

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

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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.¹ The movement's rhetoric often embraces the moderate-sounding goals of ensuring equal protection for fathers under the law.² 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.³

*Booth v. Hvass*⁴ 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.⁵ The Plaintiffs claimed that the laws violate Equal Protection guarantees because they provide funding to assist battered women but not to assist

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

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

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

4. 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).

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

battered men.⁶ The Plaintiffs brought the suit ostensibly as male citizens left unprotected by the statute;⁷ 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.⁸

The district court dismissed the *Booth* case with prejudice, the Eighth Circuit Court of Appeals affirmed, and the Supreme Court denied certiorari.⁹ Because the resolution of the case turned on issues of standing, the merits of the complaint, including the Equal Protection questions, were not addressed.¹⁰ 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.¹¹ Part II describes the Minnesota domestic violence statutes and the Equal Protection challenges leveled by the *Booth* Plaintiffs.¹² Part III examines the merits of the *Booth* arguments under current Equal Protection jurisprudence.¹³ 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.

6. *Id.* at *2.

7. *See id.* at *3.

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

9. *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).

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

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

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

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

I. THE CONTEXT FOR *BOOTH'S* EQUAL PROTECTION CHALLENGE

A. INTRODUCTION TO THE FATHERS' RIGHTS MOVEMENT

The Boston Globe modestly describes the fathers' rights movement¹⁴ as "a passionate but controversial campaign led by those who believe the courts are biased toward women in custody proceedings and domestic violence cases."¹⁵ 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,¹⁶ and the judicial "assumption that children are usually better off with their mothers."¹⁷

While the movement seems to be more focused on the local level,¹⁸ some of the movement's leaders are increasingly

14. 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.

15. 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.

16. Weiss, *supra* note 15.

17. 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.").

18. See *infra* notes 28-31 and accompanying text (describing state legislative

influencing national policy.¹⁹ For example, Wade Horn, former president of the fathers' rights group National Fatherhood Initiative (NFI),²⁰ was recently appointed Assistant Secretary for Children and Families at the U.S. Department of Health and Human Services.²¹ 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.²²

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.²³ The founder of one such group, the Fathers' Rights & Equality Exchange (FREE),²⁴ 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."²⁵ The Separated Parenting Access and Resource Center (SPARC),²⁶ 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."²⁷

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

proposals and litigation tools).

19. 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.").

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

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

22. Dana Milbank, *Karl Rove, Adding to His To-Do List*, WASH. POST, June 25, 2002, at A17.

23. 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).

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

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

26. 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).

27. *Id.*

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" legislation²⁸ 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."²⁹ 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.³⁰ 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."³¹

Postings to various online fathers' rights chatrooms, discussion lists and listservs reveal additional targets of the movement.³² In one such posting, fathers' rights leader Bill Wood

28. "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).

29. 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").

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

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

32. 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*

insists "[i]t has been quiet for TOO LONG with the Fathers' groups. ... It's time to 'ramp it up' again. And I mean RAMP IT UP!"³³ 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!!³⁴

The *Booth v. Hvass* lawsuit illustrates a practical application of Mr. Wood's call to arms.³⁵ 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."³⁶ 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."³⁷ Grounded in the father's rights ideology,³⁸ the legal action led by Mr. Booth and his fellow Plaintiffs sought nothing less than the elimination of

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").

33. 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>.

34. *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).

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

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

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

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

Minnesota's domestic violence statutes.³⁹

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."⁴⁰ The clause prohibits state governments from treating similarly situated individuals differently.⁴¹ 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.⁴²

The Supreme Court has held that some classifications are so severely suspect that they require a strict and exacting scrutiny.⁴³ For example, because the Fourteenth Amendment was originally adopted to protect freed slaves,⁴⁴ governmental distinctions based on race are considered inherently suspect and automatically trigger a strict judicial review of the classification.⁴⁵ Under this

39. 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).

40. U.S. CONST. amend. XIV, § 1.

41. 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").

42. 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").

43. 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 ... requir[es] strict judicial scrutiny").

44. 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 "[e]qual protection law was the creature of slavery, the central American equality issue").

45. See *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 291 (1978) ("Racial

strict scrutiny standard, a racial classification will almost always be found unconstitutional.⁴⁶

A classification using non-suspect classes, such as age⁴⁷ or wealth,⁴⁸ is subject to a much less rigorous review.⁴⁹ 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.⁵⁰

The Court initially used this relaxed rational basis standard to uphold sex-based classifications.⁵¹ 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.⁵² Yet, because there are many contexts in which men and women are *not* similarly situated,⁵³ the Court has refrained from uniformly raising sex-

and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.”).

46. *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”).

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

48. *See Rodriguez*, 411 U.S. at 24 (“[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.”).

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

50. *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).

51. *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.

52. *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”).

53. *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) (“[Y]oung 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) (“[M]ale and female line officers in the Navy are *not* similarly situated with respect to opportunities for professional service.”).

based distinctions as suspect classifications.⁵⁴ The Court has instead discussed sex-based classifications as "quasi-suspect"⁵⁵ and fashioned an intermediate scrutiny standard of judicial review for cases dealing with these distinctions.⁵⁶ Under the intermediate scrutiny standard, the classification must serve an important governmental objective and must be substantially related to that objective.⁵⁷

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."⁵⁸ In fact, the Court did not start seriously considering "legislation providing dissimilar treatment for similarly situated women and men [until] the early 1970s."⁵⁹ 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.⁶⁰

54. *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.").

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

56. 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).

57. *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).

58. 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.

59. 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.*

60. *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 "[t]he 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

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.⁶¹ 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.⁶² The precise meaning of this holding is still under debate,⁶³ 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."⁶⁴

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.⁶⁵ The term

(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.").

61. 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).

62. *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.").

63. 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).

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

65. 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).

"battered woman" is defined in the chapter as "a woman who is being or has been victimized by domestic abuse."⁶⁶ The chapter's subsections regarding battered women also refer to victims of domestic abuse more generally.⁶⁷ 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.⁶⁸ 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."⁶⁹ The Domestic Abuse Act does not draw distinctions between the sexes.⁷⁰

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.⁷¹

Throughout the crime victims' subsections, the statutes incorporate the Domestic Abuse Act's definitions.⁷² 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.⁷³ The subsections of the Crime Victims chapter addressing "Shelter Facility Per Diem Payments"⁷⁴ 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

66. MINN. STAT. § 611A.31, subd. 2.

67. See MINN. STAT. §§ 611A.31-.375.

68. MINN. STAT. § 518B.01 (2000).

69. *Id.* at subd. 2(a).

70. 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.*

71. MINN. STAT. § 611A.32, subd. 1.

72. See MINN. STAT. §§ 611A.31-.375.

73. See MINN. STAT. §§ 611A.31-.361.

74. MINN. STAT. §§ 611A.37-.375.

coverage for battered women and their children.”⁷⁵

The laws regarding battered women as crime victims were originally passed in 1977.⁷⁶ 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.⁷⁷ After convening several investigative hearings on the subject, the legislature ultimately decided that the sexes were not similarly situated in this context.⁷⁸ The *Booth* Plaintiffs included in their Amended Complaint select transcripts from the Minnesota House of Representatives’ floor debate regarding this legislation.⁷⁹ 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.⁸⁰

The legislative transcript shows that the legislators rejected an amendment that would have changed the word “women” to “persons” throughout the legislation.⁸¹ 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.”⁸² Several legislators stated that inquiries were specifically made as to whether there was a need for shelters for men.⁸³ The responses from people working in the domestic violence field all seemed to comport with

75. See MINN. STAT. § 611A.37, subd. 4.

76. MINN. STAT. §§ 611A.31-.375.

77. 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_Documents/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.

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

79. See *id.*

80. See *id.*

81. *Id.*

82. 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 committee[s] has said there is not a corresponding problem for men.” *Id.* at 12.

83. 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).

the report of one police officer's statement that he had "never in all his years seen a case of a battered man."⁸⁴ 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."⁸⁵ 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.⁸⁶

The record also reflects the legislature's consideration of evidence on how children are impacted by domestic violence.⁸⁷ 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.⁸⁸ They indicated a desire for the language of the statute to allow both women and their children to seek emergency shelter as a family.⁸⁹

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.⁹⁰ 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.⁹¹ 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."⁹² 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."⁹³

84. *See id.* at 3 (remarks of Mrs. Kahn).

85. *See id.* at 17 (remarks of Mr. Sand).

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

87. *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).

88. *See id.*

89. *See id.* at 8 (remarks of Mrs. Bergland).

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

91. *See id.*

92. *Id.*

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

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.⁹⁴ These changes altered certain references throughout the domestic violence statutes from "battered women" to "domestic abuse victims."⁹⁵ 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."⁹⁶ 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.⁹⁷ 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."⁹⁸ They claimed, *inter alia*, that the Battered Women section of the Crime Victims chapter⁹⁹ "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."¹⁰⁰ In addition, the Plaintiffs sought to prohibit certain state department

94. 2000 Minn. Laws 445, art. 2 §§ 10-21.

95. *Id.*

96. *See id.* § 10 (emphasis indicates language added by the amendment).

97. *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_Documents/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).

98. *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).

99. MINN. STAT. §§ 611A.31-.375 (2000).

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

commissioners "from spending funds under, or promoting the objectives of, the domestic abuse statutes."¹⁰¹

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.¹⁰² 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."¹⁰³ 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."¹⁰⁴ The court further held that the appellants lacked "taxpayer standing to challenge state expenditures to benefit battered women under the Equal Protection Clause."¹⁰⁵ In January 2003, the Supreme Court denied the Plaintiffs' petition for writ of certiorari.¹⁰⁶

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.¹⁰⁷ While not clearly labeled as such, the Plaintiffs' Amended Complaint contained claims that the Minnesota domestic violence laws are facially discriminatory, purposefully discriminatory, and

101. *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.

102. *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.

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

104. *See id.* at 854.

105. *See id.*

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

107. *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).

have discriminatory effects against men.¹⁰⁸

1. FACIALLY DISCRIMINATORY

The Amended Complaint discussed statutory language that, according to the Plaintiffs, clearly draws impermissible distinctions between men and women.¹⁰⁹ 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."¹¹⁰ 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.¹¹¹

Based on these assertions, the Plaintiffs concluded that the Minnesota statutes must be struck down as facially discriminatory.¹¹²

2. PURPOSEFULLY DISCRIMINATORY

The Plaintiffs' Amended Complaint cited to legislative history that shows the state's discriminatory intent.¹¹³ 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.¹¹⁴ The motions were defeated in both houses.¹¹⁵

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

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

110. *Id.* at 9.

111. *Id.* at 19.

112. *Id.* at 21.

113. *Id.* at 15-19.

114. *Id.* at 16-17.

115. *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

The Plaintiffs also cited "published empirical studies" showing that "women initiate and carry out physical assaults on their partners as often as men do."¹¹⁶ 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."¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ 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.¹²⁰

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

official record of the Minnesota Legislature's 1977 floor debate regarding this legislation.

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

117. *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.*

118. *Id.* at 8-13.

119. *Id.* at 11.

120. *Id.* at 8-13.

general before the judiciary ... depriving them, because they are men, of equal and impartial justice under law."¹²¹ 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".¹²² 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."¹²³

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.¹²⁴ It is from this premise that the movement is launching Equal Protection challenges to dismantle such legislation.¹²⁵ Similar to the claims made by the Plaintiffs in *Booth v. Hvass*, the movement is arguing that these laws treat similarly situated individuals differently.¹²⁶ 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.¹²⁷ While the Minnesota statutes are likely to survive the specific challenges in *Booth*,¹²⁸ 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

121. *Id.* at 13.

122. *Id.*

123. *Id.* at 23.

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

125. *Id.*

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

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

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

Booth would likely survive an Equal Protection analysis. The *Booth* Plaintiffs argued that the statutes contain sex-based classifications,¹²⁹ which trigger an intermediate scrutiny standard of review.¹³⁰ 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.¹³¹ Even using only the *Booth* Plaintiffs' very own evidence,¹³² 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,¹³³ textual sex-based distinctions have a less clear judicial outcome.¹³⁴ Because the Court has held sex-based classifications to be quasi-suspect,¹³⁵ the State must prove that the sexes are not similarly situated in the context at issue,¹³⁶ and that the classifications are not based on stereotypes or generalizations about the sexes.¹³⁷ 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.¹³⁸

The Minnesota domestic violence statutes are generally gender-neutral in language except where they provide funding for emergency shelter services.¹³⁹ 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

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

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

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

132. See *supra* Part II.B.

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

134. See *supra* notes 55-64 and accompanying text.

135. See *supra* note 55 and accompanying text.

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

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

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

139. See MINN. STAT. §§ 611A.31-.375 (2000). See also *supra* Part II.A. (explaining the Minnesota domestic violence statutes).

battered women."¹⁴⁰ 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.¹⁴¹ The Plaintiffs argued that this statutory line "cannot be read to avoid discrimination against men on account of sex."¹⁴²

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 persuasively 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.¹⁴³ 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.¹⁴⁴ Shelter providers testified that they encountered numerous women who needed but were denied emergency services because there were not enough shelters available to them.¹⁴⁵ The legislative committees specifically inquired as to whether there was a similar problem among male victims of domestic violence.¹⁴⁶ They found no evidence of this and thereby determined that men and women were not similarly situated in the context of domestic violence.¹⁴⁷

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.¹⁴⁸ The legislation was designed to meet a considered need and was substantially related to that objective by providing grants to programs that aid

140. See MINN. STAT. § 611A.32.

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

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

143. 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).

144. See *supra* notes 77-86 and accompanying text.

145. See *supra* note 85 and accompanying text.

146. See *supra* note 83 and accompanying text.

147. See *supra* note 86 and accompanying text.

148. See *supra* notes 77-86 and accompanying text.

battered women.¹⁴⁹

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.¹⁵⁰ 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.¹⁵¹ 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.¹⁵²

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.¹⁵³ From the transcript provided by the Plaintiffs, it is apparent that the legislators specifically considered making the statutory language gender-neutral,¹⁵⁴ but rejected the amendments for three main reasons: first, they did not find an immediate need for shelters among men;¹⁵⁵ second, they took into account the interests of children living in violent homes;¹⁵⁶ and third, they understood the limited funding options that were available for domestic violence shelters.¹⁵⁷

As established by the legislative debate, the Minnesota

149. See *supra* notes 77-86 and accompanying text.

150. 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).

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

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

153. See *supra* notes 77-86 and accompanying text.

154. See *supra* note 81 and accompanying text.

155. See *supra* notes 82-86 and accompanying text.

156. See *supra* notes 87-89 and accompanying text.

157. See *supra* notes 90-93 and accompanying text.

Legislature made repeated attempts to ascertain whether men and women were similarly situated with respect to a need for shelter from domestic violence.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ The legislators found evidence that in situations where women are victimized, children are also victimized.¹⁶² 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.¹⁶³

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.¹⁶⁴ Legislative committees considered the fiscal consequences of funding shelters for both men and women.¹⁶⁵ These legislators found that there were barely enough resources available to fund shelters.¹⁶⁶ Since the legislature had not found an urgent need for battered men's shelters,¹⁶⁷ 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.¹⁶⁸

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.¹⁶⁹ 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

158. See *supra* note 83 and accompanying text.

159. See *supra* notes 84-85 and accompanying text.

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

161. See *supra* notes 87-89 and accompanying text.

162. See *supra* note 88 and accompanying text.

163. See *supra* note 89 and accompanying text.

164. See *supra* notes 90-93 and accompanying text.

165. See *supra* notes 91-93 and accompanying text.

166. See *supra* note 92 and accompanying text.

167. See *supra* notes 83-86 and accompanying text.

168. See *supra* notes 92-93 and accompanying text.

169. See *supra* notes 116-117 and accompanying text.

time it was considering the original statute.¹⁷⁰ 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.¹⁷¹ 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.¹⁷² It is only in the award of grants to emergency shelters that one sex appears to be favored over the other,¹⁷³ and this favor was created in response to the continuing direct and critical need among that class of people.¹⁷⁴

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.¹⁷⁵ For example, the Plaintiffs claimed that funding provided under the statutes' educational provisions is used to publish literature that discriminates against men.¹⁷⁶ The Plaintiffs argued in particular that this literature encourages the use of protection orders and other legal remedies against men.¹⁷⁷ According to the Plaintiffs, the combination of this "sexist hate literature" and other programs funded by the statutes create a prejudicial atmosphere before

170. See *supra* note 117 and accompanying text.

171. See *supra* notes 94-96 and accompanying text.

172. See *supra* note 71 and accompanying text.

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

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

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

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

177. See *supra* note 119 and accompanying text.

courts¹⁷⁸ because the literature allegedly presents men as the cause of domestic violence and never as the victims.¹⁷⁹

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 discrimination¹⁸⁰ 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.¹⁸¹ 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."¹⁸² Throughout several hearings held by the Minnesota Legislature, the legislators found that men and women were not similarly situated with respect to domestic violence.¹⁸³ Despite this initial finding, the current statutes providing funding for educational and support programs are facially gender-neutral.¹⁸⁴ 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.¹⁸⁵

178. See *supra* note 121 and accompanying text.

179. 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).

180. See *supra* Part III.A.1.

181. See MINN. STAT. § 611A.32, subd. 1 (2000).

182. *Id.*

183. See *supra* notes 77-86 and accompanying text.

184. See MINN. STAT. §§ 611A.31-375. See also *supra* notes 71-73, 94-96 and accompanying text.

185. See *supra* notes 77-86 and accompanying text.

*B. THE IMPORTANCE OF UNDERSTANDING THE
FATHERS' 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.¹⁸⁶ 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.¹⁸⁷ In fact, the websites and newsletters for fathers' rights organizations openly call for members to enlist the media's assistance in spreading their message.¹⁸⁸ 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.¹⁸⁹

The fathers' rights organizations also pose a problem for men who are seeking genuine legal assistance in their own domestic issue proceedings.¹⁹⁰ Dispensing propaganda laced with technical jargon, the fathers' rights groups' lawyer-like advice promotes risky and possibly unlawful action.¹⁹¹ 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,¹⁹² others are concentrating their lobbying efforts at the state and local level

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

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

188. See *supra* note 34 and accompanying text.

189. See *supra* notes 15-17 and accompanying text.

190. 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.

191. See *supra* notes 30-31 and accompanying text.

192. See *supra* notes 19-22 and accompanying text.

with moderate success.¹⁹³ With a receptive audience in both the current presidential administration and in several state legislatures,¹⁹⁴ 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.

193. See *supra* notes 28-29 and accompanying text.

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