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ARTICLE: Battered by Equality: Could Minnesota's Domestic Violence Statutes Survive a "Fathers' Rights" Assault?

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SUMMARY:

... Under the rubric of a "fathers' rights" movement, a backlash is brewing against legislative advancements that protect women and children from the men who beat and mistreat them. ... These transcripts show that the Minnesota Legislature rejected a gender-neutral approach for three main reasons: they found no evidence that men were in need of domestic violence shelters, they found that the problem of battered women and children was more pressing and widespread than the problem of battered men, and they determined that the funding need to address domestic violence was extremely limited. ... " Thus, the only remaining gender-specific language in Minnesota's domestic violence statutes is the language providing emergency shelter service for battered women's shelters. ... The Minnesota domestic violence statutes are generally gender-neutral in language except where they provide funding for emergency shelter services. ... When the Minnesota Legislature initially considered the domestic violence legislation, they made findings that established men and women were not similarly situated with respect to being victims of domestic violence. ... As established by the legislative debate, the Minnesota Legislature made repeated attempts to ascertain whether men and women were similarly situated with respect to a need for shelter from domestic violence. ...

TEXT:

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INTRODUCTION

Under the rubric of a "fathers' rights" movement, a backlash is brewing against legislative advancements that protect women and children from the men who beat and mistreat them. n1 The movement's rhetoric often embraces the moderate-sounding goals of ensuring equal protection for fathers under the law. n2 Most fathers' rights groups are, however, actively pursuing much broader and more radical attacks on domestic violence, divorce, custody, and child support laws by arguing that these laws discriminate against men. n3

Booth v. Hvass n4 illustrates one legal tactic of the fathers' rights movement. In Booth, several men brought a suit in federal court challenging certain Minnesota laws that fund services and shelters for victims of domestic violence. n5 The Plaintiffs claimed that the laws violate Equal Protection guarantees because they provide funding to assist battered

women but not to assist [*342] battered men. n6 The Plaintiffs brought the suit ostensibly as male citizens left unprotected by the statute; n7 however, each Plaintiff belongs to one or more of the fathers' rights organizations promoting the outright elimination of domestic violence statutes and other family and child protection laws. n8

The district court dismissed the Booth case with prejudice, the Eighth Circuit Court of Appeals affirmed, and the Supreme Court denied certiorari. n9 Because the resolution of the case turned on issues of standing, the merits of the complaint, including the Equal Protection questions, were not addressed. n10 In the event that the fathers' rights groups involved with Booth identify a male who has been denied domestic violence services in Minnesota, these same issues are likely to come before the court.

This Note has two objectives: first, to illuminate the fathers' rights movement and examine why it poses a credible threat to domestic violence and other family laws; and second, to consider the movement's discrimination claims against domestic violence laws in particular and demonstrate how the Booth Equal Protection challenges will ultimately fail. Part I surveys the fathers' rights movement and examines the Supreme Court's treatment of sex-based classifications. n11 Part II describes the Minnesota domestic violence statutes and the Equal Protection challenges leveled by the Booth Plaintiffs. n12 Part III examines the merits of the Booth arguments under current Equal Protection jurisprudence. n13 This Note concludes that Minnesota's domestic violence laws would survive such judicial scrutiny. This Note also highlights the importance of identifying and understanding the fathers' rights movement as a whole, as well as the need to appreciate its broader implications for domestic violence and family laws.

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I. THE CONTEXT FOR BOOTH<CSQ>'S EQUAL PROTECTION CHALLENGE

A. INTRODUCTION TO THE FATHERS<CSQ> RIGHTS MOVEMENT

The Boston Globe modestly describes the fathers' rights movement n14 as "a passionate but controversial campaign led by those who believe the courts are biased toward women in custody proceedings and domestic violence cases." n15 The movement's members are working to end what they consider to be the "abuse by women" of current divorce, custody, and domestic violence laws, n16 and the judicial "assumption that children are usually better off with their mothers." n17

While the movement seems to be more focused on the local level, n18 some of the movement's leaders are increasingly [*344] influencing national policy. n19 For example, Wade Horn, former president of the fathers' rights group National Fatherhood Initiative (NFI), n20 was recently appointed Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services. n21 NFI founder Don Eberly is the former deputy director of the White House Office of Faith-Based and Community Initiatives and is currently with the U.S. Agency for International Development. n22

Specific legislative and legal targets vary among the organizations, but most fathers' rights groups are primarily concerned with what they perceive as discrimination against men in the family law context. n23 The founder of one such group, the Fathers' Rights & Equality Exchange (FREE), n24 charges that child custody cases, for example, are laced with "maternal bias" and urges members "to work at correcting the imbalance which [maternal bias] has perpetuated, just as is done with any other discriminatory bias which has wronged the peoples of our society." n25 The Separated Parenting Access and Resource Center (SPARC), n26 another fathers' rights organization, states that it advocates for custodial fathers because "far too many custodial mothers see no value in the presence of fathers ... and some actively work to sabotage any involvement. This psychological warfare is a form of child abuse." n27

While FREE and SPARC often couch their mission statements in relatively moderate and seemingly gender-neutral terminology, other fathers' rights groups describe their goals using [*345] more expressive and incendiary language. Lowell Jaks, a member of the Alliance for Non-Custodial Parents Rights, for example, encourages members to support "paternity fraud" legislation n28 because the success of such laws may lead to the elimination of what he considers "more intractable laws such as those on retroactive modification (Bradley Amendment), Domestic Violence and Custody laws[,] which are abused wholesale across the country, along with completely idiotic child support guidelines that are destroying lives everyday." n29 Another group, the Fathers' Rights Foundation, provides "free fathers rights litigation aides" on its website and encourages men to fight against "false allegations" of domestic violence and child abuse. n30 In this same vein, fathers' rights attorney Ronald Isaacs sells a "defense kit" for fathers that "have been falsely accused of child abuse by an ex-wife or girlfriend," ostensibly because these women use false allegations "to exert pressure against the father in a custody litigation." n31

Postings to various online fathers' rights chatrooms, discussion lists and listservs reveal additional targets of the movement. n32 In one such posting, fathers' rights leader Bill Wood [*346] insists "it has been quiet for TOO LONG with the Fathers' groups... . It's time to 'ramp it up' again. And I mean RAMP IT UP!" n33 In an example of what he means by "ramp it up," Mr. Wood encourages readers to spread the movement's message about domestic violence:

October is "Domestic Violence" month. We need to start a two-prong message about the domestic violence FRAUD, a) how the courts commit domestic violence against children and fathers EVERY SINGLE DAY, and b) how the courts RAPE fathers for "fun and profit" using STOLEN taxpayer (VAWA) funds to destroy them! If you have a personal Domestic Violence HORROR STORY (abused restraining order, false claims, you were hit but went to jail, etc.), CONTACT YOUR LOCAL PAPERS IMMEDIATELY!! n34

The Booth v. Hvass lawsuit illustrates a practical application of Mr. Wood's call to arms. n35 The introduction to a web-based index of motion papers filed in Booth states that the "purpose of this suit is to cut off the main source of public money which fuels sexist bias against men in our family court system." n36 Elsewhere on the website are claims that Minnesota domestic violence legislation has resulted in "a well funded attack on the natural rights and personal dignity of fathers and the accelerated destruction of the traditional family structure." n37 Grounded in the father's rights ideology, n38 the legal action led by Mr. Booth and his fellow Plaintiffs sought nothing less than the elimination of [*347] Minnesota's domestic violence statutes. n39

B. EQUAL PROTECTION CHALLENGES TO SEX-BASED CLASSIFICATIONS

The Equal Protection Clause of the Fourteenth Amendment states "nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws." n40 The clause prohibits state governments from treating similarly situated individuals differently. n41 The first issue in any Equal Protection challenge, therefore, is to determine whether a government classification is based upon a real difference between the classes, such that the different treatment is justified under the circumstances being addressed by the government. n42

The Supreme Court has held that some classifications are so severely suspect that they require a strict and exacting scrutiny. n43 For example, because the Fourteenth Amendment was originally adopted to protect freed slaves, n44 governmental distinctions based on race are considered inherently suspect and automatically trigger a strict judicial review of the classification. n45 Under this [*348] strict scrutiny standard, a racial classification will almost always be found unconstitutional. n46

A classification using non-suspect classes, such as age n47 or wealth, n48 is subject to a much less rigorous review. n49 In these cases, so long as the classification has some rational basis and furthers a legitimate government objective, the courts will generally uphold the governmental distinction. n50

The Court initially used this relaxed rational basis standard to uphold sex-based classifications. n51 Over time, however, the Court increasingly viewed these sex-based distinctions as founded more on unsubstantiated stereotypes about men or women than on some real difference between the sexes. n52 Yet, because there are many contexts in which men and women are not similarly situated, n53 the Court has refrained from uniformly raising sex- [*349] based distinctions as suspect classifications. n54 The Court has instead discussed sex-based classifications as "quasi-suspect" n55 and fashioned an intermediate scrutiny standard of judicial review for cases dealing with these distinctions. n56 Under the intermediate scrutiny standard, the classification must serve an important governmental objective and must be substantially related to that objective. n57

Since the Constitution does not specifically address sex-based distinctions, the Court's early development of appropriate judicial scrutiny for such classifications "was difficult and tortuous." n58 In fact, the Court did not start seriously considering "legislation providing dissimilar treatment for similarly situated women and men [until] the early 1970s." n59 However, once the Court began to reject government objectives that reinforce "'archaic and overbroad generalizations'" about men and women, the intermediate scrutiny standard for sex-based classifications began to take shape. n60

[*350] As more sex-based classifications are challenged under the Equal Protection Clause, the Court continues to define the exact contours of the intermediate scrutiny standard. n61 In a recent decision, the Court seemed to make it more difficult for sex-based classifications to pass intermediate scrutiny when it held that governments must also have an "exceedingly persuasive justification" for these distinctions. n62 The precise meaning of this holding is still under

debate, n63 but the language seems to require that the government must show "not merely a substantial relationship to important government interests," but also "an 'exceedingly persuasive justification' for its gender discrimination." n64

II. BOOTH'S EQUAL PROTECTION CLAIMS AGAINST THE MINNESOTA DOMESTIC VIOLENCE STATUTES

A. THE MINNESOTA DOMESTIC VIOLENCE STATUTES

The statutes challenged by the Booth Plaintiffs are in the Crime Victims chapter of the Minnesota Statutes. n65 The term [*351] "battered woman" is defined in the chapter as "a woman who is being or has been victimized by domestic abuse." n66 The chapter's subsections regarding battered women also refer to victims of domestic abuse more generally. n67 This treatment is consistent with the gender-neutral definitions of "domestic abuse" as codified in a separate collection of statutes titled the Domestic Abuse Act. n68 The Domestic Abuse Act defines "domestic abuse" as physical harm, bodily injury or assault, or the infliction of fear thereof, or terroristic threats, criminal sexual conduct, or interference with an emergency call "if committed against a family or household member by a family or household member." n69 The Domestic Abuse Act does not draw distinctions between the sexes. n70

Similar to the other subsections of the Crime Victims chapter, the subsections related to "battered women" provide that the commissioner shall:

award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children. The commissioner shall also award grants for training, technical assistance, and for the development and implementation of education programs to increase public awareness of the causes of battering, the solutions to preventing and ending domestic violence, and the problems faced by battered women and domestic abuse victims. n71

Throughout the crime victims' subsections, the statutes incorporate the Domestic Abuse Act's definitions. n72 As a result, the provisions apply to both men and women in all matters except that shelter grants are limited to those programs which provide emergency shelter to battered women. n73 The subsections of the Crime Victims chapter addressing "Shelter Facility Per Diem Payments" n74 further define "shelter facilities" eligible to receive payments under the per diem program as facilities designed "for the purpose of providing food, lodging, safety, and 24-hour [*352] coverage for battered women and their children." n75

The laws regarding battered women as crime victims were originally passed in 1977. n76 The legislative history shows that prior to passing the law, the legislature considered whether men and women were similarly situated as victims of domestic violence. n77 After convening several investigative hearings on the subject, the legislature ultimately decided that the sexes were not similarly situated in this context. n78 The Booth Plaintiffs included in their Amended Complaint select transcripts from the Minnesota House of Representatives' floor debate regarding this legislation. n79 These transcripts show that the Minnesota Legislature rejected a gender-neutral approach for three main reasons: they found no evidence that men were in need of domestic violence shelters, they found that the problem of battered women and children was more pressing and widespread than the problem of battered men, and they determined that the funding need to address domestic violence was extremely limited. n80

The legislative transcript shows that the legislators rejected an amendment that would have changed the word "women" to "persons" throughout the legislation. n81 As the legislators debated the amendment, the consensus appeared to be "that changing this to 'persons' would draw away the ability to deal with an extremely serious problem that exists for women." n82 Several legislators stated that inquiries were specifically made as to whether there was a need for shelters for men. n83 The responses from people working in the domestic violence field all seemed to comport with [*353] the report of one police officer's statement that he had "never in all his years seen a case of a battered man." n84 In contrast, a representative recalled the testimony of one battered women's advocacy organization "that they have to turn away three women for every one that they accept." n85 As a result of multiple hearings on the issue, the legislators ultimately decided that the sexes were not similarly situated with respect to domestic violence, and that the problem of battered women was more pressing and widespread at that time. n86

The record also reflects the legislature's consideration of evidence on how children are impacted by domestic violence. n87 Throughout the hearings, the legislators heard testimony that children often experience violence along with the women, and that children's interests would be served by providing shelters to battered women. n88 They

indicated a desire for the language of the statute to allow both women and their children to seek emergency shelter as a family. n89

In addition, the legislature's decision was influenced by the level of state funding that was available to address the issue of domestic violence in the State. n90 The Council on the Economic Status of Women, for example, held several hearings to consider the financial implications of providing services to both male and female victims of domestic violence. n91 The Council determined that available resources were barely adequate to provide services to battered women, and if funding was also provided for battered men's programs, "it would spread those very thin resources much, much thinner so that we could not begin to respond to this problem." n92 A member of the Social Service Subcommittee of Health and Welfare suggested that using already scarce resources to also fund shelters for men "when we don't have the men to put in the homes ... would be a shame and a crime." n93

[*354] The current language providing that emergency shelter services grants pertain only to shelters serving battered women was the result of a bill passed in the 2000 legislative session. n94 These changes altered certain references throughout the domestic violence statutes from "battered women" to "domestic abuse victims." n95 In particular, the amendments changed section 611A.32 to read: "The commissioner shall award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children." n96 Thus, the only remaining gender-specific language in Minnesota's domestic violence statutes is the language providing emergency shelter service for battered women's shelters.

B. BOOTH v. HVASS

In the fall of 2000, Scott Booth and several other fathers' rights activists challenged Minnesota's domestic violence laws in federal court. n97 The Plaintiffs sought "a declaratory judgment that the Minnesota statutory scheme for dispersing state and federal funds to assist battered women and victims of domestic abuse is unconstitutional." n98 They claimed, inter alia, that the Battered Women section of the Crime Victims chapter n99 "discriminates against men in violation of the Equal Protection Clause ... by facilitating the expenditure of millions of dollars to assist battered women, but offering no money to assist battered males." n100 In addition, the Plaintiffs sought to prohibit certain state department [*355] commissioners "from spending funds under, or promoting the objectives of, the domestic abuse statutes." n101

The U.S. District Court for the District of Minnesota found that the Plaintiffs lacked standing to bring the Equal Protection claim and dismissed the case for lack of jurisdiction. n102 The Plaintiffs appealed the dismissal asserting taxpayer standing to challenge the spending of public funds under the domestic abuse statutes "because the domestic abuse statutes unlawfully discriminate against men based upon their sex." n103 The Eighth Circuit rejected the Plaintiffs' argument and affirmed the dismissal, holding that "[a] taxpayer whose tax money is used in a discriminatory manner suffers no injury under the Equal Protection Clause unless and until an expenditure facilitates discrimination against him or her." n104 The court further held that the appellants lacked "taxpayer standing to challenge state expenditures to benefit battered women under the Equal Protection Clause." n105 In January 2003, the Supreme Court denied the Plaintiffs' petition for writ of certiorari. n106

Although the district court dismissed the case before a hearing on its merits, the Plaintiffs' Amended Complaint detailed the underlying Equal Protection claims involved in the lawsuit. n107 While not clearly labeled as such, the Plaintiffs' Amended Complaint contained claims that the Minnesota domestic violence laws are facially discriminatory, purposefully discriminatory, and [*356] have discriminatory effects against men. n108

1. FACIALLY DISCRIMINATORY

The Amended Complaint discussed statutory language that, according to the Plaintiffs, clearly draws impermissible distinctions between men and women. n109 The Plaintiffs asserted that the Minnesota statutes contain sex-based classifications that "subsidize battered women's shelters, [but not] like or comparable facilities for men." n110 The Plaintiffs claimed that the statutes rest

on the statutory premise that men are the cause of all or virtually all domestic violence, and ordains as public policy that women and only women need to be protected against domestic violence, and that funds under the said Act may be spent for the benefit of women but not men. By virtue of its express language and legislative history, [the statutes] cannot be read to avoid discrimination against men on account of sex. The most recent amendments to [the statutes], including especially the nondiscrimination clause ... make clearer than [sic] ever that discrimination is allowed against men but not against women. n111

Based on these assertions, the Plaintiffs concluded that the Minnesota statutes must be struck down as facially discriminatory. n112

2. PURPOSEFULLY DISCRIMINATORY

The Plaintiffs' Amended Complaint cited to legislative history that shows the state's discriminatory intent. n113 The records of both the Minnesota Senate and House of Representatives document motions made to replace the word "women" with "persons" throughout the original legislation. n114 The motions were defeated in both houses. n115

[*357] The Plaintiffs also cited "published empirical studies" showing that "women initiate and carry out physical assaults on their partners as often as men do." n116 The Amended Complaint included as Exhibit Four an annotated list of 117 scientific reports, which purportedly document "approximately equal rates of domestic violence for men and for women." n117 While the Plaintiffs did not articulate the argument, they appeared to offer this evidence to show that the 1977 Minnesota Legislature purposefully ignored evidence that men and women were similarly situated with respect to domestic violence, and that men had a need for, but were not receiving, access to domestic violence shelters.

3. DISCRIMINATORY EFFECTS

The Booth Plaintiffs passionately complained that the Minnesota domestic violence statutes have discriminatory effects against men. n118 For example, although the Plaintiffs did not claim that the domestic violence statutes require shelter funding recipients to publish specific literature, the Plaintiffs alleged that these shelters use state funding to publish "sexist hate literature against men" that encourage the disproportionate use of protection orders and other legal remedies against men. n119 In essence, Plaintiffs argued that by allowing domestic violence shelters to use statutory funding at their own discretion, the statutes in effect facilitate and encourage discrimination against men. n120

The Amended Complaint also contained allegations that the "cumulative effect" of the Minnesota domestic abuse statutory scheme "is the creation of a prejudicial atmosphere against men in [*358] general before the judiciary ... depriving them, because they are men, of equal and impartial justice under law." n121 Consistent with a discriminatory effect theory, the Plaintiffs contended that they "and thousands of men like them, either have been or may be personally prejudiced by the said cumulative effect of programs and spending". n122 In concluding their argument that the Minnesota domestic violence statutes violate the Equal Protection Clause, the Plaintiffs claimed that the laws have "been zealously implemented, resulting in the oppression of husbands, fathers, and men in general." n123

III. ARE FATHERS' RIGHTS A THREAT TO FAMILY LAW?

The fathers' rights movement is founded on the belief that men face sex-based discrimination under current domestic violence and family law legislation across the country. n124 It is from this premise that the movement is launching Equal Protection challenges to dismantle such legislation. n125 Similar to the claims made by the Plaintiffs in Booth v. Hvass, the movement is arguing that these laws treat similarly situated individuals differently. n126 It is important to understand these Equal Protection challenges because they were not resolved by Booth v. Hvass and are likely to arise again either against the Minnesota domestic violence statutes or against some other jurisdiction's domestic violence or family law statutes. n127 While the Minnesota statutes are likely to survive the specific challenges in Booth, n128 other states' laws may not survive sex-based Equal Protection scrutiny. Legislators would be well-advised to review their state's domestic violence and family law statutes, and to cure any discrimination that may be contained in or caused by these laws.

A. THE MINNESOTA STATUTES WOULD SURVIVE EQUAL PROTECTION SCRUTINY

The Minnesota domestic violence statutes challenged in [*359] Booth would likely survive an Equal Protection analysis. The Booth Plaintiffs argued that the statutes contain sex-based classifications, n129 which trigger an intermediate scrutiny standard of review. n130 Under the current Equal Protection jurisprudence, the State has to provide exceedingly persuasive justification showing that any sex-based classifications are substantially related to an important governmental objective. n131 Even using only the Booth Plaintiffs' very own evidence, n132 Minnesota can meet this burden and survive each of Booth's claims of discrimination.

1. THE MINNESOTA STATUTES ARE JUSTIFIED IN THEIR FACIAL DISCRIMINATION

Unlike suspect racial classifications, which rarely survive judicial scrutiny, n133 textual sex-based distinctions have a less clear judicial outcome. n134 Because the Court has held sex-based classifications to be quasi-suspect, n135 the State must prove that the sexes are not similarly situated in the context at issue, n136 and that the classifications are not based on stereotypes or generalizations about the sexes. n137 A statute that draws a distinction between men and women in its text will be upheld if the State can provide exceedingly persuasive justification that the sex-based distinctions are substantially related to an important governmental interest. n138

The Minnesota domestic violence statutes are generally gender-neutral in language except where they provide funding for emergency shelter services. n139 Section 611A.32 of the Minnesota Statutes draws a sex-based distinction when it directs the award of grants to programs providing "emergency shelter services to [*360] battered women." n140 The Booth Plaintiffs lodged a facial discrimination claim against this provision alleging that the classification subsidizes emergency shelter services for battered women but not for similarly situated battered men. n141 The Plaintiffs argued that this statutory line "cannot be read to avoid discrimination against men on account of sex." n142

However, applying the current intermediate scrutiny to the emergency shelter services provision, a court would likely uphold this sex-based classification because the State had an exceedingly persuasive justification for drawing the distinction in order to further an important governmental interest. When the Minnesota Legislature initially considered the domestic violence legislation, they made findings that established men and women were not similarly situated with respect to being victims of domestic violence. n143 According to the legislative debate, this determination was not based on generalizations about women or men or domestic violence overall, but on actual testimony and statistics provided in several legislative hearings that showed an overwhelming need for emergency shelters for women in particular. n144 Shelter providers testified that they encountered numerous women who needed but were denied emergency services because there were not enough shelters available to them. n145 The legislative committees specifically inquired as to whether there was a similar problem among male victims of domestic violence. n146 They found no evidence of this and thereby determined that men and women were not similarly situated in the context of domestic violence. n147

As demonstrated by these findings, the Legislature determined that it was an important governmental objective to respond to the pervasive needs of battered women who were attempting to escape violence in their homes. n148 The legislation was designed to meet a considered need and was substantially related to that objective by providing grants to programs that aid [*361] battered women. n149

2. THE STATUTES ARE JUSTIFIED IN THEIR PURPOSEFUL DISCRIMINATION

Any purposeful discrimination in the Minnesota domestic violence statutes is also exceedingly persuasively justified. In their Equal Protection challenge, the Booth Plaintiffs relied on both the legislative history and extrinsic scientific evidence to show that the Minnesota Legislature purposefully discriminated against men in designing the domestic violence statutes. n150 The Plaintiffs specifically pointed to defeated proposals that would have made the entire bill gender-neutral as evidence that the legislators intended only women to benefit under the law. n151 The Plaintiffs also presented a compilation of scientific reports ostensibly documenting that men and women are in fact similarly situated when it comes to domestic violence. n152

Even relying only the Plaintiffs' own evidence, however, the State could survive an intermediate scrutiny standard of review for discriminatory purpose. The gender-neutral amendment debate that Plaintiffs cited to support their claims of purposeful discrimination also supports the State's exceedingly persuasive justification for defeating these amendments. n153 From the transcript provided by the Plaintiffs, it is apparent that the legislators specifically considered making the statutory language gender-neutral, n154 but rejected the amendments for three main reasons: first, they did not find an immediate need for shelters among men; n155 second, they took into account the interests of children living in violent homes; n156 and third, they understood the limited funding options that were available for domestic violence shelters. n157

As established by the legislative debate, the Minnesota [*362] Legislature made repeated attempts to ascertain whether men and women were similarly situated with respect to a need for shelter from domestic violence. n158 The legislators heard no evidence of a pressing need for any battered men's shelters, let alone to the same degree of need for battered women's shelters. n159 Therefore, a majority of the legislators agreed that creating a gender-neutral statute would detract from their important objective to address the critical need among women. n160

In their inquiries regarding the extent of the domestic violence problem among men and women, the legislators also asked about the effect of domestic violence on children. n161 The legislators found evidence that in situations where

women are victimized, children are also victimized. n162 In order to protect the greatest number of domestic violence victims, the legislators designed the statute in a way that allowed a woman and her children to escape the violence together. n163

The limited resources available to deal with the State's domestic violence crisis was an additional factor in the legislature's decision to defeat the gender-neutral proposal. n164 Legislative committees considered the fiscal consequences of funding shelters for both men and women. n165 These legislators found that there were barely enough resources available to fund shelters. n166 Since the legislature had not found an urgent need for battered men's shelters, n167 they determined that a gender-neutral statute would detract too greatly from the funding necessary to address the urgent need for battered women's shelters. n168

The Booth Plaintiffs' Amended Complaint also included as evidence of discriminatory purpose a list of scientific reports purportedly showing that men are victims of domestic violence at equal rates with women. n169 However, even a cursory glance at the list shows that not one of these studies of actual male and female relationships was available to the Minnesota Legislature at the [*363] time it was considering the original statute. n170 It would have been difficult for Plaintiffs to prove that the Minnesota Legislature purposefully ignored this evidence of similarly situated battered men since these studies were not published at the time the legislators enacted the domestic violence statutes.

Finally, any discriminatory purpose that can be found in the 1977 Legislature's original domestic violence legislation has either been cured by the 2000 amendments or retains the original exceedingly persuasive justification. The 2000 amendments changed most of the legislation to accommodate domestic abuse victims from both sexes. n171 Men and women who are similarly situated as victims of domestic abuse are treated equally in the statute when it comes to support services, domestic violence training, technical assistance and education and public awareness programs. n172 It is only in the award of grants to emergency shelters that one sex appears to be favored over the other, n173 and this favor was created in response to the continuing direct and critical need among that class of people. n174

3. THE STATUTES DO NOT HAVE DISCRIMINATORY EFFECTS

In addition to their allegations of facial discrimination and discriminatory purpose, the Booth Plaintiffs claimed that the domestic abuse statutes collectively have the effect of discriminating against all Minnesota men in several ways. n175 For example, the Plaintiffs claimed that funding provided under the statutes' educational provisions is used to publish literature that discriminates against men. n176 The Plaintiffs argued in particular that this literature encourages the use of protection orders and other legal remedies against men. n177 According to the Plaintiffs, the combination of this "sexist hate literature" and other programs funded by the statutes create a prejudicial atmosphere before [*364] courts n178 because the literature allegedly presents men as the cause of domestic violence and never as the victims. n179

A court applying intermediate scrutiny to the Minnesota domestic violence statutes would likely find that any resulting discriminatory effects against men are exceedingly persuasively justified. The same reasons providing an exceedingly persuasive justification for facial discrimination n180 allow the domestic violence statutes to overcome the claim of discriminatory effects. The statutes clearly provide that grants for support services, training, technical assistance and education programs are gender-neutral and shall address issues of domestic violence for both battered women and all domestic abuse victims generally. n181 Specifically, the legislation provides funding for programs that "increase public awareness of the causes of battering" and that provide "solutions to preventing and ending domestic violence." n182 Throughout several hearings held by the Minnesota Legislature, the legislators found that men and women were not similarly situated with respect to domestic violence. n183 Despite this initial finding, the current statutes providing funding for educational and support programs are facially gender-neutral. n184 The statutory funding of programs that increase awareness of the causes of domestic violence and that help victims seek shelter services or legal remedies against their abusers is substantially related to the Minnesota Legislature's objective of reducing the overall occurrence of domestic violence, as well as their objective for helping victims to escape violent circumstances. Any discriminatory effect these programs have against men is exceedingly persuasively justified because the Minnesota Legislature found that women overwhelming outnumber men as victims of domestic violence. n185

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B. THE IMPORTANCE OF UNDERSTANDING THE FATHERS<CSQ> RIGHTS MOVEMENT

While the Minnesota statutes would likely survive the Booth Equal Protection challenge, it remains important to understand the underlying arguments since similar claims may be brought in other jurisdictions. Plaintiffs like those in Booth remain a litigation threat to Minnesota's domestic violence family laws and as well as and to other state and

federal laws. n186 Members of the fathers' rights movement nationwide are actively seeking grounds for litigation and new legislation regarding domestic violence, divorce, child support, and child protection laws. n187 In fact, the websites and newsletters for fathers' rights organizations openly call for members to enlist the media's assistance in spreading their message. n188 And with monikers implying that the organizations represent the legitimate interests of fathers in divorce and other family law contexts, as well as their use of moderate language when speaking publicly, these groups are starting to receive national attention. n189

The fathers' rights organizations also pose a problem for men who are seeking genuine legal assistance in their own domestic issue proceedings. n190 Dispensing propaganda laced with technical jargon, the fathers' rights groups' lawyer-like advice promotes risky and possibly unlawful action. n191 Furthermore, by preying on the frustrations of men in the midst of divorce and custody disputes, the groups may convince vulnerable fathers that the courts are actually biased against them and that they will never win under the current legal standards. This could lead fathers with legitimate claims to give up and forgo their day in court; perhaps even encouraging illegal alternates, such as kidnapping, to achieve a sense of justice.

Finally, the movement is gaining credibility with state and federal legislators. While some of the fathers' rights leaders are working their way into high-ranking federal positions, n192 others are concentrating their lobbying efforts at the state and local level [*366] with moderate success. n193 With a receptive audience in both the current presidential administration and in several state legislatures, n194 it may only be a matter of time before the movement convinces policymakers that domestic violence and certain family law statutes are either wholly unconstitutional or weighted too heavily against men, despite any empirical evidence to the contrary. For that reason, legislators and advocates are well-advised to seriously consider whether such laws should be gender-neutral. If lawmakers find there is a reason for sex-based classifications in family law matters, then this should be supported with sound impartial evidence, statistics and specific legislative findings.

CONCLUSION

The fathers' rights movement is certain to continue raising sex-based discrimination challenges in its efforts to overturn domestic violence, divorce and child custody legislation. Since *Booth v. Hvass* did not address the merits of the Plaintiffs' underlying Equal Protection claims, it is possible the court will face these questions again. A man claiming to have been denied emergency shelter services could litigate these claims with the support of the fathers' rights movement and their agenda behind him. While the Minnesota domestic violence statutes would likely survive an intermediate judicial scrutiny, it is important to understand the greater implications of the *Booth* challenges. An appreciation of the fathers' rights movement's Equal Protection arguments and motivations will help prepare policymakers and advocates for the battles they are sure to face in the coming years.

FOOTNOTES:

n1. See *infra* Part I.A. (discussing the fathers' rights movement).

n2. See *infra* notes 14-17 and accompanying text (describing the general perception of the fathers' rights movement).

n3. See *infra* notes 23-39 and accompanying text (describing the goals and tactics of the fathers' rights movement).

n4. *No. 00-1672 MJD/JGL, 2001 WL 1640141* (D. Minn. Aug. 13, 2001), *aff'd*, 302 F.3d 849 (8th Cir. 2002), cert. denied, 123 S. Ct. 883 (2003). See *infra* Part II.B. (discussing the *Booth* Equal Protection challenge to Minnesota's domestic violence statutes).

n5. *Booth, 2001 WL 1640141, at 1.*

n6. *Id.* at 2.

n7. See *id.* at 3.

n8. See *infra* note 97 and accompanying text (describing the organizational affiliations of the Plaintiffs involved in the Booth litigation).

n9. *Booth*, 2001 WL 1640141, at 1, *aff'd*, 302 F.3d 849, 854, cert. denied, 123 S. Ct. 883. See *infra* notes 102-106 and accompanying text (describing judicial treatment of the case).

n10. *Booth*, 2001 WL 1640141, at 2-3. See *infra* notes 102-106 and accompanying text.

n11. See *infra* notes 14-64 and accompanying text.

n12. See *infra* notes 65-123 and accompanying text.

n13. See *infra* notes 124-194 and accompanying text.

n14. It is important to distinguish between those organizations claiming to represent fathers' rights (the focus of this Note) and organizations representing fathers' interests. While linguistically they may sound similar or related, a real and definite difference exists in the organizational missions of each movement. Groups representing the interests of fathers may work on initiatives that educate fathers about the responsibilities of fatherhood, strengthen the positive role of fathers in families, form divorced-dad support groups, or provide legitimate legal assistance to fathers in contested divorce or child custody matters. See, e.g., Dads & Daughters, at <http://www.dadsanddaughters.org> (last visited Mar. 26, 2003) (a national education and advocacy nonprofit group); Minneapolis FATHER Project, at <http://www.ycb.org/fatherproject.asp> (last visited April 4, 2003) (a local initiator that promotes young fathers' development by providing connections to parenting classes, educational services, career planning and employment). As this Note will demonstrate, the fathers' rights movement is an organized campaign of politically-motivated, anti-feminist men's groups working to eliminate what its members consider to be pro-women or anti-men laws. See *infra* notes 14-39 and accompanying text.

n15. Joanna Weiss, *In Governor's Race, A Declarer of Independence; Campaign Style Earning Johnson Some Attention*, Boston Globe, Oct. 7, 2002, at B1. The fathers' rights movement recently increased its visibility when a Pennsylvania woman temporarily faced an injunction preventing her from having an abortion after her boyfriend took her to court. See Amy Fagan, *Judge Lifts Injunction on Abortion, Dismisses Lawsuit*, Wash. Times, Aug. 6, 2002, at A3, available at LEXIS, News Library, Allnews File; Dahlia Lithwick, *Dad's Sad, Mad: Too Bad*, Slate, at <http://slate.msn.com/id/2069132> (Aug. 7, 2002); Marie McCullough, *Man Loses Bid to Halt Abortion; A Judge Lifted an Injunction; The Ex-Boyfriend Will Appeal*, Philadelphia Inquirer, Aug. 6, 2002, at A1, available at LEXIS, News Library, Allnews File.

n16. Weiss, *supra* note 15.

n17. Peter Schworm, Fathers Want Rightful Role in Custody of Their Children, *Boston Globe*, Mar. 14, 2002, at 9. See also Nancy D. Polikoff, Why Are Mothers Losing: A Brief Analysis of Criteria Used in Child Custody Determinations, *14 Women's Rts. L. Rep.* 175, 177 (1992) ("The demands of the movement are based upon the premise that men are unfairly disadvantaged in custody litigation.").

n18. See *infra* notes 28-31 and accompanying text (describing state legislative proposals and litigation tools).

n19. See Mary Leonard, Bush Pledges Funds for Fatherhood, *Boston Globe*, June 8, 2001, at A2 ("Leaders of the fatherhood initiative have been named to key positions in Bush's administration.").

n20. See National Fatherhood Initiative, at <http://www.fatherhood.org> (last visited Mar. 26, 2003).

n21. See Sometimes It's Hard To Be a Man, *Economist*, Dec. 22, 2001, at 32-33.

n22. Dana Milbank, Karl Rove, Adding to His To-Do List, *Wash. Post*, June 25, 2002, at A17.

n23. See, e.g., Alliance for Non-Custodial Parents Rights, at <http://www.ancpr.org> (last visited Mar. 26, 2003); The Fathers' Rights and Equality Exchange, at <http://www.dadsrights.org> (last visited Mar. 26, 2003); National Fatherhood Initiative, *supra* note 20; National Congress for Fathers & Children, at <http://www.ncfc.net> (last visited Mar. 26, 2003).

n24. See The Fathers' Rights and Equality Exchange, *supra* note 23.

n25. Anne P. Mitchell, Equal Protection Under the Law?, at <http://www.deltabravo.net/custody/equal.htm> (last visited Mar. 26, 2003).

n26. See Separated Parenting Access and Resource Center, Welcome to SPARC, the Separated Parenting Access & Resource Center, at <http://www.deltabravo.net/custody/index.html> (last visited Mar. 26, 2003).

n27. *Id.*

n28. "Paternity fraud legislation" is the generic title given to state legislative proposals that allow ex-husbands and unmarried fathers to end child support obligations using DNA proof that they are not the biological fathers of the children receiving the support. See Martin Kasindorf, Men Wage Battle on 'Paternity Fraud,' *USA Today*, Dec. 3, 2002, at A3 (reporting on the paternity fraud movement and describing the eleven state paternity laws currently in effect); Robert E. Pierre, States Consider Laws Against Paternity Fraud; Child Advocates Worry About Effects, *Wash. Post*, Oct. 14, 2002, at A3 (discussing various state paternity fraud proposals and "presumption of fatherhood" laws).

n29. Posting of Lowell Jaks, ancpr@ancpr.org, to <http://www.ancpr.org>, Finally, an Opportunity To Strike Back Effectively! (June 2, 2002), *Ancpr-newsletter Archives*, at <http://www.ancpr.org/recentnewsletters.htm>. Jaks does not provide specific examples of such "intractable" domestic violence, custody, and child support

laws. Id. However, his mention of the Bradley Amendment refers to the 1986 amendment to the Social Security Act, which bars the retroactive modification of child support orders. See 42 U.S.C. 666(a)(9) (2002). See generally J. Eric Smithburn, Removing Nonconforming Child Support Payments from the Shadow of the Rule Against Retroactive Modification: A Proposal for Judicial Discretion, 28 *J. Fam. L.* 43, 43 (1990) (discussing the effect of the Bradley Amendment on "questions concerning credit requests for nonconforming support payments").

n30. Fathers' Rights Foundation, Dads' & Fathers' Rights Courtroom Tips Page, at <http://www.courtstips.com> (last visited Mar. 26, 2003).

n31. Ronald L. Isaacs, The False Claims of Child Abuse Defense Kit, at <http://www.dadslawyer.com/CHILDABUSEKIT> (last visited Mar. 26, 2003).

n32. Because the Internet has become an important tool for mobilizing grassroots efforts, and because it is a cheap and effective tool to reach people interested in a particular cause, organizational websites and chatrooms are a critical source of information on the fathers' rights movement. See, e.g., Mary R. Anderlik & Mark A. Rothstein, DNA-Based Identity Testing and the Future of the Family: A Research Agenda, 28 *Am. J.L. & Med.* 215, 221 (2002) (stating that fathers' rights organizations "have high visibility due to their presence on the World Wide Web ... Men who experience some trigger event will readily find a template for how to understand and respond to their predicament").

n33. Posting of Bill Wood, to <http://forum.fathermag.com/child-custody/004/forum>, All Quiet with Fathers for Too Long! (Sept. 14, 2002), at <http://forum.fathermag.com/child-custody/004/forum/messages/129748.shtml>.

n34. Id. Rather than dismissing Mr. Wood as a member of a fringe group whose positions yield no real influence, it is important to note that Mr. Wood co-authored a statement on the record for the Child Support and Fatherhood Proposals Hearing before the House Committee on Ways and Means Subcommittee on Human Resources. See Committee on Ways and Means, Subcommittee on Human Resources, 107th Congress, Child Support and Fatherhood Proposals, Statement of Bill Wood, and Jay Gell, Children's Legal Foundation, Charlotte, North Carolina, at <http://waysandmeans.house.gov/hearings.asp> (last visited Mar. 26, 2003).

n35. See *infra* Part II.B. (describing the Booth case and the Plaintiffs' fathers' rights affiliations).

n36. Legal Action Committee, Minnesota's Battered Women's Act Challenged, at <http://www.thebestisp.com/<diff>sbooth/BWA%20index.htm> (last visited Mar. 26, 2003).

n37. Legal Action Committee, Domestic Violence - Challenging the Minnesota Battered Women's Act, at <http://www.thebestisp.com/<diff>sbooth/Domestic%20Violence.htm> (May 2001).

n38. See *infra* note 97 and accompanying text (discussing the fathers' right affiliations of the Booth Plaintiffs).

n39. See *Booth v. Hvass*, No. 00-1672 MJD/JGL, 2001 WL 1640141, at 1 (D. Minn. Aug. 13, 2001) (seeking declaratory judgment that the Minnesota statutes appropriating funds to "emergency shelters for

battered women, and support services for "battered women and domestic abuse victims and their children" are unconstitutional).

n40. U.S. Const. amend. XIV, 1.

n41. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (stating that the clause "is essentially a direction that all persons similarly situated should be treated alike").

n42. See *Reed v. Reed*, 404 U.S. 71, 75-76 (1971) (explaining that the clause allows States to treat different classes differently but "does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute"). See also Rachel K. Alexander, *Nguyen v. INS: The Supreme Court Rationalizes Gender-Based Distinctions in Upholding an Equal Protection Challenge*, 35 *Creighton L. Rev.* 789, 806 (2002) (discussing Reed as standing for the prohibition of "the classification of persons based on criteria entirely unrelated to a statute's objective").

n43. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973) (stating that a state action that "operates to the disadvantage of some suspect class or impinges upon a fundamental right ... requires strict judicial scrutiny").

n44. Aileen McColgan, *Women Under the Law: The False Promise of Human Rights* 35 (2000) (writing that the Equal Protection clause "was originally intended solely to apply to black American men" but eventually "began to be interpreted as extending beyond discrimination based on race to regulate, more generally, governmental classifications between people"). See also Kathleen M. Sullivan, *Constitutionalizing Women's Equality*, 90 *Cal. L. Rev.* 735, 742 (2002) (writing that "equal protection law was the creature of slavery, the central American equality issue").

n45. See *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 291 (1978) ("Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.").

n46. *City of Cleburne*, 473 U.S. at 440 (stating that race is "so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy ... and will be sustained only if they are suitably tailored to serve a compelling state interest").

n47. See *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976) (applying rational basis to uphold a mandatory retirement statute).

n48. See *Rodriguez*, 411 U.S. at 24 ("At least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.").

n49. See *id.* at 2 (holding that a strict scrutiny test "is reserved for cases involving laws that operate to the disadvantage of suspect classes").

n50. See *id. at 55* ("The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest.") (citations omitted).

n51. See Lee Schottenfeld, *The Fate of Separate But Equal in the Athletic Arena*, 10 *U. Miami Bus. L. Rev.* 649, 656 (2002). Schottenfeld cites early examples of the mere rationality test as employed by the Court to uphold sex-based classifications in *Bradwell v. State*, 83 *U.S.* 130 (1872) (upholding a statute denying women a license to practice law), *Hoyt v. Florida*, 368 *U.S.* 57 (1961) (upholding a statute exempting women from serving on juries), and *Goesaert v. Cleary*, 335 *U.S.* 464 (1948) (upholding a statute excluding women from tending bar unless she was the wife or daughter of the bar owner). Schottenfeld, *supra*, at 656-57.

n52. See Schottenfeld, *supra* note 51, at 657 (writing that when rational basis review was the standard of review for sex-based classifications, "stereotypical generalizations provided the justification for restricting the spheres of life of which women could be a part").

n53. See, e.g., *Nguyen v. INS*, 533 *U.S.* 53, 63 (2001) ("Fathers and mothers are not similarly situated with regard to the proof of biological parenthood."); *Rostker v. Goldberg*, 453 *U.S.* 57, 78 (1981) ("Men and women, because of the combat restrictions on women, are simply not similarly situated for purposes of a draft or registration for a draft."); *Michael M. v. Superior Court of Sonoma County*, 450 *U.S.* 464, 471 (1981) ("Young men and young women are not similarly situated with respect to the problems and the risks of sexual intercourse."); *Schlesinger v. Ballard*, 419 *U.S.* 498, 508 (1975) ("Male and female line officers in the Navy are not similarly situated with respect to opportunities for professional service.").

n54. *Craig v. Boren*, 429 *U.S.* 190, 218 (1976) (Rehnquist, J., dissenting) ("Subsequent to *Frontiero*, the Court has declined to hold that sex is a suspect class.") (citation omitted). See also Heather L. Stobaugh, *The Aftermath of United States v. Virginia: Why Five Justices are Pulling in the Reins on the "Exceedingly Persuasive Justification"*, 55 *SMU L. Rev.* 1755, 1756 (2002) ("It is no secret that the current Supreme Court is split about whether gender is a suspect class.").

n55. See *Murgia*, 427 *U.S.* at 325 (Marshall, J., dissenting) (labeling women and illegitimate children as "quasi-suspect" classes).

n56. See *Craig*, 429 *U.S.* 190 (holding that a statutory ban on the sale of 3.2% beer to males under the age of twenty-one and to females under the age of eighteen was a violation of equal protection for males aged eighteen to twenty).

n57. *Id. at 197* ("To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."). See also McColgan, *supra* note 44, at 36 (detailing the Court's application of intermediate scrutiny to review a statutory scheme).

n58. Sullivan, *supra* note 44, at 741. Sullivan writes that a "lack of explicit constitutional text mandating women's equality" caused problems for the Court because "in adapting the law of race discrimination for sex discrimination, the Court faced certain analogical crises." *Id.* at 742.

n59. Sandra Day O'Connor, *Women and the Constitution: A Bicentennial Perspective*, in *Women, Politics and the Constitution* 5, 12 (Naomi B. Lynn ed., 1990). Justice O'Connor notes that the first time "the Court

found a state law discriminating against women to be unconstitutional was ... more than 100 years after the ratification of the Fourteenth Amendment." Id.

n60. *Craig*, 429 U.S. at 198-99 (citing cases holding that such generalizations did not justify gender classifications and noting that "increasingly outdated misconceptions concerning the role of females in the home rather than in the 'marketplace and world of ideas' were rejected as loose-fitting characterizations incapable of supporting state statutory schemes that were premised upon their accuracy") (citations omitted). See also Alexander, *supra* note 42, at 815 (discussing the Court's rejection of "the weak congruence between gender and any gender-based generalization"); Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 *Women's Rts. L. Rep.* 151, 154 (1992) ("As a practical matter, what the Court did was strike down sex-based classifications that were premised on the old breadwinner-homemaker, master-dependent dichotomy.").

n61. See R. Randall Kelso, *Standards of Review under the Equal Protection Clause and Related Constitutional Doctrines Protecting Individual Rights: The "Base Plus Six" Model and Modern Supreme Court Practice*, 4 *U. Pa. J. Const. L.* 225 (2002) (discussing the various applications and standards of Equal Protection scrutiny).

n62. *United States v. Virginia*, 518 U.S. 515, 531 (1996) ("Parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action."). See also Kelso, *supra* note 61, at 238 (2002) (discussing how the Virginia language seemed to heighten the usual standard of intermediate scrutiny); Schottenfeld, *supra* note 51, at 672 ("This phrase adds new meaning to the standard by allowing it to take on its own identity, above and beyond that of the intermediate standard.").

n63. Compare *Virginia*, 518 U.S. at 566-603 (Scalia, J., dissenting) (describing the exceedingly persuasive justification phrase as "amorphous" and "vacuous," and generally discussing the negative implications of the majority's holding), with Lawrence G. Sager, *Of Tiers of Scrutiny and Time Travel: A Reply to Dean Sullivan*, 90 *Cal. L. Rev.* 819, 822 (2002) (considering the "exceedingly persuasive justification" phrase "a more radical doctrinal change"), with Stobaugh, *supra* note 54, at 1755 (discussing the Court's subsequent misgivings regarding the phrase).

n64. See Kelso, *supra* note 61, at 238.

n65. See *Minn. Stat. 611A.31-375* (2000). "Contrary to Plaintiffs' assertions, there is no one law entitled the 'Minnesota Battered Women's Act;' rather, there is a series of statutes which, taken as a whole, provides a mechanism for the dispersal of federal and state funds to local programs that assist victims of domestic violence." *Booth v. Hvass*, No. 00-1672 MJD/JGL, 2001 WL 1640141, at 1 (D. Minn. Aug. 13, 2001).

n66. *Minn. Stat. 611A.31*, subd. 2.

n67. See *Minn. Stat. 611A.31-375*.

n68. *Minn. Stat. 518B.01* (2000).

n69. Id. at subd. 2(a).

n70. See generally *Minn. Stat. 518B.01*. The only reference to a person's sex in the Domestic Abuse Act is in 518B.01, subd. 2(b)(6), which defines "family or household members" in part as "a man and woman if the woman is pregnant and the man is alleged to be the father." *Id.* All other terms are sex-and gender-neutral. *Id.*

n71. *Minn. Stat. 611A.32*, subd. 1.

n72. See *Minn. Stat. 611A.31-375*.

n73. See *Minn. Stat. 611A.31-361*.

n74. *Minn. Stat. 611A.37-375*.

n75. See *Minn. Stat. 611A.37*, subd. 4.

n76. *Minn. Stat. 611A.31-375*.

n77. See *Amended Complaint, Exhibit 3, Booth v. Hvass, No. 00-1672 MJD/JGL, 2001 WL 1640141* (D. Minn. Aug. 13, 2001) (No. 00-1672), available at <http://rkids.org/BWA%20Documents/1e%20Exhibit%203%20MN%20House%20Debate.doc> (last visited April 4, 2003) (transcription of May 20, 1977, House of Representatives' floor debate considering an amendment to delete "women" after the word "battered" in the interest of gender neutrality). See also *infra* note 97 and accompanying text.

n78. See *id.* at 19 (recording the vote rejecting the proposed amendment).

n79. See *id.*

n80. See *id.*

n81. *Id.*

n82. See *id.* at 9 (remarks of Mrs. Kahn). Mrs. Kahn goes on to report that the legislature was then considering "a problem that has not been met in society which is an extremely serious problem and evidence presented in all committees has said there is not a corresponding problem for men." *Id.* at 12.

n83. See *id.* at 3 (remarks of Mrs. Kahn), 14 (remarks of Mr. Randall) (discussing reports by St. Paul police officers of the thousands of battered women cases they had encountered compared to the virtual non-existence of battered men cases).

n84. See id. at 3 (remarks of Mrs. Kahn).

n85. See id. at 17 (remarks of Mr. Sand).

n86. See id. at 19 (recording of the vote on the amendment, "51 Aye's, 72 Nay's, the amendment is not adopted").

n87. See id. at 2 (remarks of Mr. McDonald), 3-4 (remarks of Mrs. Kahn), 8 (remarks of Mrs. Bergland), 10-14 (remarks of various speakers in debate regarding children).

n88. See id.

n89. See id. at 8 (remarks of Mrs. Bergland).

n90. See id. at 16-17 (remarks of Mr. Sand).

n91. See id.

n92. Id.

n93. Id. at 14-15 (remarks of Mr. Randall).

n94. 2000 Minn. Laws 445, art. 2 10-21.

n95. Id.

n96. See id. 10 (emphasis indicates language added by the amendment).

n97. See *Amended Complaint at 1, Booth v. Hvass, No. 00-1672 MJD/JGL, 2001 WL 1640141* (D. Minn. Aug. 13, 2001) (No. 00-1672), available at <http://rkids.org/BWA%20Documents/1%20Complaint.doc> (Oct. 17, 2000) [hereinafter *Amended Complaint*]. The caption of the *Amended Complaint* lists among the Plaintiffs various individual men forming the R-KIDS (Remember Kids in Divorce Settlements) Legal Action Committee, the Men's Defense Association, and the National Coalition of Free Men, Twin Cities Chapter. Id. Each of these organizations has a mission statement falling under the rubric of the fathers' rights movement. See R-KIDS, at <http://www.r-kids.org> (last visited Mar. 26, 2003); Men's Defense Association, at <http://www.mensdefense.org> (last visited Mar. 26, 2003); National Coalition of Free Men, at <http://www.ncfm.org> (last visited Mar. 26, 2003). See also *supra* notes 35-39 and accompanying text (discussing Plaintiffs' organizational relationship with the fathers' rights movement).

n98. *Booth v. Hvass, 302 F.3d 849, 850 (8th Cir. 2002)*. See also *infra* notes 109-123 and accompanying text (discussing specific claims contained in the Booth Plaintiffs' *Amended Complaint*).

n99. *Minn. Stat. 611A.31-.375* (2000).

n100. *Booth*, 302 F.3d at 850.

n101. *Id.* at 851. The state department commissioners named in the case were various officials responsible for overseeing the state's domestic violence programming and funding: Sheryl Ramstad Hvass, Commissioner of Corrections; Michael O'Keefe, Commissioner of Human Services; Charles R. Weaver, Jr., Commissioner of Public Safety; and Christine Jax, Commissioner of Children, Families, and Learning. *Id.* at 850. The Domestic Abuse Project, Central Minnesota Task Force on Battered Women, and Lakes Crisis Center, all providers of service to victims of domestic violence, intervened on behalf of the Defendants. *Id.* at 851.

n102. *Booth v. Hvass*, No. 00-1672 MJD/JGL, 2001 WL 1640141 at 2 (D. Minn. Aug. 13, 2001). The District Court found that the "Plaintiffs failed to meet both the constitutional and prudential requirements for standing," leaving the court "without jurisdiction over this complaint." *Id.* at 5.

n103. *Booth*, 302 F.3d at 851.

n104. See *id.* at 854.

n105. See *id.*

n106. *Booth*, 123 S. Ct. 883 (2003).

n107. See *Amended Complaint*, *supra* note 97, at 1. The website from which this copy of the Amended Complaint may be obtained is hosted by Booth Plaintiff Scott Booth and the R-KIDS Legal Action Committee, and contains links to copies of various court documents filed in the District Court, Eighth Circuit Court of Appeals, and Supreme Court proceedings. See R-KIDS, at <http://rkids.org/BWA Documents> (last visited Mar. 26, 2003).

n108. See *infra* notes 109-123 and accompanying text (detailing Plaintiffs' main equal protection claims against the Minnesota domestic violence statutes).

n109. *Amended Complaint*, *supra* note 97, at 19.

n110. *Id.* at 9.

n111. *Id.* at 19.

n112. *Id.* at 21.

n113. *Id.* at 15-19.

n114. *Id.* at 16-17.

n115. *Id.* at 16 (citing Journal of the Senate, May 12, 1977, 2176-78), 17 (citing Journal of the House of Representatives, May 20, 1977, 3216-18). Plaintiffs' Amended Complaint Exhibit 3 is an untitled document that Plaintiffs presented as the official "transcript of the said proceedings, including all remarks made during the debate as preserved in the official records of the House of Representatives on May 20, 1977." *Id.* at 18. See *supra* note 77 and accompanying text (describing the Plaintiffs' exhibit of the legislative transcript). This Note will assume, for purposes of consistency, that the legislative transcript provided by the Plaintiffs is the official record of the Minnesota Legislature's 1977 floor debate regarding this legislation.

n116. *Amended Complaint, supra* note 97, at 20.

n117. *Id.* See Martin S. Fiebert, References Examining Assaults by Women on Their Spouses or Male Partners: An Annotated Bibliography, at <http://www.csulb.edu/~mfiebert/assault.htm> (last visited Mar. 26, 2003) (the document presented by Plaintiffs as Exhibit 4). It should be noted that of the "133 scholarly investigations ... which demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their spouses or male partners" cited in this bibliography, most are from studies or analyses published between 1980 and the present. *Id.* The only cited study that would have been available to the Minnesota Legislature considering the battered women legislation in 1977 is a 1963 examination of male and female aggression as expressed in newspaper cartoons entitled "Male and female relations in the American comic strip." *Id.*

n118. *Id.* at 8-13.

n119. *Id.* at 11.

n120. *Id.* at 8-13.

n121. *Id.* at 13.

n122. *Id.*

n123. *Id.* at 23.

n124. See *supra* Part I.A. (discussing the father's rights movement).

n125. *Id.*

n126. See *supra* notes 23-29 and accompanying text (discussing specific complaints of the father's rights movement).

n127. See supra notes 102-106 and accompanying text (describing judicial treatment of the case).

n128. See infra Part III.A. (analyzing the Minnesota domestic violence statutes under an Equal Protection intermediate scrutiny standard).

n129. See *Booth v. Hvass*, No. 00-1672 MJD/JGL, 2001 WL 1640141, at 1 (D. Minn. Aug. 13, 2001).

n130. See supra notes 55-57 and accompanying text (describing the intermediate scrutiny standard of judicial review for sex-based classifications).

n131. See supra notes 55-64 and accompanying text (describing development of judicial review of sex-based classifications).

n132. See supra Part II.B.

n133. See supra note 46 and accompanying text (discussing race-based classifications).

n134. See supra notes 55-64 and accompanying text.

n135. See supra note 55 and accompanying text.

n136. See supra notes 40-42 and accompanying text (discussing classifications of individuals).

n137. See supra notes 52, 60 and accompanying text (discussing stereotypes and generalizations about the sexes).

n138. See supra notes 56-57, 62-64 and accompanying text.

n139. See *Minn. Stat. 611A.31-375* (2000). See also supra Part II.A. (explaining the Minnesota domestic violence statutes).

n140. See *Minn. Stat. 611A.32*.

n141. See supra notes 109-112 and accompanying text (describing Booth Plaintiffs' facial discrimination claims).

n142. *Amended Complaint*, supra note 97, at 19.

n143. See supra notes 77-86 and accompanying text (discussing the Minnesota Legislature's investigation into whether men and women were similarly situated with respect to domestic violence).

n144. See supra notes 77-86 and accompanying text.

n145. See supra note 85 and accompanying text.

n146. See supra note 83 and accompanying text.

n147. See supra note 86 and accompanying text.

n148. See supra notes 77-86 and accompanying text.

n149. See supra notes 77-86 and accompanying text.

n150. See *Amended Complaint*, supra note 97, at 15-20. See also supra Part II.B. (discussing the Booth Plaintiffs' arguments and evidence exhibited with their Amended Complaint).

n151. See *id.* at 16-17. See also supra notes 113-115 and accompanying text (describing Booth Plaintiffs' use of the legislative transcript).

n152. See supra notes 116-117 and accompanying text (describing Booth Plaintiffs' scholarly studies exhibit).

n153. See supra notes 77-86 and accompanying text.

n154. See supra note 81 and accompanying text.

n155. See supra notes 82-86 and accompanying text.

n156. See supra notes 87-89 and accompanying text.

n157. See supra notes 90-93 and accompanying text.

n158. See supra note 83 and accompanying text.

n159. See supra notes 84-85 and accompanying text.

n160. See supra notes 81-82, 86 and accompanying text.

n161. See supra notes 87-89 and accompanying text.

n162. See supra note 88 and accompanying text.

n163. See supra note 89 and accompanying text.

n164. See supra notes 90-93 and accompanying text.

n165. See supra notes 91-93 and accompanying text.

n166. See supra note 92 and accompanying text.

n167. See supra notes 83-86 and accompanying text.

n168. See supra notes 92-93 and accompanying text.

n169. See supra notes 116-117 and accompanying text.

n170. See supra note 117 and accompanying text.

n171. See supra notes 94-96 and accompanying text.

n172. See supra note 71 and accompanying text.

n173. See supra notes 71, 94-96 and accompanying text.

n174. See supra notes 77-86 and accompanying text. See also supra Part III.A.1 (analyzing Booth Plaintiffs' facial discrimination claims).

n175. See *Amended Complaint*, supra note 97, at 8-13. See also supra notes 118-123 and accompanying text (describing Booth Plaintiffs' discriminatory effects claims).

n176. See *Amended Complaint*, supra note 97, at 11. See also supra notes 119-120 and accompanying text.

n177. See supra note 119 and accompanying text.

n178. See supra note 121 and accompanying text.

n179. See *Amended Complaint*, supra note 97, at 11 (citing a manual, funded by money through the state, which states nearly all domestic violence is inflicted by men upon women).

n180. See supra Part III.A.1.

n181. See *Minn. Stat. 611A.32*, subd. 1 (2000).

n182. *Id.*

n183. See supra notes 77-86 and accompanying text.

n184. See *Minn. Stat. 611A.31-375*. See also supra notes 71-73, 94-96 and accompanying text.

n185. See supra notes 77-86 and accompanying text.

n186. See supra Part I.A. (describing the fathers' rights movement).

n187. See supra notes 23-34 and accompanying text (discussing the goals and tactics of the fathers' rights movement).

n188. See supra note 34 and accompanying text.

n189. See supra notes 15-17 and accompanying text.

n190. It is important to remember the difference between legitimate fathers' interests organizations and the organizations promoting the subversive tactics of the fathers' rights movement. See supra note 14 and accompanying text.

n191. See supra notes 30-31 and accompanying text.

n192. See supra notes 19-22 and accompanying text.

n193. See supra notes 28-29 and accompanying text.

n194. See supra notes 19-22, 28 and accompanying text.

