d 735 (8th Cir. 2006). In \textit{Dial}, the employer’s use of a strength test was found to be in violation of Title VII because only 15 percent of women were hired after its implementation compared to the 49 percent prior to its use. This represented nearly ten standard deviations, a number much greater than the two or three standard deviations found to be statistically significant in prior cases. The EEOC rejected the employer’s defense that the test was designed to reduce injuries. It found that the test was considerably more difficult than the job required.

method, adverse impact exists if members of a protected class are selected at a rate less than 80 percent of that of another group.\textsuperscript{46} This rule has been criticized by the courts, which more often find an adverse impact in situations where the difference between the number of members of the protected class selected and the number that would be anticipated in a random selection is more than two or three standard deviations.\textsuperscript{47} The defendant can then rebut the prima facie case by showing that the scored test is consistent with business necessity and job specific by showing that it is “validated.”\textsuperscript{48} Even when the employer has proven that the selection procedure is job-related and consistent with business necessity, plaintiff may demonstrate that there is a less discriminatory alternative available.\textsuperscript{49}

Another important step with regard to disparate impact was taken in the case of \textit{Watson v. Fort Worth Bank & Trust}.\textsuperscript{50} In \textit{Watson}, a bank teller who was a black woman was passed over many times for a promotion. The employer showed that in each instance subjective, discretionary criteria were used to select someone else. In prior cases, only objective criteria that applied to all but that had a disproportionate adverse impact were the basis for a challenge.\textsuperscript{51} In this case, the Supreme Court held that even subjective criteria that had a disproportionate impact could prove disparate impact. In doing so, the Court acknowledged that without so holding, the \textit{Griggs}/disparate impact theory could be avoided by using both subjective and objective selection criteria.\textsuperscript{52} Thus, allowing proof of discriminatory effect through subjective means, the burden of proof shifted back to the employer to justify the legitimacy of its subjective criteria.\textsuperscript{53}

Congress reaffirmed the importance of disparate impact when it passed the Civil Rights Act of 1991. Eighteen years after \textit{Griggs}, a more politically conservative Supreme Court, in \textit{Wards Cove Packing Co. v. Antonio}, shifted the burden of proof back to the employee to show that the employer’s job selection means were not job related, thereby significantly undermining a major part of Title VII.\textsuperscript{54} Congress reacted by passing the Civil Rights Act of 1991 which codified disparate impact and its burden of proof, restoring it to its pre-\textit{Wards Cove} status, and enabling discrimination cases in other ways.\textsuperscript{55}

\textsuperscript{46} \textit{Id. at} § 4(D).
\textsuperscript{47} \textsc{Barbara Lindemann & Paul Grossman}, \textsc{Employment Discrimination} \textsc{Law}, 90-1 (Paul W. Cane, Jr. et al., eds., 3d ed. 1996). When analyzing unscored objective criteria, the Uniform Guidelines have generally found educational requirements that have a disparate impact unlawful. The higher the professional requirements, the lower the burden on the employer to show job-relatedness. \textit{See, e.g.}, \textit{Griggs v. Anderson}, 796 F.2d 1009, 123 (8th Cir. 1986) (holding that a college degree in psychology is a valid requirement for a counseling position); \textit{Aguilera v. Cook Cnty Police & Corr. Merit Bd}, 760 F.2d 844, 848 (7th Cir. 1985), \textit{cert. denied}, 474 U.S. 907 (1985) (requiring a high school diploma for police officers and corrections officers is valid).
\textsuperscript{51} \textit{Id. at} 988.
\textsuperscript{52} “We are persuaded that our decisions in \textit{Griggs} and succeeding cases could largely be nullified if disparate impact analysis were applied only to standardized selection practices.” \textit{Id. at} 989.
\textsuperscript{53} It is not sufficient, however, to just prove numerical disparity. \textit{See} 42 U.S.C.A § 2000e-2 (West 2014).
The most radical interpretation of Title VII took place with regard to affirmative action, where the Court cited the “spirit” of the 1964 Civil Rights Act rather than its language prohibiting discrimination.56 Nine years after the Court’s affirmative action decision regarding blacks, the Court, in United Steelworkers of America AFL-CIO v. Weber, recognized that women were also entitled to the benefits of affirmative action.57 In this case, a county transportation department followed a voluntarily-adopted affirmative action plan and promoted a woman over a man who had scored slightly higher on the exam taken for promotion. The plan, adopted to promote minorities and women into jobs in which they were underrepresented, considered being female a plus factor. This was approved in situations where there was a manifest imbalance. The Court noted that no jobs were set aside for women and no men were automatically excluded.58

The general affirmative action interpretation has gradually been narrowed over time – primarily through the requirement of ever better statistical evidence in combination with a heightened showing of necessity when the case involves government selection through preference for a protected category.59 Additionally, several states have passed legislation prohibiting affirmative action in the public sector.60 In the latest Supreme Court case involving affirmative action, Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by any Means Necessary (BAMN),61 the Court effectively upheld a Michigan constitutional amendment prohibiting affirmative action in employment, education, and contracting, by finding that there was no authority in the U.S. Constitution allowing judges to set aside such amendments. Despite the narrowing of its use, affirmative action, particularly in the private employment sector, is still allowed.

56 United Steelworkers AFL-CIO v. Weber, 443 U.S. 193 (1979) (“It would be ironic indeed if a law triggered by a Nation’s concern over centuries of racial injustice and intended to improve the lot of those who had ‘been excluded from the American Dream for so long,’ constituted the first legislative prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation and hierarchy.”) (quoting 110 Cong. Rec. 6552 (1964) (remarks of Sen. Humphrey)). The Court upheld a voluntarily-adopted affirmative action plan in private employment that was challenged under Title VII. Weber was decided the year after Regents of the Univ. of Cal. v. Baake, 438 U.S. 265 (1978), in which the Court upheld affirmative action in selection for admission to a public medical school through an analysis of the Equal Protection clause.


61 134 S. Ct. 1623 (2014). In a lengthy dissent, Justice Sotomayor argued that the Court’s precedents do not permit political restructurings that create separate processes for racial minorities and everyone else.
2. Expanding Protection for Women

Because sex as a protected category was added at the last minute in an attempt to kill the legislation, there is virtually no legislative history, and the courts and the EEOC, the administrative body charged with enforcement of Title VII, have been freer to decide its scope. In general, the protections have expanded over time. A significant interpretation of Title VII expanding its coverage on an issue important to women was recognition that sexual harassment suits could be encompassed within its reach. Before that recognition, many argued that harassment was not gender discrimination within the purview of Title VII because women could harass men as well as men harassing women. Eventually, the Court recognized two types of sexual harassment, *quid pro quo* and harassing environment, again expanding protection. The theoretical basis for *quid pro quo* harassment recognizes the power differential between men and women in both the workplace and society, and that men in supervisory positions sometimes take advantage of that power to extract sexual favors in exchange for a job benefit. Different levels of proof, however, are required for burden shifting because the former was considered worse than the latter.

Another expansion came in the case of *Price Waterhouse v. Hopkins*. Hopkins was denied partnership in the accounting firm even though she was highly rated for her accounting skills and her rainmaking abilities. In an effort to help her become a partner in the next round of considerations, she was advised to adopt stereotypical female attributes such as dressing and speaking more femininely. When she sued for sex discrimination, the firm argued she was not made partner because of personality problems including being too abrasive to staff. The fractured majority held that Hopkins could sue in her “mixed motive” case which included legitimate reasons to deny partnership (negative personality traits) and discriminatory reasons (gender-based stereotypes). Hopkins met her burden of proof by showing the latter was a

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63 Terry Moorehead Dworkin, et al., *Theories of Recovery for Sexual Harassment: Going Beyond Title VII*, 25 SAN DIEGO L. REV. 125, 125-6 (1988). Since women could collect for assault and battery for the most severe form of harassment, others argued it should not be included within Title VII. That almost all sexual harassment was by men harassing women was not considered dispositive.
66 Discrimination based on a harassing environment, which can be done by coworkers and third parties as well as supervisors, generally requires a repeated pattern. It is based on the power of the employer to control the work environment and failing to control it so that a harassing environment exists. The Court looked to agency law (and the EEOC) to impose liability. For harassing environment cases, the Supreme Court created a safe harbor for employers by allowing them to avoid liability by putting in place procedures to educate about and prohibit such actions, and establish meaningful procedures to report and investigate claims, and punish wrongdoers. *Vinson*, 477 U.S. at 72-73.
68 *Id.* at 233-4.
69 *Id.* at 234-35.
“motivating” factor in the decision. In the Civil Rights Act of 1991, Congress included the motivating factor in the statute.

Many of the additional gender-related decisions and Title VII supplemental legislation have centered on childbearing. Women with children have suffered more discrimination and pay inequity than women without children. As noted in the next part, these problems have not been dealt with adequately.

C. Childbearing

Since the 1960s, the labor force participation of mothers has grown by 30 percent from 54.4 percent to 70.5 percent. In 1974, the Supreme Court in General Electric v. Gilbert, held that while Title VII prohibited discrimination based on sex, it did not include pregnancy discrimination. The Court determined that an insurance policy that excluded pregnancy disability was not discriminatory because it distinguished between pregnant persons and non-pregnant persons and the latter group included both men and women. Congress reacted to this by amending Title VII in 1978 through passage of the Pregnancy Discrimination Act (PDA), thus acknowledging that Title VII was not adequately protecting women from discrimination on the basis of pregnancy, motherhood, and perceptions related thereto. The PDA mandates that an employer cannot discriminate against his or her employee on the basis of pregnancy,

70 Id. at 250. There was some disagreement in the plurality decision about who had the burden of persuasion but the majority held that the employer could escape liability by showing that it would have made the same decision without the illegal considerations. For a fuller discussion see Jamie Darin Prenkert, Fifty Years of Jockeying: The Congressional-Judicial Conversation About Title VII and Its Impacts, 18-24 (2014) (unpublished manuscript) (on file with authors).
71 42 U.S.C.A. § 2000e-2(m) (West 2014) (“an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”) Additionally, even if the defendant can show it would have made the same decision, it is still liable but plaintiff’s relief is limited. 42 U.S.C.A. § 2000e-5(g) (2)(B)(i)-(ii) (West 2014).
72 The Family and Medical Leave Act, which requires employers to provide employees with job-protected, unpaid leave for qualified family and medical reasons, is one example. It covers pregnancy, personal or family illness, adoption or foster care placement of a child. 29 U.S.C.A. §§ 2601-54 (West 2014); see DEP’T OF LABOR, WAGE AND HOUR DIVISION, FAMILY MEDICAL LEAVE ACT, http://www.dol.gov/whd/fmla (last visited Jan. 17, 2015). The 2009 Lilly Ledbetter Fair Pay Act is an exception. 42 U.S.C. § 2000e-5(e)(3)(A). The Act allows the 180-day statute of limitations for filing an equal pay lawsuit based on gender discrimination to be reset with each new paycheck that is affected by the discriminatory action. The Act was a response to Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007).
75 Id. at 136. This is similar to the reasoning some courts used to deny that sexual harassment should be included within Title VII.
childbirth, or related medical issues.\textsuperscript{78} Any pregnancy related medical conditions must be treated in the same way as any temporary illness or condition.\textsuperscript{79}

Unfortunately, despite this amendment, courts have routinely interpreted the PDA in a restrictive manner.\textsuperscript{80} Some treated pregnancy as a disability, and one that is chosen because women can control becoming pregnant. Since it is chosen, these courts provide minimal protection. Others held that the PDA only prohibits discriminatory animus against pregnant women.\textsuperscript{81} Thus, sex-neutral policies that disproportionately affect pregnant women may not be remedied. Also, because the PDA does not completely prohibit termination of pregnant employees, if the employer believed that the cost of the women’s maternity leave to the business was more than he or she believed the employee was “worth,” then termination may not constitute unlawful discrimination.\textsuperscript{82} Many of these restrictive interpretations may be made moot by the EEOC’s new guidelines.

On July 14, 2014, the EEOC released the Enforcement Guidance on Pregnancy Discrimination and Related Issues (“Guidance”).\textsuperscript{83} The Guidance focuses on the PDA and the Americans with Disabilities Act (“ADA”). The Guidance is the first time since 1983 that the EEOC has stated an official position interpreting the PDA,\textsuperscript{84} and it takes a number of controversial positions.

The Guidance favors a broad approach to interpretation of the PDA. For example, it concludes that the PDA prohibits discrimination against not only presently pregnant women, but also those with past pregnancies or intending to become pregnant.\textsuperscript{85} Furthermore, discrimination based on stereotypes and assumptions about a pregnant woman’s capabilities is unlawful, even when the employer believes it is acting in the employee’s or the child’s best interests. One example of this is excluding a pregnant woman from handling toxic chemicals. This incorporates the decision in \textit{UAW v. Johnson Controls}, where the court barred the employer from using a policy which barred any female employee who had the ability to become pregnant from working in jobs where they could be exposed to substances that could be harmful to a fetus.\textsuperscript{86} These jobs were some of the highest paying and therefore desirable to the plaintiffs, none of whom was pregnant or planned on getting pregnant. The PDA was an important factor in the

\textsuperscript{78} 42 U.S.C.A. § 2000(e)(k) (West 2014).
\textsuperscript{79} Id.
\textsuperscript{80} Dworin et al., supra note 22, at 96.
\textsuperscript{81} Id.
\textsuperscript{82} Truop v. May Dep’t Stores Co., 20 F.3d 734 (7th Cir. 1994).
\textsuperscript{84} There have been numerous conflicting interpretations of the PDA in case law. Compare \textit{Hall v. Nalco Co.}, 534 F.3d 644 (7th Cir. 2008) (finding that discrimination against a female employee because she was seeking fertility treatment is actionable) with \textit{EEOC v. Houston Funding II, Ltd.}, 717 F.3d 425 (5th Cir. 2013) (holding that lactation discrimination is not covered because lactation is not related to pregnancy).
Court not allowing a classification based on potential for pregnancy, and contrasts with its pre-
PDA decision in *Gilbert*.\textsuperscript{87}

In a major change, the Guidance takes a broad interpretation of the phrase “related
medical condition,” which now officially includes lactation.\textsuperscript{88} If an employer allows sick leave
or change of schedules based on non-incapacitating medical conditions, the same options should
be available for lactation.

The most controversial position in the Guidance is that women affected by pregnancy,
childbirth, or related medical conditions should be treated in the same manner as those who have
similar abilities and are not affected. Those protected by the PDA should be entitled to
“workplace adjustments similar to accommodations” provided by the employer for disabled
employees.\textsuperscript{89} In fact, the source of the limitation, whether pregnancy or disability, is immaterial.
What matters is whether the employees have a similar ability or inability to work. This
interpretation was strongly criticized by an EEOC Commissioner because she believes that it
“allows pregnant employees to bypass the requirements of a qualified individual with a disability
under the ADA, thus elevating pregnant employees to a kind of super-status above that of
individuals with disabilities.”\textsuperscript{90}

Another key issue discussed by the Guidance is whether an employer must provide a
pregnant employee with a light-duty assignment to accommodate her pregnancy-related
limitation or incapacity,\textsuperscript{91} a central issue in *Young v. United Parcel Service*.\textsuperscript{92} The plaintiff in *Young*
requested light-duty assignments to accommodate heavy lifting restrictions, but UPS’s
policy limited light-duty to employees who (1) have been injured on the job; (2) had lost their
U.S. Department of Transportation certification; or (3) were disabled under the ADA. Young did
not qualify for any of these categories and her request was denied. However, she received an
extended leave of absence. The District Court for the District of Maryland granted summary
judgment to UPS.\textsuperscript{93} The Fourth Circuit Court of Appeals affirmed by finding that UPS’s light-
duty policy was “pregnancy-neutral” as required by the PDA.\textsuperscript{94} The Supreme Court’s decision is
expected to address the “pregnancy-blind” employer policies and the appropriate ways for
pregnant workers to establish a pregnancy discrimination claim under the PDA.\textsuperscript{95}

The Guidance addresses both issues. First, an employee “may still establish a violation of
the PDA by showing that she was denied light-duty or other accommodations that were granted

been strongly criticized by two commissioners as well as others. See Nardone & Riccobono, *supra* note 85.

\textsuperscript{88} Nardone & Riccobono, *supra* note 85.

\textsuperscript{89} Id.

\textsuperscript{90} See *EQUAL EMP’T OPPORTUNITY COMM’N*, Public Statement of EEOC Commissioner Constance S. Barker,
http://op.bna.com/dlrcases.nsf/id/kmgn-9Iznpp55SFile/barkerdissent.pdf; *EQUAL EMP’T OPPORTUNITY COMM’N*,
Public Statement of the Honorable Victoria A. Lipnic, Commissioner on Enforcement Guidance on Pregnancy and

\textsuperscript{91} Nardone & Riccobono, *supra* note 85.


\textsuperscript{93} Id.

\textsuperscript{94} *Young*, 707 F.3d 437.

\textsuperscript{95} Id.
to other employees who are similar in their ability or inability to work.\footnote{Enforcement Guidance, supra note 83.} The Guidance clearly states that employer policies that make light-duty work available only to employees who suffer an on-the-job injury violate the PDA. The EEOC argues that these policies treat pregnant workers differently simply because of the source of her limitation.\footnote{Id.} Second, the Guidance states that in disparate treatment cases, a pregnant employee may compare herself to employees with disabilities or on-the-job injuries to establish a \textit{prima facie} case of pregnancy discrimination.\footnote{Id. at Part II Americans with Disabilities Act.}

The Guidance also interprets the ADA. Unsurprisingly, the EEOC acknowledges that pregnancy in itself does not constitute an impairment under the ADA.\footnote{Id.} However, the EEOC finds that a broad range of temporary impairments associated with pregnancy could qualify as disabilities. The Guidance includes a long list of accommodations that may be necessary when the pregnancy-related impairments impose substantially limiting work-related restrictions.

In order to address many of the questions left for the employers post-Guidance, the EEOC has created a list of best practices that could help employers avoid liability under the PDA and ADA.\footnote{Id. at Part IV Best Practices.} Central in these practices is the need for employers to develop, disseminate, and enforce a strong policy, which includes a process for addressing accommodation requests by pregnant women.\footnote{Id.} An important note is that under the Guidance, parental leave must be offered to similarly situated men and women under the same terms.\footnote{Id.}

The Guidance has been released at a complicated time. The Supreme Court’s impending decision in \textit{Young} could contradict the Guidance in many ways. Additionally, Congress is considering the passage of the Pregnant Workers Fairness Act (“PWFA”), which could amend the PDA to expressly require employers to grant reasonable accommodations to pregnant workers.\footnote{Pregnant Workers Fairness Act, S. 942, 113th Cong. (2013); Pregnant Workers Fairness Act, H.R. 1975, 113th Cong. (2013).}

Discrimination on the basis of pregnancy occurs at all levels of an organization.\footnote{See, e.g., Bass v. Chem. Banking Corp., No. 94 CIV. 8833 SHS, 1996 WL 374151 (S.D.N.Y. July 2, 1996).} An illustration of how rare it is to have a pregnant CEO is seen in the selection of Marissa Mayer as the CEO of Yahoo in 2012. Ms. Mayer announced she was pregnant the same day that Yahoo announced her appointment. Her selection made her the twentieth female CEO of a Fortune 500 company and also the first pregnant CEO of a Fortune 500 Company.\footnote{Annie-Rose Strasser, \textit{Marissa Mayer Becomes First Ever Pregnant CEO of Fortune 500 Company}, THINK PROGRESS (July 17, 2012, 11:45 AM), http://thinkprogress.org/health/2012/07/17/529141/mayer-pregnant-ceo/?mobile=nc; Press Release, Yahoo!, Yahoo! Appoints Marissa Mayer Chief Executive Officer (July 16, 2012), http://pressroom.yahoo.net/prycorp/236553.aspx; Patricia Sellers, \textit{New Yahoo CEO Mayer is Pregnant}, FORTUNE, July 16, 2012.} While her appointment was newsworthy for a variety of reasons, including her qualifications and her visions for the struggling company, it was her pregnancy that garnered more discussion than those. Her appointment also raised the issue of the “glass cliff,” where women are appointed to leadership
positions in organizations “a disproportionate amount of the time” when the corporation is facing a dire situation.\textsuperscript{106}

Successful women in the labor market are less likely to be married and have children than others.\textsuperscript{107} This is in stark contrast to men. For example, one study found that 33 percent of high achieving women and 49 percent of ultra-achieving women between 41 and 55 were childless.\textsuperscript{108} Another study conducted in 2001, found that only half of women on Wall Street had children compared to 74 percent of men.\textsuperscript{109} The more hours that women work, the more women experience dissatisfaction about the time pressures of life, while managing the demands of employment and family life.\textsuperscript{110} However, a man’s sense of satisfaction is not influenced by the hours that men spend at work. Additionally, women who are extremely highly educated are less likely to participate in the workforce after having children.\textsuperscript{111}

A study which looked at female graduates at top universities concluded that once those women have children, they are more likely to quit their jobs than those who graduated from less selective schools.\textsuperscript{112} Sixty percent of women who graduated from top schools work full time, compared to sixty-eight percent of those who graduated from less prestigious universities.\textsuperscript{113} Married women without children are 20 percentage points more likely to work full time than those with children, while the difference between graduates of lesser schools is 13.5 points.\textsuperscript{114} Even more surprising, only 35 percent of women who have earned MBAs after studying at a top school are working full time, compared to 66 percent of graduates of lesser institutions.\textsuperscript{115} This may be because they are pushed out by inflexible workplaces or they may be willingly opting out to care for their children.\textsuperscript{116} Since graduates of elite schools have more flexibility in terms of workplace options and higher wages, the inflexible workplace hypothesis cannot explain the differences between graduates of elite and non-elite schools.\textsuperscript{117}

\textsuperscript{108} \textit{Id.} at 304.
\textsuperscript{109} \textit{Id.} at 304-305. Also, most women did not report being childless by conscious choice, but something that occurred for various reasons. \textit{Id.} at 306.
\textsuperscript{110} See generally \textsc{Alice H. Eagly & Linda L. Carli}, \textsc{Through the Labyrinth: The Truth About How Women Become Leaders} 55 (2007).
\textsuperscript{111} See \textsc{Amy Wolf}, \textit{Women with Elite Education Opting Out of Full-time Careers}, \textsc{Research News at Vanderbilt} (Apr. 8, 2013 8:00 AM), http://news.vanderbilt.edu/2013/04/women-elite-education-work-less/.
\textsuperscript{113} \textit{Id.} at 45, Table 2.
\textsuperscript{114} \textit{Id.} at 48 Table 4.
\textsuperscript{115} \textit{Id.} at 29.
\textsuperscript{116} \textit{Id.} at 33.
\textsuperscript{117} \textit{Id.} “[I]ncreasing workplace flexibility alone may have only a limited impact on reducing the gap between graduates of elite and non-elite schools.” \textit{Id.} Obama recently proposed an initiative calling for an $80 billion expansion to a federal program that gives childcare subsidies to low and middle-income families. This could enable more women to remain in the workplace. He also proposed to raise the childcare tax credit. Julie Hirschfield Davis, \textit{Obama Proposes Expansion of Program Providing Subsidies for Child Care}, N.Y. TIMES, Jan. 23, 2015, at A17.
Common biases toward women in the workplace include assumptions that women with small children will be less productive or dependable than their counterparts,\footnote{Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 55-56 (1st Cir. 2000) (holding that comments that the plaintiff might not be able to balance work and family responsibilities after she had a second child was sufficient for the jury to find that she was fired due to gender); Troy v. Bay State Computer Group, Inc., 141 F.3d 378, 381-82 (1st Cir. 1998) (upholding the jury’s inference that the supervisor’s comment “[her] body trying to tell her something” demonstrated in part that the plaintiff was fired based on gender stereotypes rather than performance issues); Enforcement Guidance, supra note 83, at Part I.A.1.b.} that mothers will not, or should not, work long hours;\footnote{Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 120-21 (2nd Cir. 2004) (holding that the view that woman cannot be a good mother and have a job that requires long hours reflects gender stereotypes); Bailey v. Scott-Gallaher, Inc., 480 S.E.2d 502, 503 (Va. 1997) (reversing lower court and suggesting that employer terminated new mother on the theory that her place was at home with her child).} and that mothers are not committed to their jobs.\footnote{Back, 365 F.3d at 120; Enforcement Guidance, supra note 83, at Part I(B)(1)(b). This perception is unfounded, “a meta-analysis of twenty-six studies revealed no difference between men and women in feeling committed to their organizations.” EAGLY & CARLI supra note 110, at 61. Enforcement Guidance, supra note 83, at Part I.B.1.b.} Women who take leave or use flexible schedules may be viewed as less committed to their workplace as well.\footnote{Stephen Benard et. al., Cognitive Bias and the Motherhood Penalty, 59 HASTINGS L.J. 1359, 1371-72 (2008); see Amy J.C. Cuddy, When Professionals Become Mothers, Warmth Doesn’t Cut the Ice, 60 J. SOC. ISSUES 701, 709-11 (2004).} Discrimination faced by working mothers can be very subtle. Benard, Paik, and Correll document that women with children are often perceived as more warm, but less competent and less worthy of institutional rewards in experimental studies.\footnote{EAGLY & CARLI, supra note 110, at 96.} Part of the bias against women as leaders, stems from the fact that characteristics associated with leadership are also associated with masculinity.\footnote{Kathleen Fuegen et al., Mothers and Fathers in the Workplace: How Gender and Parental Status Influence Judgments of Job-Related Competence, 60 J. SOC. ISSUES 737, 748 (2004).} This mismatched association creates competition between the two sets of expectations. Other experimental studies suggest that mothers are held to higher performance standards.\footnote{See Catherine Albiston, Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights, 39 LAW & SOC’Y REV. 11, 30-39 (2005).} Some research shows that bias may be stronger in work settings.\footnote{See Catherine Albiston, et al., Ten Lessons for Practitioners about Family Responsibilities Discrimination and Stereotyping Evidence, 59 HASTINGS L.J. 1285, 1300-01 (2008).}

Men also can face family responsibilities discrimination.\footnote{Martin H. Malin, Fathers and Parental Leave, 72 TEX. L. REV. 1047, 1077-78 (1994); Albiston, supra note 125. Magid, supra note 76, at 821-22.} Men may find that employers discourage them from using time off to take care of children.\footnote{See Schipani et al., supra note 5, at 511.} Alternatively, employers may retaliate against men when they return from leave or deny them leave with the idea that their spouses should take leave instead. The men may also be perceived as less committed to their job and career. Stereotypes about women’s roles in the home are reinforced by parallel stereotypes of men’s roles. These restrictive interpretations “inculcate the cultural stereotypes and invidious treatment of women who have been, are, or may be affected by pregnancy or childbirth in their lifetime.”\footnote{Magid, supra note 76, at 821-22.} Many have attributed the pay disparities and lack of female leadership not to bias against women, \textit{per se}, but to the fact that women have children and thus are not as committed to their jobs, take more time out to care for the children, and are not as focused.\footnote{See Schipani et al., supra note 5, at 511.}
Factors other than familial that limit access to top positions come from cultural, social and organizational obstacles.\textsuperscript{130} For example, when leadership positions become available, those doing the selecting, who are almost always male, tend to select those who are most like them.\textsuperscript{131} Also, male leaders at the top quite often have spouses who do not hold a job outside the home but stay home with the children, thus reinforcing another norm.\textsuperscript{132} In fact, one study found that compared to men in modern marriages, employed husbands in traditional marriages tend to view the presence of women in the workplace unfavorably, perceive those organizations with high levels of female employees as running less smoothly, find organizations with female leaders less attractive, and more frequently deny qualified female employees opportunities for promotion.\textsuperscript{133} The “like me” and “like my spouse” are cultural norms that can influence leadership selections. Another factor is that women have diminished access to experiences that build social capital within the organization.\textsuperscript{134} We have conducted a multi-year study in an effort to obtain a greater perspective on this issue. In the study reported here, we examine the extent to which being more like one’s boss is important for women with children. Additionally, we look at the effect of mentoring and networking in helping those with children get past the barriers to leadership positions.

II. The Pathways Study

In this Part, we review previous studies to formulate hypotheses regarding how sharing cultural norms may influence experiences in the workplace. We then utilize survey data to analyze whether sharing cultural background with top people in an organization influences career outcomes for men and women and whether those outcomes depend on whether these men and women are married or single. We further address the extent to which sharing cultural background with top people in the organization influences career outcomes for men and women and whether these outcomes depend on whether these men and women have dependents.

A. Backdrop: Previous Studies

This section reviews previous studies involving the similarity of the cultural background of recruits and employees to leaders of organizations and its relevance to employee hiring or advancement. For example, Kathleen L. McGinn and Katherine L. Milkman examined gender demographics in large law firms, specifically looking at the interplay between persistent

\textsuperscript{130} See Dworkin, et al., supra note 22, at 95.

\textsuperscript{131} \textit{Id.} at 97-98; see also, Jerry Large, \textit{We Tend to Discriminate by Favoring the Familiar}, SEATTLE TIMES, May 22, 2014, at B1 (citing studies showing that discrimination without malice is by far the most common kind through in-group favoritism which harms others when practiced by a dominant group).

\textsuperscript{132} Melissa Korn, \textit{Careers: At Work}, WALL ST. J., Apr. 10, 2013, at B8 (34.8 percent of women with children who attended selective undergraduate schools were fully employed compared with 66.1 percent of those who attended less selective schools; since elite companies tend to hire from elite schools and women from elite schools do not remain employed as long, the talent pipeline is more limited).


\textsuperscript{134} Susan Vinnicombe & Val Singh, \textit{Locks and Keys to the Boardroom}, 18 WOMEN IN MGMT. REV. 325, 328 (2003).
inequalities in gender at the top of the firms despite a more proportional gender makeup in the entry-level ranks at the firms. Law firms are “up or out” in terms of promotion policies, meaning that entry-level employees are required to prove their value to the firm in a specified time period early on in their careers. Moreover, with this “up or out” policy, it is senior professionals who decide whether junior professionals move up or move out. This results in intense pressure on the associates to “fit in.”

McGinn and Milkman studied promotions and departures within these up-or-out firms and found that a higher proportion of same-sex superiors within a workgroup decreased a woman’s likelihood of departure and increased the likelihood of a promotion. They also found, however, that higher proportions of same-sex peers within one’s workgroup increased the likelihood of departure and decreased the likelihood of promotion. This finding was a bit of a departure from previous research, which showed that higher proportions of same-sex peers within a workgroup contributed to social cohesion. Instead, McGinn and Milkman found that putting demographically similar peers in the same workgroup led to structural marginalization, creating competition within the group. The same effects were found for men and women, suggesting that one perceives one’s chances of success hampered when one is within the presence of numerous individuals who are in the same demographic group.

Allen N. Berger and his coauthors examined how homophily and social ties affect career outcomes in banking, looking at outsider appointments versus insider appointments to executive boards. The authors analyzed the effect of homophily and social ties, including age, gender, education, and social connections on the appointment of outsiders over insiders. They studied the German banking industry from 1993-2008, using data on nearly 11,000 executive appointments. The authors found age to be an important factor – small differences in age between the appointed and the members of the executive board was a considerable factor in whether the appointed was an outsider. That is, if the appointed is in the same generation as the board members, there is an increased likelihood that the appointed is an outsider. For gender, the authors found that women appointees were more likely to be outsiders when the executive board already had female representation. Social connections also played a role – if

136 Id. at 1042.
137 Id.
138 Id.
139 Id. at 1055.
140 Id.
141 Id. at 1056.
142 Id. at 1057.
143 Id. at 1057.
145 Id. at 2088.
146 Id.
147 Id. at 2094
148 Id.
149 Id.
the appointee was well-embedded in the social systems of the executives, there was a higher chance that the appointee was an outsider.  

Another study considered hiring in academia, hypothesizing that recruiters in academia prefer candidates with demographic backgrounds that are similar to their own.  

Prior research suggested that due to absence of clear evaluation criteria in academia, decision-makers often base their assessments on “alternative criteria” – as a result, candidates with similar backgrounds, attitudes, and personalities to the recruiter are often rated more favorably than other candidates.  

Heinke Roebken found, using recruitment data on sixty departments of business administration in Germany, that the more exchange partners in common, the more likely that universities were to exchange personnel directly with each other.  

Moreover, the more departments published in similar journals, the more likely they were to interact.  

Geographic distance between universities also had an effect on recruitment, with universities located close to each other more likely to recruit from one another.  

Additionally, Roebken found that departments preferred candidates from the same or higher status group – thus, when it is difficult to evaluate the candidate directly, academic departments may instead look at the social position of the sending institution.

Paul K. Skilton studied factors that influence employers’ decision to create breakthrough opportunities for individuals working on elite Hollywood projects.  

Because a breakthrough is considered employment in a new career for which the employee has no experience, the employer cannot use employee experience as a gauge for the employee’s ability in the new area.  

Thus, even when an individual has experience in non-elite projects, this is not sufficient to qualify him or her for the breakthrough job on an elite project.  

Instead, employers might rely on familiarity or similarity when making a decision, such as gender, family or work affiliations, or prior acquaintances.  

“Similarity” is defined as a correspondence between persons on the basis of characteristics such as race, sex, or age – he considers these unearned, inherited elements.  

Past affiliations and family and work ties are a component of similarity.  

In contrast, “familiarity” involves specific knowledge of a person’s abilities and attitudes – a product of actual social contact.

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150 _Id._  
152 _Id._ at 473.  
153 _Id._ at 482-83.  
154 _Id._ at 483.  
155 _Id._  
156 _Id._  
158 _Id._ at 1744.  
159 _Id._ at 1745.  
160 _Id._  
161 _Id._ at 1748.  
162 _Id._ at 1749-50.  
163 _Id._ at 1751.
Skilton looks at breakthroughs to direct an elite motion picture, using archival data on employment in Hollywood motion picture production. He found that similarity and familiarity play a larger role than experience in individuals who achieve breakthroughs. He found that two similarity factors played a role in achieving a breakthrough. He further found gender to be a factor, and that producer groups with a higher proportion of women are more likely to hire a woman director. However, he also found that breakthroughs go to the sexes in the proportion represented by the prospects – that is, although more men achieve breakthroughs, 89% of the prospects were men in the first place. Thus, there is a small number of women in producing and directing roles overall, meaning men may have a cumulative advantage in career progressions. He also found that affiliation quality was an important factor in achieving breakthroughs. Family based favoritism did not facilitate breakthroughs. Finally, the author found that non-elite directing experience played little role in achieving a breakthrough.

Christoph Ellersgaard, Anton Larsen, and Martin Munk studied the importance of families, educational system, and economic organizations on pathways to the top in organizations. The authors note the similarity of the social origin of the top managerial elite, with 4/5 of executives coming from the top fifth of their society. While their social origin is homogenous, their pathways to the top are heterogeneous. As a result, there is a homogenous business elite with regard to age, sex, and ethnicity.

Furthermore, women in the highest positions may face higher performance expectations. A recent Utah State University study suggests that companies that hire their first female or minority CEO, might not actually be setting the company on a more diverse track. The study found that boards are more likely to promote women or minority candidates to top leadership when the company is in crisis. When these companies then decline, the boards are more likely to replace the diverse executives with white males. Previous studies have identified this as the “glass cliff,” where boards are more likely to appoint minorities and women to companies that are in difficult times.

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164 Id. at 1753-54.
165 Id. at 1767.
166 Id.
167 Id.
168 Id.
169 Id.
170 Id. at 1768.
171 Id. at 1769.
172 Christoph H. Ellersgaard et.al, A Very Economic Elite: The Case of the Danish Top CEOs, 47 SOCIOLOGY 1051 (2012).
173 Id. at 1052.
174 Id. at 1052.
176 Id.
177 Id.
178 Id.
179 Id. The detailed findings of this study were published in May 2013. Alison Cook & Christy Glass, Glass Cliffs and Organizational Saviors- Barriers to Minority Leadership in Work Organizations?, 60 SOCIAL PROBLEMS 2, 168 (2013).
B. Hypotheses

Against this backdrop of prior studies, drawing on social identity and similarity-attraction theories, we build arguments for eight hypotheses regarding the significance of sharing cultural background with organizational leaders, for both men and women, whether married or single, for career satisfaction and career success. Further, because access to mentors and networks have been proven to be an important component to successfully climbing the corporate ladder, we also examine whether sharing a cultural background with those at the top in the organization conferred any advantages to one gender over the other in the quality of mentoring and networking relationships. Previous research has not examined how gender and family status (marital and dependents) interact with sharing cultural background with top people on work related outcomes. We used both objective and subjective career success measures (position and career satisfaction). We could not use salary because a large portion of the sample did not provide such information. Recent research suggests that demographic characteristics such as gender and marital status can have differential associations with men’s and women’s career development and growth. Specifically, using signaling theory, these researchers argue that gender and family status signal negative attributes and stereotypes in senior decision makers’ minds that ultimately influence their workplace decisions regarding women, especially women who are in committed relationships or have dependents. Because organizational decision makers have incomplete information about employees, they rely on such signals to furnish information (albeit incorrect) about competence, fit, and commitment to the organization. Indeed, in the absence of full information, as noted earlier, decision makers are likely to rely on familiarity, similarity, and social indicators of employee ability and motivation, regardless of whether such signals and indicators are defensible or job-related and necessary. Superiors also use gender and family status to predict how productive or worthy of developmental investment a subordinate will be, that is, their potential social exchange. To that end, marital and dependent status are less likely to aid women’s careers or their developmental opportunities, in comparison to single women or their male counterparts with or without dependents.

In this context, we posit that sharing cultural background with top managers in the organization will likely reduce the negative discriminatory effects of family status especially for women. Shared social and cultural identities facilitate interpersonal interactions. According to social identity theory, individuals categorize themselves and others into different categories (demographic, social, cultural, for example) and attach differing value to different social categories maintaining their self-esteem by valuing the categories they identify with personally.

180 See infra Part III.C discussion and accompanying notes.
183 Ramaswami, et al., supra note 181, at 2547-49.
higher. \(^{187}\) The similarity-attraction theory suggests that individuals who are similar or are perceived to belong to similar demographic, social, and cultural categories will be interpersonally attracted, leading to mutual liking and positive perceptions of each other. \(^{188}\) Similarity in socio-cultural aspects suggests having the similar socialization in values, beliefs, and assumptions, historical experiences and “cultural capital” promote communication, trust and reciprocity. \(^{189}\) Following the above arguments, we expect that sharing cultural background with top people in the organization will be particularly useful for women who are married or have dependents, as such similarity may replace the negative signals from women’s family status with positive signals.

Our hypotheses are as follows:

Hypothesis 1: Gender, marital status and sharing cultural background with top people in the organization will interact on career satisfaction. For married women, the relationship between sharing cultural background and career satisfaction will be stronger than for their single counterparts. Sharing cultural background should equally benefit married and single men.

Hypothesis 2: Gender, dependent status and sharing cultural background with top people in the organization will interact on career satisfaction. For women with dependents, the relationship between sharing cultural background and career satisfaction will be stronger than for women without dependents. Sharing cultural background should equally benefit men regardless of dependent status.

Hypothesis 3: Gender, marital status and sharing cultural background with top people in the organization will interact on organizational position. For married women, the relationship between sharing cultural background and organizational position will be stronger than for their single counterparts. Sharing cultural background should equally benefit married and single men.

Hypothesis 4: Gender, dependent status and sharing cultural background with top people in the organization will interact on organizational position. For women with dependents, the relationship between sharing cultural background and organizational position will be stronger than for women without dependents. Sharing cultural background should equally benefit men regardless of dependent status.

Hypothesis 5: Gender, marital status and sharing cultural background with top people in the organization will interact on benefitting from a network. For married women, the relationship between sharing cultural background and benefitting from a network will be stronger than for their single counterparts. Sharing cultural background should equally benefit married and single men.

\(^{187}\) Id.

\(^{188}\) Donn Erwin Byrne, The Attraction Paradigm (1971).

Hypothesis 6: Gender, dependent status and sharing cultural background with top people in the organization will interact on benefitting from a network. For women with dependents, the relationship between sharing cultural background and benefitting from a network will be stronger than for women without dependents. Sharing cultural background should equally benefit men regardless of dependent status.

Hypothesis 7: Gender, dependent status, and sharing cultural background with top people in the organization will interact on having a mentor. For women with dependents, the relationship between sharing cultural background and having a mentor will be stronger than for their single counterparts. Sharing cultural background should equally benefit married and single men.

Hypothesis 8: Gender, marital status and sharing cultural background with top people in the organization will interact on having a mentor. For married women, the relationship between sharing cultural background and having a mentor will be stronger than for women without dependents. Sharing cultural background should equally benefit men regardless of dependent status.

C. Method

Data used in this study are part of a larger project on career pathways for women to obtain organizational leadership. The survey was administered beginning in August, 2007 and continued into 2008 to graduates of leading business schools. Surveys were sent to 11,291 male and 3,198 female Master of Business Administration (MBA) graduates, 173 female and 274 male Master of Accounting graduates, and 1,393 female and 2,875 male Bachelor of Business Administration (BBA) graduates of the Ross School of Business at the University of Michigan, and 1,643 MBA, Master of Accounting, BBA graduates of the Warrington College of Business at the University of Florida. Those earning Master in Accounting and BBA degrees were sent surveys so long as at least three and ten years had passed since graduation, respectively, to allow for sufficient experience to potentially rise in their organizations. Through the above methods, we received in total 887 usable surveys. 69% of the sample was male, 69% were in a committed relationship, and 71% reported having dependents. Descriptive statistics of the analysis sample is included in Table 1.

D. Measures

The independent, dependent, and control variables analyzed in our study are described below.

1. Independent Variables

The independent variables identified for this study are:

Gender. Males were coded as 1 and females as 0.

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190 Professors Virginia Maurer, Angel Kwolek-Folland, and Mary Hinesly, together with the authors, collaborated on this project.
Committed relationship. Those who were married, in a civil union or in a long-term committed relationship were coded as 1 and others (never married, divorced, widowed) were coded as 0.

Dependents. Respondents who indicated they had dependents were coded as 1 and others as 0.

Sharing cultural background with top people in organization. Respondents answered the question, “Over the course of my career, I have shared a great deal of cultural background with the people at the top levels of my organizations” on a scale of 1 to 5 where 1 is = “strongly disagree,” and 5 is = “strongly agree.”

2. Dependent Variables

The dependent variables examined in this study are:

Career satisfaction. Respondents rated the item, “I am satisfied with the level I have reached in my career,” on a five-point scale ranging from 1 = “strongly disagree” to 5 = “strongly agree.”

Organizational position. Respondents indicated their reporting level to the top person in their organization on the following scale: 1) Three or four levels below, 2) Two levels below, 3) Direct report or one level below, and 4) I am the top person.

Mentor Yes No. Respondents indicated whether or not they had mentors. Those with mentors were coded as 1 and those without mentors were coded as 0.

Benefit from network. Respondents rated a single statement, “I have benefited from being part of a network,” on a five-point scale ranging from 1 = “strongly disagree” to 5 = “strongly agree.”

3. Control Variables

Following prior research 191 we controlled for five demographic, human capital, organizational and industry-related variables that could influence the outcomes of interest. These are:

Age. Respondents reported their age based on the following scale: 1) 20-29 years old, 2) 30-39 years old, 3) 40-49 years, 4) 50-59 years old, 5) 60-69 years old, and 6) 70+ years old.

**Education level.** Respondents indicated their educational attainment on the following scale: 1) Associates Degree (2-year college degree), 2) Bachelors Degree (4-year college degree), 3) Master's Degree, 4) Doctoral Degree, and 5) Professional Degree.

**Firm size.** Respondents indicated their firm size on the following scale: 1) Fewer than 50, 2) 50-499, 3) 500-999, 4) 1,000-9,999, and 5) 10,000+.

**Respondent industry.** We controlled for industry using a dummy coding sequence where those with positions in service industries and manufacturing industries were contrasted with those in other industries.

**E. Analysis and Results**

Descriptive statistics including means, standard deviations, and correlations are reported in Table 1. Among the independent variables, all correlations were below .30, except that between manufacturing and service industry ($r = -.43$), theoretically posing no cause for concern. Variation inflation factor values indicated no problems with multicollinearity. Hypotheses were tested using ordinary least squares (OLS) multiple regression and logistic regression, where the control and independent variables were entered first, followed by the two-way interaction terms, and finally the three-way interaction term in separate steps.

The three-way interaction of gender x committed relationship x share cultural background was only significant for career satisfaction ($\beta = .75$, $p < .05$) and organizational position ($\beta = .58$, $p < .05$). The three-way interaction of gender x dependents x share cultural background was only significant for mentor yes no ($\beta = -1.03$, $p < .01$) and benefit from network ($\beta = -.86$, $p < .01$).

To better understand the interactions, we plotted graphs of the significant three-way interactions for each dependent variable using unstandardized regression coefficients.
Career Satisfaction

Figure 1

This graph suggests that, single women with high cultural similarity with top people in the organization report higher career satisfaction than married/committed women, who also have high cultural similarity with top people, contrary to hypothesis 1. So, even if women have high cultural background similarity with organizational leaders, the benefits are still higher for single than for married women.
Figure 2 suggests that men and women – single or married - who have low cultural background similarity do not differ much in the organizational position they hold. Note that the lines all converge on the left side of the graph. Indeed, there is no difference between single and women in committed relationships or between single and men in committed relationships. However, having cultural similarity with top people in the organization appears to benefit single women more than it does married women, contrary to hypothesis 3. This suggests that with respect to sharing cultural similarity with top people, being married is a disadvantage for women, but not for men.
The graph depicted in Figure 3 suggests that for women with dependents, having high cultural background similarity with top people in the organization influences their likelihood of having a mentor, supporting hypothesis 6. For men with dependents, sharing cultural similarity with top people does not seem to affect their likelihood of having a mentor. So women with dependents fare better if they share cultural background with top people in terms of obtaining developmental resources such as mentoring. To the contrary, for men with dependents, sharing cultural background with the organizational leadership neither provides an advantage nor a disadvantage with respect to their likelihood of having a mentor.
Benefit from Network
Figure 4

Figure 4 plots the relationship between network benefits and cultural background similarity with the top people in the organization, comparing male and female experiences. This data suggests that neither gender nor having dependents makes a difference with regard to network benefits for those with a low cultural background similarity with top people. However, women with dependents gain from having cultural similarity with top people. Women with dependents who also have high cultural background similarity with top people report benefiting most from networks compared to other groups, supporting hypothesis 8. Yet, as shown in Figure 4, the data suggest that for men with dependents, cultural background similarity with top people does not seem to impact the benefits they report receiving from networks. So, again, sharing cultural similarity with top people in the organization influences the outcomes of women with dependents.

Finally, hypotheses 2, 4, 5 and 7 were not supported, as their respective three-way interactions were not significant.

F. Discussion

The role of family status in men’s and women’s career development and progress continues to receive research attention.\(^{192}\) This study examined the relationships between family status (marital and dependent), sharing cultural background with top people in the organization and career, mentoring, and networking outcomes. Importantly, this study extends the

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\(^{192}\) Hoobler et al., supra note 184.
Ramaswami, Huang, and Dreher cross-cultural study on gender x marital status interaction on mentoring attainment by also examining the gender x dependent status interaction on mentoring attainment (and other dependent variables) as well as observing whether these interactions differ for four career, mentoring, and networking outcomes, as a function of the respondents’ similarity of cultural background with top people in their organizations. Ramaswami and her colleagues found that, in contrast to women in Taiwan, in the U.S., married women have a lower likelihood of attaining mentors compared to single women, but for men, being married was still advantageous in having mentors.

Following their study, here we tested for whether sharing cultural background with top people in the organization would help women who are married or who have dependents to report higher outcomes (career success, mentoring, and network benefits) than their single counterparts. Only some of our hypotheses were supported. Indeed, the gender x marital status x sharing cultural background interaction was significant only for career success variables such as career satisfaction and organizational position but we found that single women benefited more than married women for both outcomes. Indeed our results suggest that sharing cultural capital with top people in the organization, and the associated understanding that arises from such similarity may not be enough to trump the negative associations of marital status on women’s career satisfaction and organizational position. As hypothesized, the gender x dependent yes/no x sharing cultural background interaction was significant but only for mentor yes/no and benefits from network and not for the career success variables. In terms of other significant main and interaction effects, marital status had no significant main effects on the dependent variables. Gender and dependent status were positively related to organizational position, and gender to mentor yes/no. Sharing cultural background was positively related to all dependent variables. The only significant two-way interaction was that of gender x sharing cultural background on organizational position, suggesting that men who shared cultural background with top people were more likely to be in higher organizational positions than women. The results of our study suggest that family status continues to pose barriers for women’s careers in the U.S. In line with Professor Ramaswami, and her coauthors’ findings, these results once again show that in the U.S. or Western context, women who have high career attainment also tend to be single and/or without children.

As is true with most studies, this study is not without limitations. Our analysis combined both formal and informal mentoring, but only a small percentage of our respondents had formal mentors. This study also does not distinguish between current and past mentoring, nor have we differentiated among various types of professional networks or types of dependents (children versus parents). We used self-report cross-sectional data preventing us from making conclusions regarding causality. In addition, we did not have data from respondents’ significant others in their respective organizations (supervisors, superiors, teammates, etc.) regarding their attributions of men and women in who are in committed relationships, have dependents, or share cultural backgrounds with top people in the organizations.

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193 Ramaswami et al., supra note 181.
194 Id.
Certainly, the influence of family status on men and women’s careers is complex and warrants continued study. Our study underscores the fact that diversity variables in isolation may not be able to paint the complete picture. Considering the intersection of multiple diversity as well as organizational or contextual variables may shed light on how gender and family status influence career, mentoring, and networking outcomes for men and women.

III. Proposed Solutions

No matter what the cause, it is clear that women are still effectively shut out of most leadership positions. In this Part, we propose a combination of new judicial interpretations, regulatory disclosure requirements, and firm-level actions in an attempt to rectify the problem. First, we propose that Title VII which, in its current form has not been effective with regard to breaking the glass ceiling, be reinterpreted to address the issue of leadership. We cannot take the European approach, which is to use quotas, due to the Supreme Court’s rulings with respect to affirmative action. However, we propose that when deciding cases of employment discrimination for top leadership positions, the courts impose a rebuttable presumption of discrimination with respect to opportunities for advancement when there are no women or only token women in top leadership positions or on the board of directors. Second, as advocated in our previous work, we propose that the Securities and Exchange Commission (SEC) require that details already reported about diversity include reports on the numbers of women occupying positions of leadership and board positions. Finally, based on our studies and the literature, we advocate that firms provide mentoring programs and opportunities for networking to help break the glass ceiling. These proposals are discussed below.

A. Rebuttable Presumption

1. Proposed U.S. Approach

The U.S. effectively bars a quota system based on the language of Baake, the case that allowed affirmative action in the public sector in 1978. As noted, the Supreme Court is limiting the availability of affirmative action in some instances, and Baake’s quota ban is still good law. This does not mean, though, that we cannot learn from the European Union (EU) experience.

Title VII is an elastic statute, as the above discussion shows. Disparate impact was adopted to eliminate “built-in head winds” and “unnecessary barriers” when progress was stalled. The decision to expand the reach of disparate impact by allowing evidence of subjective decision-making was likewise designed to further the goal of getting rid of built-in headwinds. The Weber decision was based on the spirit of Title VII to level the playing field and open opportunities to protected groups. Coverage of sexual harassment was read into the statute

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196 See infra Part III.A.1 discussion and accompanying notes.
199 Id. at 431.
when that was recognized as a problem.\textsuperscript{201} Also important was the shifting of the burden of proof to the defendant after a relatively easily met burden of proof on plaintiff’s part.\textsuperscript{202} Fifty years after 1964, there is still a glaring failure regarding women and minorities achieving attainment of leadership positions, and it is time to expand or stretch Title VII once again.

This goal can be facilitated by establishing a rebuttable presumption that discrimination is at play if there are no women, or only token women, in top leadership positions or on the board of a company. In the past this would not have succeeded because in any one instance, the number of top leadership positions in a company opening up at a particular time would not have been large enough to be statistically relevant.\textsuperscript{203} But if board and top leadership positions are examined as a whole, the number would be large enough as long as there are 15-25 positions that fit within this category. This would then shift the burden of proof to the defendant to prove it did not discriminate. This is admittedly a step beyond the disparate impact scheme of burden shifting that occurs once a relevant disparity is shown. However, since subjective selection methods are encompassed by the theory, and top positions are filled by subjective selection, it would be consistent with precedent in this regard.

Admittedly, small numbers of opportunities can be problematic but not insurmountable. In \textit{Watson}, where the Court recognized that subjective or discretionary selection procedures that lead to disparate impact can be actionable, Watson was denied a promotion on four occasions.\textsuperscript{204} She was still able to show that the unfettered discretion of the selectors resulted in discrimination. Choosing board members and leaders is generally not a transparent process to which those not selected would have access. Shifting the burden greatly increases the possibility of a successful challenge; at a minimum, it should facilitate getting to a jury.

A rebuttable presumption is not a quota, and it would not be as effective as quotas have been elsewhere in the world.\textsuperscript{205} But it may be enough to finally put a crack in the glass ceiling and help women achieve top management positions in sufficient numbers to be meaningful. In \textit{Watson} the plurality was concerned that the adoption of the disparate impact theory might cause employers to adopt quotas because of the difficulty of validating subjective criteria used to select a candidate.\textsuperscript{206} This view, though, did not prevent the adoption of the theory then, and should not now bar a device that could help overcome the barriers that lead to the “markedly disproportionate”\textsuperscript{207} number of women – over 90 percent - being kept out of these top leadership positions. A recent study shows that women and minorities are punished when they appoint a

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{201} See, e.g., Meritor Sav. Bank v. Vinson, 477 U.S. 57 (1986); Bundy v. Jackson, 641 F.2d 934, (D.C. Cir. 1981); Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).
\item In order to prove disparate impact, one must have a sample size that is statistically significant. “Small sample sizes are often rejected as having little probative value, because results from small sample sizes that show ... disparity can also be credited to or explained by simple random chance.” Melinda K. Burton, \textit{Using Statistics to Prove Disparate Treatment Discrimination}, \textit{17 Young Lawyer} 7 (2013). Usually, one compares an average measure of economic performance or welfare for the protected class with an average measure of the same economic variable for the unprotected class.
\item See \textit{infra} Part III.A.2 and accompanying notes.
\item Prenkert, \textit{supra} note 70, at 12.
\end{itemize}
\end{footnotesize}
women or minority to a leadership position. Thus, having a token woman or minority in a leadership position would not be effective in solving the problem. The problem will continue until a sufficient number of women are in leadership positions that it is no longer harmful.

Shifting the burden to the organization to show business necessity of its subjective (and usually nontransparent) selection process is consistent with a long line of cases that speak to Title VII’s “broad remedial purposes” as well as the Civil Rights Act of 1991. It would be difficult to argue business necessity in light of the fact that when women are included on boards and in top positions, the organizations do better financially and employees tend to be more satisfied because they have more voice within the organization.

Ideally, Congress would implement the presumption in the statute. However, in the current political climate, this is highly unlikely. This does not prevent the EEOC from adopting a Guideline to this effect which would be highly persuasive to courts. The EEOC has often taken the lead on discrimination issues and should do so here. The courts usually look to the EEOC when interpreting Title VII. We advocate that both the EEOC and the courts adopt this rule. Alternatively, if they are not willing to do this, as a minimum, the EEOC and the courts should follow the long line of cases establishing burden shifting in favor of the protected group.

Such an approach is somewhat similar to the EU proposal and the Finland approach in terms of having to explain why no women were appointed. While many countries have adopted quotas as a fast-track way to more parity, quotas were a step too far for the EU (and, of course, the U.S.). Our proposal would put the U.S. more in line with most developed countries which are already showing that including women in leadership is crucial and just.

2. The European Approach

European countries have attacked the problem of low female representation directly by establishing quotas for women, primarily in terms of board membership. Norway was the first

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208 The researchers performed an experiment in which they asked 395 students to watch trained actors playing human resources professionals pitching to hire specific candidates. The experiment results showed that students watching the presentations reacted negatively when women and minority actors were promoting diverse candidates. They suggested that these reactions may arise from negative stereotypes. David R. Hekman & Maw-Der Foo, Does Valuing Diversity Result in Worse Performance Ratings for Minority and Female Leaders? (Aug. 1-5, 2014) (presented at the Annual Meeting of the Academy of Management). See also, Jillian Berman, Women and Minorities are Punished for Promoting Women and Minorities at Work: Study, THE HUFFINGTON POST, (July 28, 2014. 11:02 AM), available at http://www.huffingtonpost.com/2014/07/25/diversity-study_n_5620839.html.


to adopt a board quota in 2008, and its female representation now approaches 40 percent.212 Other European countries followed suit and today Belgium, France, Iceland, Italy, The Netherlands, Spain, and Sweden have “pink quotas.”213 The United Kingdom encourages female representation through its corporate governance code214 and Finland requires companies with no women on their boards to tell investors why.215 The push, however, is not uniform throughout the E.U. Board representation in Portugal, for example, is only one percent, and the average in European companies is about ten percent.216

More recently, France enacted a law217 requiring French public companies making at least 50 million euros with more than 500 employees to have 40 percent female board directors by 2017.218 A recently published paper analyzes the effectiveness of the French approach and compares it to that of the EU.219 The paper suggests that the French approach has wider reach because it applies to both executives and nonexecutive directors.220 As of November 2014, Germany requires the boards of directors of its largest corporations to include 30 percent women nonexecutive directors by 2016.221 Firms that do not meet the 30 percent requirement are required to leave those seats unoccupied.222 The agreement affects more than 100 German firms.222 Lastly, the Netherlands enacted a law in 2013 that advises large companies to aim for at least 30 percent women representation in their executive and supervisory boards.224

The E.U. attempted to set an E.U.-wide quota of 40 percent in 2012,225 but it failed primarily due to objections of some E.U. commissioners to its mandatory nature and questions of its legality.226 Instead, it is attempting to “smash the glass ceiling” by establishing goals for large

215 Joann S. Lublin & Francis, supra note 212. Finland has been pushing since 2010 to increase female representation on boards. Women’s board representation is now up to 27 percent.
216 Id. See Dworkin et al. supra note 22, at 86.
219 Id. (citing Annick Masselot & Anthony Maymont, Balanced Representation between Men and Women in Business Law: The French ‘Quota’ System to the Test of EU Legislation, 3 CENTRE FOR EUR. L. LEGAL STUDIES ONLINE PAPER SERIES 1 (2014)).
220 Id.
221 Id.
223 Id.
224 Id.
Corporations that do not meet the target would be required to be transparent in their hiring process by, for example, disclosing the reasons for choosing board members to unsuccessful candidates, and to favor women over equally qualified men.

In November 2013, the European Parliament voted 459 to 148 in support of the European Commission’s proposed law requiring 40 percent of nonexecutive directors to be women by 2020. This would require a 16.6 percent increase from the 2013 statistics. Small and medium-sized companies are beyond the scope of the directive and member states cannot exempt companies where women make up less than ten percent of the workforce. The proposed directive would have to be adopted in the Council by the European Parliament and the EU member states before it can come into effect. The directive is currently pending.

The push for women in board positions, particularly in the Nordic countries, is contributing to leadership in other areas such as politics. In Sweden, women now outnumber men in government and it is considered the most gender-egalitarian country. Even there, though, women make up only 25 percent of corporate boards, earn 14 percent less than men, and still take 75 percent of parental leave. Worried that progress had stalled, women established the Feminist Initiative, a party that became the first to win a seat in the European Parliament on a feminist platform. In September 2014, it also won a seat in the Swedish parliament.

In the EU, some see an increase in female board representation as a competitive advantage. Some international companies such as Sodexo SA, Fiat, and Logica PLC, in an effort to meet their quotas, have actively recruited U.S. women viewing it as an opportunity to gain U.S. business. Despite being the most desirable candidates, only twelve percent of outside directors on the 500 largest companies’ boards are female CFOs.

227 Id. (quoting EU Justice Commissioner Vivane Reding). The goal is to have 2/5 women on boards by 2020. The goal would only apply to companies with 250 or more employees or global sales of over 50 million euros.

228 Id.


231 Orsagh, supra note 218.

232 Id.

233 Id. citing Legislative Board Diversity-Pending, CATALYST, http://www.catalyst.org/legislative-board-diversity-pending#footnote3_7ee9c98.


235 Id. (citing the INSTITUTE FOR GENDER EQUALITY).

236 Id.

237 A quarter of its members are men. One of its biggest donors is Benny Anderson of ABBA fame. Id.

238 Id.


240 Teri L. Thompson, From Pink Quotas to Pink Ghettos: Opportunities Abound, FORBES, (Oct. 10, 2012). In 2011, Catalyst found a 26 percent difference in return on invested capital between top-quartile companies with 19-44 percent female board representation and those at the bottom with zero women directors.

241 Lublin, supra note 213.

242 See Maxwell Murphy, CFO Journal: Boards Snap Up Female CFOs, WALL ST. J., July 16, 2013, at B6. (Citing the European Union’s proposal). The article also notes that in the U.S., since the passage of Sarbanes-Oxley, CFOs
B. Regulatory Reporting Approach

A second approach, previously advocated by the authors is for the SEC to amplify the disclosure requirement regarding diversity. Companies are already required to disclose whether and if so, how diversity was considered when selecting candidates for the board of directors.\textsuperscript{243} We propose that companies be required to further disclose whether gender is included in any diversity considerations. A disclosure requirement would put the issue at the forefront for consideration and may encourage companies to put diversity policies, which include gender, in place. This requirement would help signal that results could be improved with sufficient diversity as well as potential legal problems if there is none.

C. Role of Mentors and Networks

Our findings would be particularly useful to organizations and human resource managers interested in retaining female talent. Mentoring can be described as an “intense reciprocal interpersonal exchange between a senior experienced individual (the mentor) and a less experienced individual (the protégé), characterized by the type of guidance, counsel, and support provided by the mentor for the protégé’s career and personal development.”\textsuperscript{244} Having a mentor has implications for employees’ career advancement, and the positive association of mentoring with career outcomes for protégés makes it “a key employee development and talent management practice. . .”\textsuperscript{245} Through mentoring, protégés are able to more effectively enhance their skills and more easily adapt to new work and/or non-work settings.\textsuperscript{246}

Another helpful tool for better protégé development is networking. Networking is an alternative, yet complementary, mechanism to mentoring that provides career and moral support, advice, and personal and interpersonal resources that aid in employees’ career progression.\textsuperscript{247} It are sought after for stronger financial controls, and this has benefitted women in terms of outside board membership. Today, more than 60 percent of all auditors and accountants are women.


\textsuperscript{245} Ramaswami, supra note 244; Tammy D. Allen, et al., Career Benefits Associated with Mentoring for Protégés: A Meta-Analysis, 89 J. APP. PSYCHOL. 127 (2004) (reporting that the aggregated results of mentoring studies published between 1985 and 2004 confirm that there are measurable benefits associated with mentoring); Lillian T. Eby et al., Does Mentoring Matter? A Multidisciplinary Meta-analysis Comparing Mentored and Non-mentored Individuals, 72 J. VOCATIONAL BEHAV. 254, 254 (2008) (reporting that the aggregated results of mentoring research show that mentoring has a small, favorable effect on the behavior, attitudes, health, relationships, motivation, and careers of protégés); Thomas W.H. Ng et al., Predictors of Objective and Subjective Career Success: A Meta-Analysis, 58 PERSONNEL PSYCHOL. 367, 367, 371 (2005) [hereinafter Ng, et al.] (considering organizational sponsorship, including the extent to which employees receive sponsorship from senior employees and supervisors, as a potential determinant of objective and subjective career success, and finding that organizational sponsorship is relatively strongly related to subjective career success).

\textsuperscript{246} Ramaswami, supra note 244.

is the “process of gaining advice and moral support or using contacts for information in or
to become more effective in the work world.” Networking can be particularly helpful for those
who did not have access to mentors early in their careers. Networking and mentoring provide
similar and complementary career benefits. 

As discussed earlier and despite evidence to the contrary, women (regardless of marital or
parental status) continue to suffer bias and negative perceptions regarding their competence and
commitment to the job or career. Yet, women, and men and women who are in committed
relationships or with dependents, represent important sources of diversity at work. Networking
and mentoring are useful and effective mechanisms through which gender inequality in career
attainment may be reduced. The “importance of mentors for employee career progress and

attends to develop and maintain relationships with others who have the potential to assist them in their work or
career.”

Crampton & Mishra, supra note 247, at 94.

Catherine Tracey & Honor Nicholl, Mentoring and Networking, 12 NURSING MGMT. 28, 31 (2006) (finding that
networking is especially important for some women who have not had the benefit of mentors early in their careers);
William Whately, et al., Relationship of Career Mentoring and Socioeconomic Origin to Managers’ and
Professionals’ Early Career Progress, 34 ACAD. MGMT. J. 331, 341 (1991) (suggesting that mentoring is related to
early career progress of managers and professionals). See Ronald J. Burke & Carol A. McKeen, Training and
(finding that among a sample of women mostly in the early stage of their careers, mentoring was perceived to be
useful but was infrequently undertaken relative to other training and development activities).

Forret & Dougherty, supra note 247, at 431 (finding that many networking behaviors are positively correlated
with number of promotions obtained, total compensation, and perceived career success); Tracey & Nicholl, supra
note 249, at 31 (arguing that mentoring and networking are alternative means to achieve the same career-related
ends, and that mentoring is more appropriate to individuals in the early stage of their careers).

Alexander H. Jordan, & Emily M. Zitek, Marital Status Bias in Perceptions of Employees, 34 BASIC APPLIED
SOC. PSYCH. 474 (2012); Belle Rose Ragins, & Eric Sundstrom, Gender and Power in Organizations: A

EQUAL EMP’T OPPORTUNTY COMM’N, FEDERAL LAWS PROHIBITING JOB DISCRIMINATION QUESTIONS AND
ANSWERS, supra note 2 (noting that Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963 protect
workers against gender discrimination and that state and municipal laws protect workers against discrimination and
harassment based on status as a parent); Elizabeth Mannix & Margaret A. Neale, What Differences Make a
Difference? The Promise and Reality of Diverse Teams in Organizations, 6 PSYCHOL. SCI. PUB. INT. 31, 42 (2005)
(“[T]o the extent that groups are more diverse in their perspectives and approaches to problem solving, they should
outperform groups with less diversity.”)

Forret & Dougherty, supra note 247, at 433 (“While engaging in networking behavior might be viewed as a
promising career management strategy for women, our results show that networking behaviors are not as
advantageous for women as for men.”); Margaret Linehan & Hugh Scullion, Repatriation of European Female
Corporate Executives: an Empirical Study, 17 WOMEN IN MGMT. REV. 80 (2002) (establishing that female
international managers experience more difficulties than their male counterparts in repatriation after an international
assignment, and suggesting that home-based mentors and access to networks while abroad are important factors in
contributing to the successful repatriation of international managers.); Aarti Ramaswami, et al., Gender, Mentoring,
and Career Success: The Importance of Organizational Context, 63 PERSONNEL PSYCHOL. 385, 399 (2010) (“[T]he
return to a mentoring relationship . . . appears greatest for women employed in male-gendered
industries. . . . [W]ithin industries characterized by general levels of female underrepresentation or by aggressive,
engineering-intensive, competitive, ‘up-or-out’ corporate cultures, the importance of a senior-male mentor seems
high for female managers and professionals.”); Aarti Ramaswami, et al., The Interactive Effects of Gender and
Mentoring on Career Attainment: Making the Case for Female Lawyers, 37 J. CAREER DEV. 692, 707 (2010)
(reporting that “lawyers with senior male mentors had higher compensation, career progress satisfaction, and
organizational position compared to lawyers with other mentors or without mentors” and reporting an interaction
that suggests that “female lawyers with senior male mentors had higher career attainment than male lawyers with
senior male mentors . . . .”).
necessitates an examination of the role that mentoring plays in a career enhancing strategy such as networking.

In a prior study, we concluded that employers should provide mentoring for women to help open networking pathways for women to success in business. Relatedly, a 2011 study of college-educated men and women, over half of whom were in large companies, cited inadequate career development as the primary reason women have not reached the top rungs of the corporate ladder. Female managers interviewed in one study suggested “that men, as the dominant group, may want to maintain their dominance by excluding women from the informal interactions of mentoring and networking.” Some studies suggest that the impact of mentorship and networking may be greatest for women in male-dominated professions and industries. Women within these industries often have a particular need for sponsorship and legitimacy that mentorship and networking can provide. Furthermore, mentors may buffer an individual from overt and covert forms of discrimination; even discrimination they may not consciously realize exists.

Utilizing the survey data described above, we found that mentoring results in higher returns for women with dependents, in terms of women benefiting from a network. We further found that organizational and social support is particularly needed for women with dependents to overcome challenges to networking. We thus advocate that firms invest more in the area of diversity training and sensitivity to the unique contingencies faced by women with dependents by establishing mentoring programs.

Conclusion

As documented above, although Title VII and the accompanying legislation and judicial rulings have made significant headway in improving the work environment for women, pathways for women to positions of leadership in organizations are still generally elusive. Our studies suggest that there are additional challenges for women with dependents.

As a society, we should want to maximize the contributions of all citizens, both at leadership levels and lower levels of organizations. Likewise, if we are to continue as a society,
we should want to encourage citizens to have children. As the above study shows, women who have children are doubly disadvantaged in terms of reaching the path to higher leadership positions. Since leadership opportunity is effectively denied to a large number of our female citizens, it is time to again stretch the elastic Title VII and take steps to help remedy this type of discrimination.

In this paper, we offer three proposals to begin to achieve more cultural diversity and thus, identity. First, recognizing that unlike in the Nordic countries, quotas would not survive judicial scrutiny in the U.S. law, we advocate that in cases alleging gender discrimination, courts consider the paucity of women in leadership positions as a rebuttable presumption that discrimination has occurred. This analysis is a logical extension to the disparate impact analysis firmly established in judicial precedents. Second, we see a role for regulatory authorities. To the extent firms manage what is measured, the SEC could define diversity in the reporting requirements of public companies that are already mandated, to include gender diversity. Finally, we advocate that firms take mentoring seriously - especially given the significance of cultural similarity - it is important that leaders look beyond mentoring those who share cultural similarity and provide mentoring and networking opportunities to others as well.

We recognize that the problems are complex and elude simple solutions. We hope that our study and recommendations may prompt further research and discussion to help break the logjam in the pathway for women who seek upward mobility.
### Appendix

#### Table 1 Descriptive Statistics and Correlations

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* p < .05

** p < .01
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* * p < .05
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