

DIGGING BENEATH THE EQUALITY LANGUAGE:  
THE INFLUENCE OF THE FATHERS' RIGHTS MOVEMENT  
ON INTIMATE PARTNER VIOLENCE PUBLIC POLICY  
DEBATES AND FAMILY LAW REFORM

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In 2004, a fathers' rights group formed in West Virginia to promote "Truth, Justice, and Equality in Family Law." They created a media campaign including billboards and radio spots warning about the dangers of false allegations of domestic violence, sexual assault, and child abuse, even offering a \$10,000 award to anyone who could prove false allegations of abuse were used against a parent in a custody case. In 2007, they released a study concluding that seventy-six percent of protection order cases were unnecessary or based on false allegations, and warned that protection orders were often filed to gain leverage in divorce and custody cases. They used their research to propose a new law with language created by a national fathers' rights group to sanction parents making false allegations of intimate partner violence during custody cases. The Governor signed their bill into law in 2011.

Within the broader context of the fathers' rights movement, a closer examination of the West Virginia group's work raises important questions. In spite of its dissemination within and beyond the fathers' rights movement, their research conclusions bore little rational relationship to the findings. The research was at best misguided and confused, and at worst, a deliberate attempt to mislead the public in order to promote a political agenda. The new law was redundant, as both the domestic relations code and criminal code already provide sanctions for parents who make false allegations of abuse. The law was effectively a solution created to prove a problem by shifting the public policy focus from protecting victims to questioning their motives and potentially silencing them.

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At first glance, the modern fathers' rights movement and law reform efforts appear progressive, as do the names and rhetoric of the "fathers' rights" and "children's rights" groups advocating for family law reform. They appear a long way removed from the activists who climbed on bridges dressed in superhero costumes or the member martyred by the movement after setting himself on fire on courthouse steps. Their use of civil rights language and appeal to formal gender equality is compelling. But a closer look reveals a social movement increasingly identifying itself as the opposition to the battered women's movement and intimate partner violence advocates. Beneath a veneer of gender equality language and increased political savviness remains misogynistic undertones and a call to reinforce patriarchy.

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## INTRODUCTION

Historically, the two groups participating in the intimate partner violence (IPV)<sup>1</sup> debate within family law reform were the family court community and the victim advocacy movement.<sup>2</sup> The family court community prioritized cooperation between parents using non-adversarial dispute resolution procedures and shared parenting to demonstrate gender equity in custody decisions.<sup>3</sup> Victim advocates prioritized identifying IPV and enhancing the safety of IPV victims

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1. The Center for Disease Control defines intimate partner violence (IPV) as physical violence, sexual violence, threat of physical or sexual violence, and psychological/emotional abuse (including coercive tactics) when there has been prior physical or sexual violence, or prior threat of physical or sexual violence by a current or former partner or spouse, or person with a child in common. *See Intimate Partner Violence: Definitions*, CENTERS FOR DISEASE CONTROL AND PREVENTION, INJURY AND PREVENTION CONTROL (Nov. 24, 2014), <http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/definitions.html>, archived at <http://perma.cc/A46T-QBQY>; see also LINDA E. SALTZMAN ET AL., CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, INTIMATE PARTNER VIOLENCE SURVEILLANCE: UNIFORM DEFINITIONS AND RECOMMENDED DATA ELEMENTS 11–13 (2002). I frequently use the term “IPV” rather than “domestic violence” in this Article because of the lack of clarity surrounding the term “domestic violence.” While organizations such as the U.S. Department of Justice, Office on Violence Against Women define the term “domestic violence” as the use of coercive control against an intimate partner, many state laws and policies use a much broader definition of domestic violence, including acts of violence or emotional abuse against immediate and extended family members, children, and non-intimate household members. *Areas of Focus*, THE UNITED STATES DEPT. OF JUSTICE (July 23, 2014), <http://www.ovw.usdoj.gov/areas-focus>, archived at <http://perma.cc/Q8GF-LUKF> (defining domestic violence as “a pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner.”).

2. Janet R. Johnston & Nancy Ver Steegh, *Historical Trends in Family Court Response to Intimate Partner Violence: Perspectives of Critics and Proponents of Current Practices*, 51 FAM. CT. REV. 63, 63 (2013) (identifying the intersecting efforts of the victim advocacy movement and the family court community).

3. *Id.* at 66.

and their children.<sup>4</sup> Through policy debates and discussions, these groups laid the framework for how family courts respond to IPV in civil protection order, divorce, and child custody cases.<sup>5</sup> Increasingly, a third group is now claiming a seat at the table and shifting the discourse about IPV from victim safety to false allegations.

Once easily dismissed as fringe organizations, fathers' rights groups (FRGs) are beginning to find success in their family law reform efforts.<sup>6</sup> Although their membership numbers remain relatively small, they are increasingly gaining both supporters and influence. The fathers' rights movement (FRM), a subset of the men's rights movement, engages in advocacy efforts to change family law.<sup>7</sup> Although FRGs traditionally focused on child support, divorce, paternity, and custody reform, they increasingly attack organizations and laws advocating for victims of IPV.<sup>8</sup> FRGs attempt to influence family laws and services through impact litigation and lobbying efforts.<sup>9</sup> They have become more organized and savvy, utilizing formal equality language, sharing personal narratives, and creating their own research to bolster their claims.<sup>10</sup>

This Article utilizes one state's FRG as a case study to analyze the goals and methods used by FRGs to challenge IPV laws and services. Part I of this Article will provide a brief history of the FRM. Part II summarizes the efforts of a state FRG, the Men and Women Against Discrimination (MAWAD), and introduces the national FRGs who assisted MAWAD. Part III discusses MAWAD's lawsuit against the West Virginia Board of Family Protection Services and explains how the lawsuit fits into a national effort to sue IPV service providers and funders. Part IV reviews and critiques research created by MAWAD and looks at how one study was disseminated nationally. Part V summarizes MAWAD's statewide lobbying efforts on issues impacting IPV victims and discusses how these efforts fit into the FRM national agenda. The conclusion suggests that FRG research and family law reform efforts should be analyzed within

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4. *Id.* at 65–68 (discussing the different goals of the family court system and IPV advocates and providing recommendations for future changes).

5. *Id.*

6. Jocelyn Elise Crowley, *Taking Custody of Motherhood: Fathers' Rights Activists and the Politics of Parenting*, 37 WOMEN'S STUDIES Q. 223, 223–24 (2009) [hereinafter Crowley, *Taking Custody*].

7. See *infra* notes 13–18 and accompanying text.

8. Molly Dragiewicz, *Patriarchy Reasserted: Fathers' Rights and Anti-VAWA Activism*, 3 FEMINIST CRIMINOLOGY 121, 130 (2008) [hereinafter Dragiewicz, *Patriarchy*].

9. Shannon M. Garrett, Note, *Battered by Equality: Could Minnesota's Domestic Violence Statutes Survive a "Fathers' Rights" Assault?*, 21 LAW & INEQ. 341, 344–46 (2003).

10. See, e.g., Dragiewicz, *Patriarchy*, *supra* note 8, at 130; see also Crowley, *Taking Custody*, *supra* note 6, at 228, 230–31.

the FRM's broader goal to undermine the successes of IPV advocates, rather than as a gender equality movement.

## I. THE FATHERS' RIGHTS MOVEMENT

### A. *Origins of the Movement*

The fathers' rights movement (FRM)<sup>11</sup> emerged in the 1980s and intensified its grassroots mobilization in the 1990s.<sup>12</sup> It is a direct descendent of the men's rights movement of the late 1960s and 1970s, which formed as a counter-movement to growing feminism, advocating for broad law reform.<sup>13</sup> The men's rights movement focused its family law reform advocacy on divorce grounds, alimony, and marital property distribution.<sup>14</sup> Reform efforts expanded in the 1980s to

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11. While "fathers' rights" is the most common term employed by both the participants in the social movement and social scientists researching this social movement, other terms have been used as well. For example, several FRGs refer to themselves as "equal parenting" or "shared custody" groups or identify themselves as "children's rights" organizations. See Dragiewicz, *Patriarchy*, *supra* note 8, at 129; see also JOCELYN ELISE CROWLEY, *DEFIANT DADS: FATHERS' RIGHTS ACTIVISTS IN AMERICA 2* (2008) [hereinafter CROWLEY, *DEFIANT DADS*]. Critiques of the movement use other descriptive terms as well, including the "fathers' supremacist movement." PHYLLIS CHESLER, *MOTHERS ON TRIAL: THE BATTLE FOR CHILDREN AND CUSTODY* 295–308 (2d ed. 2011). In a 2012 Newsletter, the National Organization for Women (NOW) warned that the term "fathers' rights" is misleading as no rights are denied to men because they are men or fathers, and questioned the use of the designation "movement" for what they term a collection of small groups and networks promoting fathers' custody. *Fall 2012—Newsletter of the NOW Family Law Ad Hoc Advisory Committee—SPECIAL REPORT*, NAT'L ORG FOR WOMEN 3 (2012), archived at <http://perma.cc/7647-NGEY>.

12. See Jocelyn Elise Crowley, *Adopting 'Equality Tools' from the Toolboxes of their Predecessors: The Fathers' Rights Movement in the United States*, in *FATHERS' RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE* 81 (Richard Collier & Sally Sheldon eds., 2006) [hereinafter Crowley, *Equality Tools*].

13. Dragiewicz, *Patriarchy*, *supra* note 8, at 129. Bethany M. Coston and Michael Kimmel suggest that the precursor to the men's rights movement in the 1960s, "men's liberation," was aligned with early feminists in their critiques of traditional sex roles. In the 1970s, this developed into two different movements: one supporting feminists and embracing new roles for men, and the other, the men's rights movement, identifying feminism a hateful ideology that despised and denigrated men as the real problem. Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men's Rights Movement*, 13 *NEV. L.J.* 368, 369–72 (2013). But see Richard Collier & Sally Sheldon, *Fathers' Rights, Fatherhood and Law Reform—International Perspectives*, in *FATHERS' RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE* 7 (Richard Collier & Sally Sheldon eds., 2006) (suggesting that activism over fathers' rights can actually be traced to the 19th century and earlier times, though the last thirty years evidenced an increased intensity and heightened media presence by FRGs, as well as a more organized FRM which has secured a greater political prominence). For examples of ways in which modern FRGs acknowledge their ties to the men's rights community, see *Founding Fathers*, DADS AMERICA, <http://www.dadsamerica.org/ff.htm> (last visited Feb. 28, 2015), archived at <http://perma.cc/7ZS4-A3WN>.

14. Jocelyn Elise Crowley, *Fathers' Rights Groups, Domestic Violence and Political Countermobilization*, 88 *SOC. FORCES* 723, 725 (2009) [hereinafter Crowley, *FRGs*].

include child support and paternity, and a distinct FRM formed from these new efforts.<sup>15</sup> Some researchers suggest that the initial FRM movement was not only influenced by the men's rights movement, but by the feminist movement as well in its work on expanding the meaning of fatherhood.<sup>16</sup> The modern FRM is based on the central premise that men are unfairly disadvantaged in family court.<sup>17</sup> FRGs remain connected to the men's rights movement, differing primarily in their explicit emphasis on family law and IPV.<sup>18</sup> FRGs differ from organizations created to promote fatherhood and male responsibility in their primary focus on the family court system and opposition to IPV organizations.<sup>19</sup>

Today, FRGs continue to grow and claim more successes from their agenda.<sup>20</sup> In the past three decades, FRGs enjoyed increased media presence and influence over public discourse about family law reform.<sup>21</sup> Though FRGs grew in response or as a backlash to feminism, researchers found that changes in family demographics, technology, and cultural politics also influenced their emergence.<sup>22</sup> Research on

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15. *Id.* at 727–28.

16. See Crowley, *Equality Tools*, *supra* note 12, at 80–81 (arguing that “[m]odern FRGs in the US [are the] result[] [of] the convergence of three previous threads of male-based activism”: the divorce reform movement, men's rights activism, and religious groups promoting male responsibility).

17. See Crowley, *Taking Custody*, *supra* note 6, at 233.

18. See Coston & Kimmel, *supra* note 13, at 378 n.48–49 (describing a men's rights organization survey identifying fathers' rights as the top issue for its members). When discussing the online men's rights movement, or the “manosphere,” the Southern Poverty Law Center (SPLC) identified several organizations, including FRGs, such as SAVE services. *Misogyny: The Sites*, SOUTHERN POVERTY LAW CENTER INTELLIGENCE REPORT (2012), available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/misogyny-the-sites>, archived at <http://perma.cc/3PCS-GVBB>.

19. FRGs are distinguishable from Fatherhood Initiative and Fatherhood Economic Empowerment Organizations, which focus on creating financial stability and labor skills that will assist low-income fathers, particularly fathers of color, in providing for their children. Nonetheless, there is some overlap in leadership. See Crowley, *Equality Tools*, *supra* note 12, at 99 (explaining the differences between FRGs and pro-marriage or economic empowerment organizations); see also Richard Collier, *Fathers 4 Justice, law and the new politics of fatherhood*, 17 CHILD & FAM. L.Q. 511, 512, 512 n.10 (2005) [hereinafter Collier, *Fathers 4 Justice*] (discussing the fathers' rights movement in the UK and explaining that “it is important to differentiate the views of fathers' rights groups from those of ‘fathers’ in any more general sense”).

20. Leora N. Rosen et al., *Fathers' Rights Groups: Demographic Correlates and Impact on Custody Policy*, 15 VIOLENCE AGAINST WOMEN 513, 513 (2009); see also Crowley, *Taking Custody*, *supra* note 6, at 224 (estimating total American membership in FRGs around 10,000); Ellie J. Spielberger, *Whose Rights Matter Most? Fathers' Rights, Joint Custody, and Domestic Violence*, 4 U. PA. J.L. & SOC. CHANGE 55, 55 (1997) (discussing successes of the FRM).

21. Collier & Sheldon, *supra* note 13, at 7.

22. Compare Rosen et al., *supra* note 20, at 515–16 (describing the FRM as a backlash movement to feminism and an attempt to reinsert patriarchy into families post-divorce), with Collier & Sheldon, *supra* note 13, at 7–15 (suggesting that the backlash theory used

FRGs reveals the privileged nature of its membership, which is composed primarily of white, upper-middle or upper-class educated men.<sup>23</sup>

The FRM is not exclusive to the United States.<sup>24</sup> There is an FRM actively engaged in policy debates and law reform in the United Kingdom, Canada, Australia, and Sweden.<sup>25</sup> FRGs are also present in

to explain the growth of the FRM in many countries is overly simplistic and that three other international trends should be considered: shifting household demographics, evolving expectations of fatherhood and childhood, and a shift in how the legal system regulates families). See also Crowley, *Equality Tools*, *supra* note 12, at 816–34 (explaining that FRGs emerged in response to family demographic and policy changes, including increases in divorce and non-marital childbearing and changing child support and child custody laws). The internet created the perfect venue for FRGs, contributing significantly to its growth in the past two decades. Rosen et al., *supra* note 20, at 513 (noting the role of the internet in “the multiplication of FRGs” and the “[h]undreds of fathers’ rights Web sites . . . now available”). For an example of the types of discussions held online in chat rooms, see Pauline Irit Erera & Nehami Baum, *Chat-Room Voices of Divorced Non-Residential Fathers*, 36 J. SOC. & SOC. WELFARE 63 (2009) (summarizing postings by noncustodial fathers on an un-moderated chat room); Dragiewicz, *Patriarchy*, *supra* note 8, at 129; see also Rosen et al., *supra* note 20, at 513, 515 (noting the growth in the FRM in response to cultural politics).

23. Jocelyn Elise Crowley conducted interviews with 158 members from 26 FRGs. She limited her potential sample to FRGs which held regular physical meetings (excluding groups that organized only through the internet), and she only included FRGs focused on child support and child custody reform (excluding FRGs focused on domestic violence legal reform or paternity fraud). Her sample of FRG members had an average age of forty-six years old and two biological children. Eighty-five percent were male (and most of the member women were new romantic partners of male members). Eighty-seven percent were white. Ninety-one percent had some college, sixty-one percent had a four-year degree, and thirty percent had a graduate degree. Seventy-eight percent had white-collar jobs. Crowley, *Equality Tools*, *supra* note 12, at 88–89. Similarly, the men’s rights movement is also composed of white, middle or upper-class educated men. Coston & Kimmel, *supra* note 13, at 368.

24. For articles about the FRM in different countries, see FATHERS’ RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE (Richard Collier & Sally Sheldon eds., 2006); see also Rosen et al., *supra* note 20, at 513; Crowley, *FRGs*, *supra* note 14, at 727.

25. See Collier, *Fathers 4 Justice*, *supra* note 19, at 515, 519–20 (analyzing the rhetoric and agendas of Fathers 4 Justice and other FRGs in the United Kingdom); see also Richard Collier, ‘The Outlaw Fathers Fight Back’: *Fathers’ Rights Groups, Fathers 4 Justice and the Politics of Family Law Reform—Reflections on the UK Experience*, in FATHERS’ RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE 53–77 (Richard Collier & Sally Sheldon eds., 2006) [hereinafter Collier, *Outlaw Fathers*] (discussing the arguments and impact of the FRM in the U.K.); Susan B. Boyd, ‘Robbed of their Families?’ *Fathers’ Rights Discourses in Canadian Parenting Law Reform Processes*, in FATHERS’ RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE 28 (Richard Collier & Sally Sheldon eds., 2006) (analyzing the FRM in Canada); see Helen Rhoades, *Yearning for Law: Fathers’ Groups and Family Law Reform in Australia*, in FATHERS’ RIGHTS ACTIVISM AND LAW REFORM IN COMPARATIVE PERSPECTIVE 125–49 (Richard Collier & Sally Sheldon eds., 2006) (analyzing the influence of FRGs in Australia by looking at the rhetorical devices used by FRGs in triggering and influencing a parliamentary investigation into custody laws in 2003, examining FRG responses to the inquiry’s report, and exploring FRGs’ success in changing draft legislation through the transformation from an evidence-based approach to an ideological framework); Miranda Kaye & Julia Tolmie, *Fathers’ Rights Groups in Australia and their Engagement with Issues in Family Law*, 12 AUSTL. J. OF FAM. L. 19, 20–21, 66 (1998) (critiquing the increasing influence of fathers’ rights groups on family law reform in Australia).

France, Germany, Switzerland, Italy, Portugal, and Spain.<sup>26</sup> Although FRGs generally have a regional or national focus, rather than international, some evidence suggests that FRGs from different countries learn from one another and share tactics.<sup>27</sup>

### *B. Central Narratives*

The modern FRM in the United States consists primarily of loosely connected state and local FRGs, with a few national organizations providing technical assistance and lobbying on federal law issues.<sup>28</sup> Sociologists identified several themes underlying FRM demands as the belief that family courts routinely discriminate against men and the belief that the state does not have the right to intervene in family matters—even after a divorce.<sup>29</sup> FRG agendas seek to remedy this perceived gender discrimination against men by reforming family laws and engaging in litigation against direct service providers and funding mechanisms for IPV victims.<sup>30</sup> A quantitative content analysis of FRG websites identified three “factors” . . . central to the groups’ rhetoric: “representing domestic violence allegations as false, promoting presumptive joint custody and decreasing child support, and portraying women as perpetrators of domestic abuse.”<sup>31</sup> FRM core beliefs include a family court bias against men, IPV as gender-neutral, and identifying the real problems facing families as false allegations of abuse and parental alienation syndrome.<sup>32</sup>

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26. Collier & Sheldon, *supra* note 13, at 5 n.20 (listing specific FRGs active in several European countries).

27. *Id.* at 6 (suggesting that “there may be a transplantation of ideas and strategies occurring between FRGs across national borders”).

28. Crowley, *Equality Tools*, *supra* note 12, at 81–82.

29. See Crowley, *Taking Custody*, *supra* note 6, at 230–33 (explaining how one theme that emerged from interviews with FRM members was their expressed belief that any custody proceeding was unconstitutional and that custody proceedings are excessively interventionist); see also Garrett, *supra* note 9, at 344 (“Specific legislative and legal targets vary among the organizations, but most [FRGs] are primarily concerned with what they perceive as discrimination against men in the family law context.”). For an international perspective, see Boyd, *supra* note 25, at 30–40 (identifying the following eight themes in FRM rhetoric before the Special Joint Committee in 1998: promoting traditional families; the ills of father absence and of single mothering; mother blaming; anti-feminism; bias of the legal system against fathers and for mothers; unfair/excessive child support orders against fathers; treat fathers equally; the formal equality model; and remedies: shared parenting; joint custody; or paternal custody).

30. See Rosen et al., *supra* note 20, at 518–19.

31. *Id.* at 527 (concluding that content analysis of 285 FRGs and Men’s Rights Group websites “discerned three factors . . . central to the groups’ rhetoric”).

32. See Crowley, *FRGs*, *supra* note 14, at 747. Though the FRM continues to work on issues related to child support and paternity, this Article is focused on FRG advocacy

### 1. *Family Court Bias*

FRGs advocate for the equal treatment of men in family courts, arguing that family courts are biased against men in protection order hearings and biased against fathers in custody proceedings.<sup>33</sup> FRGs invoke common sense arguments, implying that the truth of their argument is intuitively evident and therefore needs no empirical support.<sup>34</sup> They point to the growing number of children raised primarily by single mothers as evidence of family court bias without addressing their assumption that all parents want and are capable of parenting or seek custody through family court.<sup>35</sup> They largely ignore social science research analyzing outcomes for mothers and fathers who engage in family court litigation, which contradicts their assertions of bias against men.<sup>36</sup> FRGs point to social science research about the impact of fatherlessness on children to evidence the need for mandatory joint or shared custody in all cases, while ignoring consistent research which warns that joint custody in high conflict families is more detrimental to children than less access to both parents.<sup>37</sup> FRGs view laws about IPV as further evidence of

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around issues of IPV. It is important to note that FRG advocacy related to child support issues may impact victims of IPV when it results in decreased access to financial support for children and an increased barrier to escaping violent homes.

33. See Crowley, *Taking Custody*, *supra* note 6, at 233–36 (finding that members of FRGs generally believed that family courts were biased against men); see also Boyd, *supra* note 25, at 28 (summarizing the Canadian FRM successful impact on the national discourse of family law in generating the belief that mothers are unfairly favored in family law and that feminists gained control over the family law reform).

34. See Rhoades, *supra* note 25, at 131.

35. *Id.* at 132.

36. See Crowley, *Equality Tools*, *supra* note 12, at 86–88 (summarizing the research on gender bias in family courts). Compare Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 970 n.240 (2005) (summarizing appellate case law and law review articles finding family trial courts improperly hold mothers to higher standards than fathers), with Collier & Sheldon, *supra* note 13, at 20–23 (warning feminists against limiting FRGs to empirical evidence or attacking them for being ‘anti-science’ when feminists also advocate the importance of listening to individual experiences and using anecdotes).

37. For example, in supporting its platform for shared parenting, the National Parents Organization states:

The Center for Disease Control, the Department of Justice, and the Bureau of the Census report: thirty percent of children who live apart from their fathers will account for sixty-three percent of teen suicides, seventy percent of juveniles in state-operated institutions, seventy-one percent of high-school dropouts, seventy-five percent of children in chemical-abuse centers, eighty-five percent of rapists, eighty-five percent of youths in prison, eighty-five percent of children who exhibit behavioral disorders, and ninety percent of homeless and runaway children.

*Political Platform: Our Solution*, NAT'L PARENTS ORG., <http://nationalparentsorganization.org/about-npo/political-platform> (last visited Feb. 28, 2015), archived at <http://perma.cc/PNS6-3JEG>; see also Dragiewicz, *Patriarchy*, *supra* note 8, at 131–32 (discussing FRG

bias by family courts against fathers, and often argue against the inclusion of IPV as a factor in custody determinations.<sup>38</sup>

An underlying theme in FRG rhetoric is notably anti-government, arguing that states have no right to interfere in a father's custody of his child or order child support.<sup>39</sup> FRGs argue that custody proceedings are anti-child.<sup>40</sup> They claim that the government has no right to determine custody and access to children, with some groups arguing that family courts are unconstitutional and that a father's constitutional right to parent trumps any government interest in children.<sup>41</sup> FRGs further question the constitutionality of civil protective orders and suggest that the government should not be involved in private affairs, with some FRGs questioning the legitimacy of Child Protective Services as well.<sup>42</sup>

## *2. A Theory of Gender-Symmetry in Intimate Partner Violence*

Much of modern FRG rhetoric is focused on IPV.<sup>43</sup> FRGs claim that IPV is committed by women against men at an equal or greater rate than violence committed by men against women, i.e. "gender symmetry."<sup>44</sup> They use gender equality language to further enforce their

leaders who point to fatherlessness as the root of all social ills and blame IPV laws and policy as a cause of fatherlessness). For a summary of research addressing the impact of joint custody in high conflict families, see Peter G. Jaffe et al., *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, 46 FAM. CT. REV. 500, 501–04 (2008).

38. See Dragiewicz, *Patriarchy*, *supra* note 8, at 136.

39. See Crowley, *Taking Custody*, *supra* note 6, at 233–36 (reporting that interviewed FRG members expressed their belief that custody proceedings are overly interventionist and unconstitutional).

40. *Id.* at 226 (describing a FRG belief that custody proceedings are anti-child because fathers' equal access to children is always in children's best interests).

41. *Id.* at 230–31. This includes a state's interest in keeping a child safe, as FRGs argue against joint custody exceptions for domestic violence or child abuse, as well as emergency custody determinations made through civil protection orders. See Dragiewicz, *Patriarchy*, *supra* note 8, at 134.

42. See *id.* at 134–35 (identifying civil protection orders as a target of FRGs who either minimize IPV qualifying for protection orders as normal marital conflict or claim that protection orders are ineffective and may actually increase danger to petitioners).

43. Crowley, *FRGs*, *supra* note 14, at 725 (identifying an increasing focus on IPV by FRGs).

44. See Boyd, *supra* note 25, at 29, 46 (describing Canadian national hearings in 1998 on custody laws in which FRGs and politicians sympathetic to FRGs addressed concerns from battered women advocates by citing work suggesting that domestic violence is reciprocal between women and men, and in 2002 when members of Parliament stated that incidences of domestic violence were perpetuated equally by men and women and that domestic violence should not have a gender with respect to discussions); see also Mark Potok & Evelyn Schlatter, *Men's Rights Movement Spreads False Claims About Women*, SOUTHERN POVERTY LAW CENTER INTELLIGENCE REPORT (2012), available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/myths-of-the-manosphere-lying-about-women>, archived at <http://perma.cc/U6D3-5P35> (describing

claim that IPV is not gendered and is usually more accurately described as “mutual combat.”<sup>45</sup> Although FRGs utilize gender-neutral language to suggest that male victims of IPV need equal access to services, most of their efforts regarding IPV services focus primarily on defunding services currently available to victims of IPV.<sup>46</sup>

When discussing cases in which men are violent against women, FRGs claim that women often initiate or participate in the violence.<sup>47</sup> In addressing empirical data about women killed or seriously injured by IPV, FRGs suggest that women are more seriously injured in “mutual combat” altercations because they are generally smaller in size or that they are more likely to report the injuries.<sup>48</sup> Perhaps most remarkable, FRGs utilize circular logic to blame family courts for violence against women, arguing that male victims of an unfair family court system are left no choice but to respond with violence, or that the family court system, in encouraging divorces, is the actual cause of IPV.<sup>49</sup> FRGs further suggest that civil protection orders should

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the gender symmetry lies spread by US FRGs). For examples of FRG postings regarding IPV gender symmetry, see Charles E. Corry et al., *Controlling Domestic Violence Against Men*, EQUAL JUSTICE FOUNDATION, <http://www.ejfi.org/DV/dv-9.htm> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/6NQQ-U5XN>; *see also* *Areas of Interest*, EQUAL JUSTICE FOUNDATION, <http://ejfi.org/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/EU7V-EMVU> (asserting that “[m]en and women are equally violent in domestic relationships”); CAL. ALLIANCE FOR FAMILIES & CHILDREN, FROM IDEOLOGY TO INCLUSION 2009: NEW DIRECTIONS IN DOMESTIC VIOLENCE RESEARCH AND INTERVENTION 9–13 (2009), *available at* <http://www.cafcusa.org/2009-conferenceregistration/Brochure.pdf>, *archived at* <http://perma.cc/NFQ4-T488> (advertising its academic conference with several plenary sessions on gender symmetry in partner violence).

45. Corry et al., *supra* note 44. For a critique of the gender-symmetry theory of IPV, *see* Michael S. Kimmel, “Gender Symmetry” in *Domestic Violence: A Substantive and Methodological Research Review*, 8 VIOLENCE AGAINST WOMEN 1332, 1336 (2002).

46. *See* Coston & Kimmel, *supra* note 13, at 382 (suggesting that if we accept men’s rights groups assertions that women’s rates of violence are equal to men’s rates, then we would expect them to advocate for more shelters for battered men and join feminists in anti-violence efforts, rather than challenging the number of shelters for battered women, revealing their real goal of discrediting battered women). For examples of FRG lawsuits challenging battered women’s shelters, *see* Rosen et al., *supra* note 20, at 514, 518–19. One exception is the Domestic Abuse Helpline for Men and Women (DAHMW) in Maine, specifically established to provide services to male victims of intimate partner violence and frequently cited by FRGs. *See Our Mission*, DAHMW, <http://www.dahmw.org/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/D2PT-P6NZ>.

47. For example, *see* STEPHEN BASKERVILLE, FAMILY VIOLENCE IN AMERICA: THE TRUTH ABOUT DOMESTIC VIOLENCE AND CHILD ABUSE 7 (2006), *available at* [http://www.acfc.org/acfc/assets/documents/research\\_pdfs/FamilyViolenceEdit.pdf](http://www.acfc.org/acfc/assets/documents/research_pdfs/FamilyViolenceEdit.pdf), *archived at* <http://perma.cc/FX4C-DUGP>; *see also* RESPECTING ACCURACY IN DOMESTIC ABUSE REPORTING, SPECIAL REPORT: FIFTY DOMESTIC VIOLENCE MYTHS 2 (2009), *available at* <http://www.mediadarar.org/docs/RADARreport-50-DV-Myths.pdf>, *archived at* <http://perma.cc/X5U3-RM2E> (reporting that “[n]early 250 scholarly studies show women are at least as likely as men to engage in partner aggression and that partner violence is often mutual”).

48. BASKERVILLE, *supra* note 47, at 7.

49. *See* Joe U., *Tom Ball Kills Himself in Front of Keene, NH Courthouse*, THE FATHERHOOD COAL. (Aug. 16, 2011), <http://www.fatherhoodcoalition.org/newsite/content>

be abandoned because they are ineffective in preventing violence against women.<sup>50</sup> They claim that protection orders provide false reassurance to victims and may actually escalate violence against women because they are too casually distributed and used as “a weapon to harass and entrap unwary men.”<sup>51</sup>

FRGs not only promote a gender symmetry theory of IPV, they argue that any discussion of the gendered nature of IPV is another example of bias against men and accuse any group focusing on violence against women of sexism or misandry.<sup>52</sup> FRGs claim to be the

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/tom-ball-kills-himself-front-keene-nh-courthouse, archived at <http://perma.cc/L558-6VW4> [hereinafter JoeU, *Tom Ball*]; see also Glenn Sacks, *Why Dads Matter*, GLENN SACKS (June 19, 2006), <http://www.glennsacks.com/column.php?id=146>, archived at <http://perma.cc/A4PH-F8YS> (FRM commentator distancing himself from the fathers' rights groups who supported or excused the actions of Darren Mack after he killed his wife and shot his family court judge); EQUAL JUSTICE FOUNDATION, *supra* note 44 (“The safest place for a child is with their [sic] biological father. The safest place for a woman is in her home married to the biological father of her children.”); see also BASKERVILLE, *supra* note 47, at 38 (using an example of a murder-suicide in Wichita to illustrate how the threat of family court intervention through divorce and custody can cause a man to respond with violence).

50. Carey Roberts, *Restraining Orders Hurt Women*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Dec. 1, 2010), <http://www.saveservices.org/2010/12/restraining-orders-hurt-women/>, archived at <http://perma.cc/P7MB-7H7Y>.

51. *Id.*

52. For example, a Massachusetts FRG criticized the governor for allowing a white ribbon “jane doe” campaign as “sexist and hateful.” JoeU, *Gov. Patrick's Office Double Standards. Once Again Allows Jane Doe Hate Banner on Mass. State House*, THE FATHERHOOD COAL. (Feb. 28, 2012, 4:50 PM), <http://www.fatherhoodcoalition.org/newsite/content/gov-patricks-office-double-standards-once-again-allows-jane-doe-hate-banner-mass-state-house>, archived at <http://perma.cc/7QVH-BRH9> [hereinafter JoeU, *Office Double Standards*]; see also *CDC Biased*, AM. COAL. FOR FATHERS & CHILDREN (Jan. 31, 2012), <http://www.acfc.org/blog/cdc-biased/>, archived at <http://perma.cc/Y86P-YFMY> (FRG suggesting that the findings of the CDC's National Intimate Partner and Sexual Violence Survey “paints a portrait of America as a society full of abusers and victims,” which “raise[s] serious questions of whether the CDC is being used to promote political and ideological agendas); Teri Stoddard, *PR: Media Criticized for Biased Coverage of CDC Violence Report*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Dec. 18, 2011), <http://www.saveservices.org/2011/12/pr-media-criticized-for-biased-coverage-of-cdc-violence-report/>, archived at <http://perma.cc/YH9H-CFCT> (FRG criticizing the *New York Times*, *Washington Post*, CNN, and other media outlets for its biased coverage of a CDC Study and criticizing the CDC for including alcohol and drug-facilitated sexual assault in its definition of rape) [hereinafter Stoddard, *Media Criticized*]; Teri Stoddard, *PR: SAVE Chides Media for 'Sound Bite' Coverage of Abuse Bill*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Mar. 21, 2012), <http://www.saveservices.org/2012/03/pr-save-chides-media-for-sound-bite-coverage-of-abuse-bill/>, archived at <http://perma.cc/U9YZ-4YRM> (FRG criticizing CNN and the *Washington Post* for their coverage of the VAWA debate in the U.S. Senate) [hereinafter Stoddard, *SAVE Chides*]; Teri Stoddard, *PR: Verizon Abuse Video Sparks Controversy, Condemnation*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Dec. 6, 2011), <http://www.saveservices.org/2011/12/pr-verizon-abuse-video-sparks-controversy-condemnation/>, archived at <http://perma.cc/KZ4K-QGL5> (FRG criticizing Verizon for “misleading the public about domestic violence” through its PSA showing an abusive father and statistics about violence against women on its website); *Boycott!*, FATHERS 4 JUSTICE, <http://www.fathers-4-justice.us/activism/boycott> (last visited

only voice of truth regarding IPV, criticizing mainstream organizations for suggesting that patriarchy has a role in IPV or suggesting that women are more at risk of IPV.<sup>53</sup> Forming an unlikely counter-movement, the FRM attempts to shift the political discourse about IPV from prevention and response to questioning the validity and seriousness of IPV.<sup>54</sup>

### *3. Identifying the Real Problems as False Allegations and Parental Alienation Syndrome*

FRGs contend that the real source of danger in custody litigation is not IPV, but rather false allegations.<sup>55</sup> They point to studies concluding that IPV is gendered as not only evidence of bias against men, but also clear evidence that women often lie about IPV.<sup>56</sup> FRGs promote the belief that most allegations of IPV and child abuse are falsehoods created by women to win custody litigation and property settlements, which they term the “silver bullet” or “nuclear option.”<sup>57</sup> They further criticize the Violence Against Women Act (VAWA) for providing incentives to women to lie about IPV by funding emergency shelters and legal assistance for victims of IPV.<sup>58</sup> They accuse IPV

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Feb. 28, 2015), *archived at* <http://perma.cc/SS8Z-9U8H> (FRG urging citizens to boycott Verizon for its anti-domestic violence PSA, which is deemed “the most gender-biased [and] ANTI-father commercial ever seen on television”); Robert Franklin, *Verizon Foundation Sponsors Misleading, Anti-Father DV Video*, NAT'L PARENTS ORG. (Dec. 7, 2011), <http://nationalparentsorganization.org/blog/20913-verizon-foundation-sponsors-misleading-anti-father-dv-video>, *archived at* <http://perma.cc/MT9K-EP9Y> (FRG speculating that Verizon's anti-domestic violence video portraying a male abuser and female victim “purveys falsehoods” and “actually promotes domestic violence” and asking readers to close their Verizon accounts). [hereinafter Franklin, *Verizon*].

53. See, e.g., Robert Franklin, *Feds Spend \$76.3 Million on False and Misleading Claims about DV*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Apr. 13, 2012), <http://www.saveservices.org/2012/04/feds-spend-76-3-million-on-false-and-misleading-claims-about-dv/>, *archived at* <http://perma.cc/8K6E-KMC6> [hereinafter Franklin, *Feds*].

54. Crowley, *FRGs*, *supra* note 14, at 747.

55. See, e.g., STOP ABUSIVE AND VIOLENCE ENVIRONMENTS, *WHAT IS THE COST OF FALSE ALLEGATIONS OF DOMESTIC VIOLENCE? 2* (2010), *available at* <http://www.save-services.org/pdf/SAVE-Cost-of-False-Allegations.pdf>, *archived at* <http://perma.cc/K8P2-EGZ5> [hereinafter COST OF FALSE ALLEGATIONS] (claiming that twenty-five percent of divorces include allegations of domestic violence and seventy percent of those allegations are deemed to be unnecessary and providing examples of men whose lives were destroyed by false allegations of IPV).

56. See Potok & Schlatter, *supra* note 44 (“Misogynists in the men’s and fathers’ rights movements have developed a set of claims about women to support their depictions of them as violent liars and manipulators of men.”).

57. See, e.g., *New Domestic Violence Research Compilation Available*, AM. COAL. FOR FATHERS AND CHILDREN (May 21, 2013), <http://www.acfc.org/>, *archived at* <http://perma.cc/P672-ZLT5> (“False allegations of abuse are commonplace in divorce. Known by such names as the ‘nuclear option’ or the ‘silver bullet technique,’ false allegations are a quick way to gain the upper hand in child custody actions.”).

58. Franklin, *Feds*, *supra* note 53.

advocates of encouraging women to lie about violence in order to obtain more funding for their organizations as part of the “domestic violence industry.”<sup>59</sup> FRGs claim that false allegations cost taxpayers more than twenty billion dollars a year.<sup>60</sup>

FRGs assert that the real danger to children is false allegations and parental alienation.<sup>61</sup> Parental Alienation Syndrome (PAS), first invented by psychiatrist Richard Gardner in the mid-1980s, claimed that mothers accusing fathers of child sexual abuse were brainwashing and “alienating” their children.<sup>62</sup> PAS grew into a vague accusation that children accusing a parent of child abuse or IPV were actually manipulated by the other parent.<sup>63</sup> PAS is not a recognized medical or psychological syndrome or diagnosis, and its definition cannot be found in any reputable medical source.<sup>64</sup>

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59. Crowley, *FRGs*, *supra* note 14, at 732, 735 (noting that FRG activists believe members of battered women’s shelter and women’s organizations spread a fallacious message about fathers being dangerous in order to receive grants). For specific examples, see J. Johnson, *Adult Child Speaks Out About Their Parental Alienation in Washington Courts*, WASH. SHARED PARENTING (June 3, 2012), <http://washingtonsharedparenting.com/?p=102>, archived at <http://perma.cc/YE77-R7G4> (accusing Washington state of allowing false allegations in order to get money from VAWA); *LAWFARE: Organized Opposition to Shared Parenting*, AM. COAL. FOR FATHERS & CHILDREN (Apr. 5, 2013), <http://www.acfc.org/e-newsletter-archive/april182013listserve/>, archived at <http://perma.cc/LR45-5G5N>; Roger, *Inside the Domestic Violence Industry*, EAGLE FORUM (Dec. 8, 2011, 8:00 AM), <http://blog.eagleforum.org/2011/12/inside-domestic-violence-industry.html>, archived at <http://perma.cc/74SW-8MTT>; Dean Esmay, *Refuting 40 Years of Lies About Domestic Violence*, A VOICE FOR MEN (Dec. 19, 2012), <http://www.avoiceformen.com/mens-rights/domestic-violence-industry/refuting-40-years-of-lies-about-violence/>, archived at <http://perma.cc/AWP3-U7FW>; see also THOMAS B. JAMES, *DOMESTIC VIOLENCE: THE 12 THINGS YOU AREN’T SUPPOSED TO KNOW* 90–91 (2003); Trudy Schuett, *50 Myths of Domestic Violence Revealed*, EXAMINER (Jun. 23, 2009), <http://www.examiner.com/article/50-myths-of-domestic-violence-revealed>, archived at <http://perma.cc/9PUX-WNT9> (“Not many people realize that today’s entire domestic violence industry is based on the opinions of a few angry, vengeful, and sometimes emotionally disturbed women.”); Robert Franklin, *VAWA Committee Vote Tomorrow; Call Members to Let Them Know Your Thoughts*, NAT’L PARENTS ORG. (Jan. 25, 2012), <http://nationalparentsorganization.org/blog/20847-vawa-committee-vote-tomorrow-call-members-and-let-them-know-your-thoughts>, archived at <http://perma.cc/W393-Z5NR>.

60. See COST OF FALSE ALLEGATIONS, *supra* note 55, at 2.

61. Nancy S. Erickson, *Fighting False Allegations of Parental Alienation Raised as Defenses to Valid Claims of Abuse*, 6 FAM. & INTIMATE PARTNER VIOLENCE Q. 35, 43 (2013) (noting that as PAS began to be discredited, proponents started substituting the term “Parental Alienation” or PA). Though alienation undoubtedly occurs within divorcing families, PAS or PA is most often used in discrediting women claiming IPV or child abuse. *Id.* at 38, 44.

62. *Id.* at 41.

63. *Id.* at 41–43 (noting that before Richard Gardner’s suicide in 2003, he was discredited for his other bizarre beliefs, including the proposition that “pedophilia had evolutionary benefits” and “that Western society [was] ‘excessively moralistic and punitive toward pedophiles’”).

64. *Id.* at 40.

Although the mainstream scientific and legal communities reject PAS, FRGs continue to assert it in response to accusations of IPV.<sup>65</sup> They claim that children are not only harmed through the limitations placed on their contact with a parent falsely accused of IPV, but that child victims of PAS suffer as much, if not more than, children who are physically abused by a parent or children who witness IPV against a parent.<sup>66</sup> PAS provides a circular argument available to abusers to use against protective parents.<sup>67</sup> FRGs train custody decision-makers to screen for PAS and mitigate its effects on children by modifying custody.<sup>68</sup> They attempt to reframe the issue of IPV by creating a presumption that mothers alleging IPV are lying and that their false allegations are evidence of PAS, an act of child abuse that should result in a change in custody in favor of the father.<sup>69</sup>

### C. Antifeminism and Intimate Partner Violence

FRGs are transparently anti-feminist, blaming feminism for the current bias they perceive in civil protection order and custody proceedings.<sup>70</sup> Molly Dragiewicz suggests that FRGs have an underlying

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65. *Id.* at 38, 41–42; see also Joan S. Meier, *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation*, 6 J. OF CHILD CUSTODY 232, 232 (2009) (discussing the prevalence of allegations of PAS in custody litigation in spite of the scientific community's renouncement of the syndrome); Paula J. Caplan, "Parental Alienation Syndrome: Another Alarming DSM-5 Proposal: Using a Medicalizing Label to Mask Child Sexual Abuse," PSYCHOLOGY TODAY (June 6, 2011), available at <http://www.psychologytoday.com/blog/science-isnt-golden/201106/parental-alienation-syndrome-another-alarming-dsm-5-proposal>, archived at <http://perma.cc/Q8KU-22EK> (referring to PAS as scientifically unwarranted and socially dangerous).

66. See Michele A. Adams, *Framing Contests in Child Custody Disputes: Parental Alienation Syndrome, Child Abuse, Gender, and Fathers' Rights*, 40 FAM. L.Q. 315, 324–32 (2006) (describing the history of PAS, its reliance on a gendered stereotype of the "scorned women," and the FRM's success in using PAS to reframe the custody debate).

67. Erickson, *supra* note 61, at 43.

68. FRGs lobbied for the inclusion of PAS in the DSM-V. Robert Franklin, *NOW's Opposition to PAS Inclusion in DSM-V Anti-Science, Anti-Dad, Anti-Mom, Anti-Child*, NAT'L PARENTS ORG. (July 2, 2012), <http://www.nationalparentsorganization.org/blog/20668-now-s-opposition-to-pas-inclusion-in-dsm-v-anti-science-anti-dad-anti-mom-anti-child>, archived at <http://perma.cc/WBS4-U53Y>. For example, Fathers and Families engaged in a campaign to add PAS to the DSM-IV. Glen Sacks, *New Campaign: Ask DSM to Include Parental Alienation in Upcoming Edition*, PARENTAL ALIENATION SUPPORT (Dec. 2, 2009), <http://parentalalienationsupport.com/2009/12/02/new-campaign-ask-dsm-to-include-parental-alienation-in-upcoming-edition-by-glenn-sacks-ma-for-fathers-families/>, archived at <http://perma.cc/PA4U-XL9H>.

69. See Erickson, *supra* note 61, at 36 (summarizing the critiques of PAS and pointing out how allegations of PAS have been used against victims of IPV); see also Meier, *supra* note 65, at 236.

70. *Global Domestic Violence*, EQUAL JUSTICE FOUNDATION, <http://www.ejfi.org/DV/dv.htm> (last visited Feb. 28, 2015), archived at <http://perma.cc/J5S5-FWLT> (an FRG claiming that "[b]ecause the violent female-on-male side of the DV equation is deliberately

goal of reestablishing patriarchy, both in society in general and in post-divorce families, in particular.<sup>71</sup> Using content analysis of FRG websites, she found that men who take male privilege for granted are surprised when the state does not automatically favor them, and they mistake the diminished power of patriarchy for discrimination.<sup>72</sup> The FRM paints fathers as blameless victims oppressed by women and the family court system.<sup>73</sup> FRM leaders argue that the “best interests of the child” standard currently employed by most states is as discriminatory as the “tender years presumption” courts previously employed, because it generally instructs judges to consider who provided primary care to a child prior to the court filings, and the primary caregiver is often the mother.<sup>74</sup> They further argue that women are encouraged to ask for sole custody because they gain financially through child support guideline formulas.<sup>75</sup> While the majority of FRGs promote a mandatory equal physical custody statute, either without exceptions or with the very limited exception of “unfitness” by a parent, a few alternatively argue for sole custody for fathers in a harkening back to fathers’ historical property rights over their children.<sup>76</sup>

FRGs are increasingly focused on IPV, false allegations of abuse, and PAS.<sup>77</sup> They claim that IPV laws unfairly privilege women’s

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obscured by radical feminists to further their political and funding agenda, for balance we provide information here on abused men and *violence-prone women*”).

71. Dragiewicz, *Patriarchy*, *supra* note 8, at 132–33.

72. *Id.* at 133.

73. Crowley, *Taking Custody*, *supra* note 6, at 233.

74. *Id.* (explaining how one theme that emerged from interviews with FRM members was their expressed belief any custody proceeding was biased in favor of women often because of the pre-divorce division of household labor).

75. *See id.* at 236 (discussing an interview in which one member of FRM groups explained that mothers almost always receive primary physical custody because of the court’s favoritism towards women in terms of protecting them financially).

76. For example, Dads Against Discrimination promotes father custody and distinguishes its organization from what it terms “joint custody” or “children’s rights” advocates disguised as fathers’ rights activists.” *See Resources*, DADS AM., <http://www.dadsamerica.org/resource.htm> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/LTH4-8W9P>.

77. *See* Crowley, *Taking Custody*, *supra* note 6, at 234 (discussing interviews in which members of FRGs expressed their beliefs that courts were “overly sympathetic to women’s allegations of domestic violence” and how “[m]any fathers’ rights activists vigorously campaign against what they see as the rise in false allegations of abuse, which they maintain are simply weapons used against them in order to strip their custody rights away”); *see also* Potok & Schlatter, *supra* note 44 (“Misogynists in the men’s and fathers’ rights movements have developed a set of claims about women to support their depictions of them as violent liars and manipulators of men. Some suggest that women attack men, even sexually, just as much as men attack women. Others claim that vast numbers of reported rapes of women, as much as half or even more, are fabrications designed to destroy men they don’t like or to gain the upper hand in contested custody cases.”).

allegations of abuse over fathers' legal rights, and that IPV allegations made by mothers are generally malicious falsehoods or gross exaggerations.<sup>78</sup> They blame VAWA for empowering women to call the police to have their partners arrested anytime they have an argument and use civil protection orders to obtain custody, evict men from their homes, and violate men's constitutional right to own guns.<sup>79</sup> FRGs argue that women engage in more IPV against men than vice versa, and that male victims are discriminated against by family courts.<sup>80</sup> They further argue that women's false allegations of IPV and child abuse not only ruin men's lives, but are the real form of child abuse, as they cause children to suffer from PAS.<sup>81</sup>

The darker side of FRGs drew public attention in 2011 following the suicide of Thomas Ball, a member of the Fatherhood Coalition who set himself on fire on the courthouse steps in Keene, New Hampshire.<sup>82</sup> Ball sent a fifteen-page "Last Statement" to a local newspaper describing his story and encouraging the FRM to set government buildings on fire and engage in a war.<sup>83</sup> Rather than separate

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78. MOLLY DRAGIEWICZ, EQUALITY WITH A VENGEANCE: MEN'S RIGHTS GROUPS, BATTERED WOMEN, AND ANTIFEMINIST BACKLASH 17–18 (2001) (discussing antifeminist discourses on woman abuse) [hereinafter DRAGIEWICZ, EQUALITY].

79. See Crowley, *Taking Custody*, *supra* note 6, at 234–35 (discussing an interview in which one member of FRM groups described VAWA by stating that he'd "been personally affected by that federal law" and had been arrested because "[a]ny time my ex-wife gets mad at me, which is all the time, she can just call 911 and say, I feel threatened, I'm a woman, I demand protection under the Violence Against Women Act").

80. DRAGIEWICZ, EQUALITY, *supra* note 78, at 51–60 (discussing antifeminist discourses on woman abuse).

81. Erickson, *supra* note 61, at 36.

82. Mark Arsenault, *Divorced Dad Leaves Clues to His Desperation*, BOSTON GLOBE (July 10, 2011), [http://www.boston.com/news/local/new\\_hampshire/articles/2011/07/10/divorced\\_dad\\_leaves\\_clues\\_to\\_his\\_desperation/](http://www.boston.com/news/local/new_hampshire/articles/2011/07/10/divorced_dad_leaves_clues_to_his_desperation/), archived at <http://perma.cc/367W-7D8T>.

83. In his Last Statement, Thomas Ball explained that his story began ten years earlier when he slapped his four-year-old daughter's face hard enough to cut her lip because she had licked his hand. He refused to complete the court-ordered counseling and was consequently restricted to supervised visitations with her. He claimed that having his actions labeled as domestic violence in America was "akin to labeling someone a Jew in Germany in the 1930's," and wrote for several pages about the problems with IPV policies and laws. He advocated for the burning of bureaucracy, noting that although most New England police stations are made of brick or stone, their roofs are still wood, and he provided instructions on how to make a "Molotov cocktail." He warned that there would be casualties on both sides of this war, but suggested that fathers' lives may not be worth much beyond child support anyway. Tom Ball, *Last Statement*, in *Last Statement Sent to Sentinel from Self-Immolation Victim*, KEENE SENTINEL (June 16, 2011, 12:49 PM), [http://www.sentinelsource.com/news/local/last-statement-sent-to-sentinel-from-self-immolation-victim/article\\_cd181c8e-983b-11e0-a559-001cc4c03286.html](http://www.sentinelsource.com/news/local/last-statement-sent-to-sentinel-from-self-immolation-victim/article_cd181c8e-983b-11e0-a559-001cc4c03286.html), archived at <http://perma.cc/YZB7-G9U7>; see also Arthur Goldwag, *Leader's Suicide Brings Attention to Men's Rights Movement*, SOUTHERN POVERTY LAW CENTER INTELLIGENCE REPORT (2012), available at <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/a-war-on-women> (last visited Feb. 28, 2015), archived at <http://perma.cc/3DZH-HRBZ>.

themselves from Ball or consider the possibility that the family court judge was correct to order supervised visitation in Ball's case, the FRM and the broader men's rights movement embraced him as a hero for the cause and blamed the family court system for his death.<sup>84</sup> Not only do FRG members blame the family law system for suicides, some blamed homicides of women by former partners on the family law system as well.<sup>85</sup> FRGs use the research identifying increased lethality risk for IPV victims following separation as evidence that women's decisions to leave a marriage or obtain a civil protection order are the real cause of violence against them.<sup>86</sup>

There are similarities between the FRM and the white supremacist movement, including the level of vitriol and claims to equality through complaints of reverse prejudice.<sup>87</sup> The Southern Poverty Law Center specifically noted the similarity between the anti-women rhetoric of specific FRGs and the rhetoric of white supremacists and other hate groups.<sup>88</sup> In its list of misogynistic hate groups, it included

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84. Arsenault, *supra* note 82 (reporting that Thomas Ball was an active member of the fathers' rights movement and that his death and final writings have resonated within the movement); *see also* Goldwag, *supra* note 83; JoeU, *Tom Ball*, *supra* note 49 ("It is with sadness that we learned Tom Ball, in an act of protest, sacrificed his life by dousing himself with gasoline and lightening himself on fire . . . . In this moment of grief we ask everyone new and old to fatherhood causes to come together in solidarity. That no one else should endure such an absolute and final sacrifice let us show our respect to a father pushed to his limits by continuing our resolve to stop this country's war on fatherhood."); *Father's Day 2011 and the Last Statement of Retired Army Sergeant Tom Ball*, EQUAL JUSTICE FOUNDATION (June 19, 2011), [http://ejfi.org/News/Families-June\\_19\\_2011.htm](http://ejfi.org/News/Families-June_19_2011.htm), archived at <http://perma.cc/VMY6-HVC2> ("While Sergeant Bell's ten-year battle with the 'justice' system ended in his self immolation at the door of the Keene County, New Hampshire, courthouse, it is to be hoped that his testament will bring some measure of relief to millions of others. . . . Isn't it time to end the war on men if our nation is to survive?"); John Hembling, *A Father Burns Himself to Death*, A VOICE FOR MEN (June 16, 2011), <http://www.avoicemen.com/feminism/government-tyranny/a-father-burns-himself-to-death/>, archived at <http://perma.cc/RUP6-39DY> ("Our culture's war against men has reached a point where individual men have begun to burn themselves to death. On June 15, a New Hampshire man named Thomas Ball doused himself in gasoline, and set himself on fire, and died. The most remarkable thing about this, is not that a man was so brutalized by the family court system that self-immolation seemed a logical choice to him, but that his story is not on the front page of every news site in North America. The carnage of a feminized family court system written on pavement in charred flesh, melted human body fat and blood.").

85. Glenn Sacks, *First Darren Mack, Now Herbert Chalmers—More Radical Fathers Right Idiocy*, GLENN SACKS (Feb. 10, 2007), <http://glennsacks.com/blog/?p=205>, archived at <http://perma.cc/KRF2-BB9K> [hereinafter Sacks, *First Darren Mack*] (detailing an FRG leader's criticism of other FRGs who supported or canonized men who killed their former partners after engaging in protective order and custody litigation).

86. Dragiewicz, *Patriarchy*, *supra* note 8, at 130 (commenting on the response to the loss of male privilege when describing FRM activists who claim male violence is caused by a response to an unfair legal system).

87. Rosen et al., *supra* note 20, at 516 ("[B]oth movements are primarily concerned with rearticulating white male identity and privilege.").

88. *Misogyny: The Sites*, *supra* note 18.

SAVE Services and other FRGs.<sup>89</sup> The Southern Poverty Law Center further referred to several men's rights movement organizations, including FRGs, as "an underworld of misogynists, woman-haters whose fury goes well beyond criticism of the family court system, domestic violence laws, and false rape accusations."<sup>90</sup> As with white supremacist groups, FRG policy suggestions and research should be considered in the broader context of their social movement goals.

Although the majority of FRGs do not advocate violence, there are specific instances in which extremist FRGs supported violent action.<sup>91</sup> More frequently, FRGs publicly name people who disagree with them. This includes providing a forum to shame "contact deniers" in which primarily men post information about the mothers of their children, the social workers, or attorneys in their cases preventing them from visiting their children, and providing a forum to shame judges who make custody decisions with which they disagree.<sup>92</sup> FRGs criticize not only journalists and media outlets who do not cover them in a positive light, but include journalists and media outlets who provide a voice to victims of IPV, report on research or trends involving IPV, or report on new laws intended to protect victims of IPV.<sup>93</sup>

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89. *Id.*

90. Goldwag, *supra* note 83; see also *Misogyny: The Sites*, *supra* note 18 (describing a dozen men's rights websites from the "so-called 'manosphere' peopled with hundreds of websites, blogs and forums dedicated to savaging feminists in particular, and women, very typically American women, in general. . . . almost all thick with misogynistic attacks that can be astounding for the guttural hatred they express").

91. Goldwag, *supra* note 83 (summarizing the responses of the FRM to specific violent crimes). *But see, e.g.*, Sacks, *First Darren Mack*, *supra* note 85. Sacks, a mainstream FRM leader associated with Fathers and Families (now known as the National Parent Organization), condemned Darren Mack, a FRG activist from Reno who killed his estranged wife and attempted to kill a family court judge in 2006, and was criticized by other FRG members for failing to recognize Mack as a hero. See Glenn Sacks, *Blowback on Darren Mack*, GLENN SACKS (June 25, 2007), <http://glennsacks.com/blog/?p=834>, archived at <http://perma.cc/9JSE-4PQ5>.

92. See, e.g., *Name and Shame: Contact Denial is Child Abuse*, FATHERS 4 JUSTICE, <http://www.contactdeniers.com/> (last visited Feb. 28, 2015), archived at <http://perma.cc/UM5T-85QX>. Many FRG posters say they were falsely accused by the mothers of their children or the government of domestic violence or child abuse. For example, A Voice for Men started a campaign against Judge Lori Jackson and an attorney serving as *guardian ad litem* in a family law case in Clarksburg, WV. See Paul Elam, *The Dishonor of Judge Lori B. Jackson*, A VOICE FOR MEN (Sept. 14, 2012), <http://www.avoicemen.com/feminism/government-tyranny/the-dishonor-of-judge-lori-b-jackson/>, archived at <http://perma.cc/2E8Z-HA7E>. The campaign claimed success after another judge recused Judge Jackson from the case on the basis that she could no longer be neutral after A Voice for Men's personal online attacks. See Paul Elam, *Lori B. Jackson Recused from Kirk Case by Chief Justice Ketchum*, A VOICE FOR MEN, (Oct. 10, 2012), <http://www.avoicemen.com/updates/news-updates/lori-b-jackson-recused-from-kirk-case-by-chief-justice-ketchum/>, archived at <http://perma.cc/ZJ9J-LS6K>.

93. See Robert Franklin, *Forbes' Misleading Anti-Dad Article Short on Facts, Long on Misandry*, NAT'L PARENTS ORG. (May 23, 2012), <http://nationalparentsorganization.org/blog/20700-forbes-misleading-anti-dad-article-short-on-facts-long-on-misandry>,

Some also attack researchers who study IPV or child welfare, organizations working within the IPV movement, politicians who publicly support IPV victims or oppose anything proposed by FRGs, and corporations and organizations that financially support IPV services or participate in public service campaigns.<sup>94</sup>

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archived at <http://perma.cc/2F5K-86PL> (criticizing an article in FORBES that discusses some of the tactics used by men against women in family court proceedings, including false allegations of abuse); Wendy McElroy, *PBS Film Ignites Fathers' Rights Debate*, FOX NEWS (Nov. 7, 2005), <http://www.foxnews.com/story/2005/11/07/pbs-film-ignites-fathers-rights-debate/>, archived at <http://perma.cc/9SCC-MP39> (discussing the FRM critiques of "Breaking the Silence," a documentary about cases in which family courts grant custody to domestic abusers); Teri Stoddard, *Dirty Little Secrets of Domestic Violence Programs*, EXAMINER (Aug. 14, 2009, 8:23 AM), <http://www.examiner.com/article/dirty-little-secrets-of-domestic-violence-programs>, archived at <http://perma.cc/ACY7-9P5Z> (a SAVE member complaining that media coverage of the protests against funding cuts for IPV programs in California ignored both the ineffectiveness and the gender discrimination of IPV programs and criticizing the media for failing to mention research showing women frequently batter men and engage in mutual combat); Stoddard, *Media Criticized*, *supra* note 52; Stoddard, *SAVE Chides*, *supra* note 52.

94. For an example of a researcher criticized by FRGs, see critiques of Jennifer McIntosh and AFCC's decision to include attachment theorists at the 2012 AFCC annual conference, calling it "voodoo/junk science." Their complaints of AFCC's inclusion of the work in their publication, *Family Court Review*, resulted in the publication offering to dedicate an issue to critiques of attachment theory. See *AFCC Conference Kicks off in Chicago-Marked by Controversy*, AM. COAL. FOR FATHERS & CHILDREN (June 6, 2012), <http://www.acfc.org/blog/afcc-child-custody-conference/>, archived at <http://perma.cc/9AZ6-M57E>; see also *CDC Biased?*, *supra* note 52 (criticizing the U.S. Center for Disease Control (CDC) for its National Intimate Partner and Sexual Violence Survey by accusing the CDC of promoting "political and ideological agendas," and calling for it to withdraw the report); Robert Franklin, *Christina Hoff Sommers Calls on CDC to Withdraw Misleading New DV Survey*, NAT'L PARENTS ORG. (Feb. 1, 2012), <http://nationalparentsorganization.org/blog/20841-christina-hoff-sommers-calls-on-cdc-to-withdraw-misleading-new-dv-survey>, archived at <http://perma.cc/2WTF-8GJ3>. For examples of IPV advocacy and training groups criticized by the FRM, see *Protests to Begin Against Family Court Judges at the 75th Annual Judicial Conference in New Orleans!*, FATHERS 4 JUSTICE (July 13, 2012), <http://www.fathers-4-justice.us/sites/default/files/MEDIA%20ADVISORY%20Fathers4Justice%20Protest%20NationalCouncil%20of%20Juvenile%20and%20Family%20Court%20Judges.pdf>, archived at <http://perma.cc/V3CE-J5Z2>; STOP ABUSIVE AND VIOLENT ENVIRONMENTS, MYTHS OF THE ABA COMMISSION ON DOMESTIC VIOLENCE: DETAILED FINDINGS 3–4, 15 (Aug. 2010), available at <http://www.saveservices.org/pdf/SAVE-Myths-of-ABA-Commission-on-DV-Detailed.pdf>, archived at <http://perma.cc/JF3B-9PAQ> (criticizing the ABA Commission on Domestic Violence as spreading false information about IPV). For examples of politicians under fire by FRGs, see *Campaign to Remove Senator Creem*, FATHERS UNITE, <http://www.fathersunite.org/> (last visited Feb. 28, 2015), archived at <http://perma.cc/4DZ2-6C2F>; Robert Franklin, *Gov. Mark Dayton Vetoes MN Shared Parenting*, NAT'L PARENTS ORG. (May 27, 2012), <http://nationalparentsorganization.org/blog/20697-gov-mark-dayton-vetoes-mn-shared-parenting>, archived at <http://perma.cc/23LG-NHAV> (criticizing Gov. Mark Dayton of Minnesota for vetoing a shared parenting bill and blaming the "domestic violence industry that burned the midnight oil opposing the bill"); JoeU, *Office Double Standards*, *supra* note 52. For examples of corporate boycotts, see *Boycott!*, FATHERS 4 JUSTICE, *supra* note 52; see also Franklin, *Verizon*, *supra* note 52; Jack Frost, *NYS Police Support Gender Biased Domestic Violence Program*, STOP ABUSIVE & VIOLENT ENVIRONMENTS (Nov. 28, 2012), <http://www.saveservices.org/2012/11/nys-troopers-support-gender-biased-domestic-violence-program/>,

One explanation for the increase in popularity of FRGs in the past few decades is the ability to change in their rhetoric and their decision to temper some of the incendiary language used against women.<sup>95</sup> Nonetheless, one researcher concluded that their political goals are at best, “overly simplistic” and unsupported by research, and at worst, “demonstrate an alarming level of anti-feminism and overt negativity towards women as a group.”<sup>96</sup> Although FRM rhetoric sounds less alarming and more nuanced, the focus has increasingly turned toward the issue of IPV.<sup>97</sup> In a politically savvy change, their websites now read less like hate groups and more like civil rights organizations.

#### *D. Appeal to Civil Rights Movements, Formal Equality Language, and Victim Status*

FRGs claim they are engaged in the newest civil rights movement, often drawing parallels to earlier civil rights movements and comparing the current plight of fathers to injustices faced by African Americans, women, and gay and lesbian Americans.<sup>98</sup> They embrace

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archived at <http://perma.cc/6HWX-G4FP> (complaining that police officers mentioned their donation to a domestic violence shelter on an official Facebook page, and asking people to campaign both the NY State Police and local police officers not to support traditional domestic violence shelters because of their gender bias).

95. Crowley, *Equality Tools*, *supra* note 12, at 99.

96. CROWLEY, *DEFIANT DADS*, *supra* note 11, at 11.

97. See, e.g., DRAGIEWICZ, *EQUALITY*, *supra* note 78, at 16–17.

98. See, e.g., Crowley, *Equality Tools*, *supra* note 12, at 90–93. In sharing findings from her interviews with members of FRGs, Jocelyn Elsie Crowley notes the use of prior civil rights movements in staking a morality claim. She included specific quotes by interviewees, one paralleling how the Black civil rights movement and women’s rights movement worked to overcome injustice, just as the fathers’ rights movement is doing today, and another comparing the fight for equal parenting time for men with the fight to get women the vote. Another compares the imperative to share the horrors of the impact of the family court system on fathers with the reason gay and lesbian individuals had to come out of the closet to engage in a social dialogue. Crowley also identifies the FRG members who claim that fathers experience worse social circumstances than other groups who ultimately formed social movements, including one man who insisted that the treatment of fathers by the family courts is worse than slavery because “[t]he Blacks were never stripped of their children to steal money from [them],” and another who insisted that even though Black men can now make millions of dollars as basketball players, fathers are prevented from seeing their children and forced to pay money. *Id.* For an example, Melanie Mays, a member of the Tennessee FRG A Child’s Best Interest, stated, “the fathers’ rights movement is the civil rights movement of our era. Some belittle the plight of fathers, saying ‘oh, they’re men, they’re privileged, what have they suffered compared to other groups?’ The answer is this—whatever horrors blacks or women or other groups have endured in the past 50 years, nobody ever took their children away. What discrimination and what injustice is worse than that?” Dianna Thompson & Glenn Sacks, *Why Are There so Many Women in the Fathers’ Movement?*, MINNEAPOLIS STAR TRIBUNE (June 21, 2002), available at <http://www.glennsacks.com/column.php?id=48>, archived at <http://perma.cc/RUD9-KTHD>.

and co-opt the language of formal equality and formal legal rights, while utilizing narratives of discrimination and injustice to provide moral authority for law reform.<sup>99</sup> They appropriate the progressive language of “equal rights” even as they attempt to roll back the rights of battered women.<sup>100</sup>

FRGs increasingly use moderate and gender-neutral language in their names and mission statements, though some continue to utilize “more expressive and incendiary language.”<sup>101</sup> FRG mission statements often include gender-neutral goals, such as promoting relationships between children and both parents, or advocating against sex discrimination in courts or IPV organizations.<sup>102</sup> FRG mission statements rarely refer to IPV directly, but instead include a goal of stopping false allegations or PAS.<sup>103</sup> The term “fathers’ rights” is in and of itself an innocuous term implying a movement in favor of gender equity and masking the antifeminist rhetoric and agenda undermining IPV policy.

Many FRGs adopted names to indicate a broader membership and more neutral or inclusive advocacy goals. For example, “Fathers and Families” changed their name to the “National Parents Organization” in 2013, while other FRGs adopted names referring to children’s rights, further distancing their public identity from the men’s rights movement.<sup>104</sup> Demonstrating increased political sophistication,

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99. See Rosen et al., *supra* note 20, at 518–19 (“FRGs have attempted to capitalize on the effectiveness of formal equality discourse in their lawsuits and other forms of activism.”); see also Collier & Sheldon, *supra* note 13, at 15–16 (discussing how FRMs in different countries embrace the language of formal equality); Miranda Kaye & Julia Tolmie, Critique and Comment, *Discursing Dads: The Rhetorical Devices of the Fathers Rights Groups*, 22 MELB. U. L. REV. 162, 162, 164, 169–72 (1998) (describing some of the rhetorical devices used by Australian FRGs when presenting their position on family law issues as “the language of formal equality,” “the language of rights,” and “claims to victim status”); Collier, *Fathers 4 Justice*, *supra* note 19, at 519 (summarizing “common rhetorical devices employed by the [FRM],” including the use of “language of formal equality,” an appeal to “formal legal rights,” and “a claim to victim status”).

100. DRAGIEWICZ, EQUALITY, *supra* note 78, at 16–17.

101. Garrett, *supra* note 29, at 345 (describing how the founder of one FRG, Fathers’ Rights & Equality Exchange (FREE), “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.’”). *Id.* at 344. The equality language is also utilized by FRGs outside of the United States. For example, Fathers 4 Justice advertises an Equal Parenting Campaign calling for “Equal Rights. Equal Parenting. Equal Love.” *Our Campaigns*, FATHERS4JUSTICE, <http://www.fathers-4-justice.org/our-campaign/our-campaigns/> (last visited Feb. 28, 2015), archived at <http://perma.cc/UW3Z-37QA>. Fathers 4 Justice describes its organization as “the campaign for truth, justice and equality in family law.” See *Our Story*, FATHERS 4 JUSTICE, <http://www.fathers-4-justice.org/about-f4j/our-story> (last visited Feb. 28, 2015), archived at <http://perma.cc/CA65-TY4X>.

102. Garret, *supra* note 9, at 344–45.

103. See Rosen et al., *supra* note 20, at 524.

104. NAT’L PARENTS ORG. (formerly FATHERS AND FAMILY), <http://nationalparentsorganization.org/> (last visited Feb. 28, 2015) (formerly [www.fathersandfamilies.org](http://www.fathersandfamilies.org/)),

most FRGs toned down misogynist rhetoric in the past decade and further embraced equality language.<sup>105</sup> As with other backlash movements, FRGs learned to “refer to culturally valued concepts and language to promote their cause, rhetorically tying their marginal agenda to more moderate mainstream assumptions and beliefs.”<sup>106</sup>

FRGs also appropriate the language of equal rights when demanding their inclusion in discussions about IPV. They claim to represent the other side of the debate and call for balance through their inclusion.<sup>107</sup> Through this assertion, they claim invitations to participate in public policy debates and government work groups.<sup>108</sup> Some FRGs self-identify as part of the IPV movement, claiming expertise in IPV and legitimacy as organizations dedicated to preventing IPV and serving victims.<sup>109</sup> They claim neutrality and advertise their

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*archived at* <http://perma.cc/CR4B-4Y7Z>. Examples of FRGs that sound like “children’s rights” organizations include: Children’s Rights Initiative for Shared Parenting Equally (CRISPE), the Children’s Rights Council, and the Children’s Rights Fund of Maryland. *See Home*, CHILDREN’S RIGHTS COUNCIL, <http://www.crckids.org> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/8VDW-ANMZ>; *About Us*, CHILDREN’S RIGHTS FUND, <http://www.childrensrightsfund.org> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/W4LB-NP89>; *see also* Crowley, *Equality Tools*, *supra* note 12, at 80–81 (showing the evolution from the men’s rights movement to the fathers’ rights movement); Collier & Sheldon, *supra* note 13, at 15–16 (identifying one common rhetorical device used by FRGs internationally as “a conflation of the interests of fathers and children in such a way that they become, in effect, one and the same thing”).

105. Nonetheless, examples of misogynist rhetoric still exist on both FRG and (especially) men’s rights group websites, although it is often more hidden now in their blogs or newsletters, rather than on the main page of the website. *Compare Home*, AM. COAL. FOR FATHERS & CHILDREN, <http://acfc.org/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/5Q4T-8LT4> (“Children Need Both Parents”), *with New Domestic Violence Research Complication Available*, AM. COAL. FOR FATHERS & CHILDREN, <http://acfc.org/blog/new-domestic-violence-research-compilation/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/4HBD-CTC8> (“False allegations of abuse are commonplace in divorce.”).

106. Rosen et al., *supra* note 20, at 519.

107. *See* Boyd, *supra* note 25, at 48–49 (commenting on the success of Canadian FRGs in presenting themselves as adversaries to women’s organizations, which “falsely implies that all advocacy groups offer equally valid analyses and recommendations grounded in research” and caused the government to try to split the difference between the two positions, regardless of validity).

108. In Maryland, the Governor appointed one representative from a specific FRG and the Women’s Law Center, along with a representative of another FRG and a domestic violence group. Commission on Child Custody Decision Making, H.B. 687, 2013 Gen. Assemb., Reg. Sess. (Md. 2013), *available at* <http://www.mdcourts.gov/family/pdfs/hb687.pdf>, *archived at* <http://perma.cc/AWF9-76P8>. In Minnesota, the Governor included a member from each of the two local FRG (the Minnesota Chapter of Fathers and Families and the Center for Parental Responsibility) on the statewide workgroup to study joint custody. MINNESOTA JOINT PHYSICAL CUSTODY PRESUMPTION STUDY GROUP REPORT I (Jan. 14, 2009), *available at* [http://www.mncourts.gov/Documents/0/Public/NewsPostings/MN\\_Joint\\_Physical\\_Child\\_Custody\\_Presumption\\_Study\\_Group\\_Report\\_2009\\_Dsprint.pdf](http://www.mncourts.gov/Documents/0/Public/NewsPostings/MN_Joint_Physical_Child_Custody_Presumption_Study_Group_Report_2009_Dsprint.pdf), *archived at* <http://perma.cc/R2Y9-Q7EX>.

109. Franklin, *Feds*, *supra* note 53 (describing SAVE as an “anti-domestic violence organization”); Glenn Sacks, *Dissident Domestic Violence Experts Form New Group to Challenge DV Establishment*, FATHERS FOR EQUAL RIGHTS, (Nov. 21, 2006), *available*

research on IPV as unbiased, using the terms “evidence-based” and “scientifically-sound” to describe their gender symmetry perspective about IPV while denigrating information provided by national IPV organizations and the federal government.<sup>110</sup>

At other times, they identify themselves as a group oppressed by discrimination, and they assert that there is a war on fathers and men started by feminists.<sup>111</sup> Some claim the moral authority as the representatives of “true victims”—fathers treated unfairly by family or domestic violence courts.<sup>112</sup> Their inclusion of members who acknowledge court findings of IPV against them, which they claim were based on false allegations or exaggerations, has led some feminists and politicians to accuse them of being the voice of lobbyists for batterers.<sup>113</sup>

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at <http://fathersforkids.com/news/165/dissident-domestic-violence-experts-challenge-establishment>, archived at <http://perma.cc/YJH9-4AHZ> [hereinafter Sacks, *Dissident DV Experts*] (describing the creation of the National Family Violence Legislative Resource Center with national domestic violence “experts” to help combat the domestic violence establishment that “is not telling us the full truth about domestic violence, and [creating] many destructive family law policies . . . based on misleading information”).

110. See *id.*; Teri Stoddard, *TEPA Accreditation Program Promotes Evidence-Based Policy and Practice*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (Dec. 28, 2010), <http://www.saveservices.org/press-releases/tepa-accreditation-program-promotes-evidence-based-policy-and-practice/>, archived at <http://perma.cc/MPW6-CHS8>; see also *Unprecedented Domestic Violence Study Affirms Need to Recognize Male Victims*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS (May 21, 2013), <http://www.saveservices.org/2013/05/unprecedented-domestic-violence-study-affirms-need-to-recognize-male-victims/>, archived at <http://perma.cc/WT5U-KYXR> (describing a FRG research compilation as a “project to bring together, in a rigorously evidence-based, transparent and methodical manner, existing knowledge about partner abuse,” and “[t]he most comprehensive review of the scholarly domestic violence research literature ever conducted”).

111. See, e.g., *Domestic Violence*, TEX. FATHERS FOR EQUAL RIGHTS, <http://fathers4kids.com/issues/domestic-violence> (last visited Feb. 28, 2015) archived at <http://perma.cc/2MGS-265V> (describing “radical feminist groups [that] have been working overtime for many years to promote the libelous propaganda that men are violent towards women and children” and comparing fathers accused of IPV to jews being forced to pay for their train tickets to Nazi concentration camps); see also Gordon Finley, *The Violence Against Women Act (VAWA) and the War on Men*, AM. COAL. FOR FATHERS & CHILDREN, <http://www.acfc.org/news/violence-against-women-act-2013/> (last visited Feb. 28, 2015), archived at <http://perma.cc/UN23-FJYX> (describing VAWA as “one of the most misguided pieces of legislation ever passed by Congress . . . [which] has wreaked a wide swath of destruction across American society and accurately can be described as ‘A War on Men’”).

112. See Collier & Sheldon, *supra* note 13, at 15–16 (identifying “a claim to victim status, supported by what critics suggest has been a selective use of statistics and a frequent, and undoubtedly emotionally powerful, use of personal anecdotes of men’s suffering in the field of family justice” as a common rhetorical device used by FRGs internationally).

113. For example, after Congresswoman Zoe Lofgren accused SAVE Services of being a group of “apologists for abusers” during a VAWA mark-up of the House Judiciary Committee, SAVE responded by demanding an apology and claiming that they are a “victim-advocacy organization working for evidence-based solutions to the problem of domestic violence” who “advocates for all victims of domestic violence.” SAVE, *SAVE demands apology from Rep. Zoe Lofgren*, A VOICE FOR MEN (May 9, 2012), <http://www.avoic>

In addition to using the language of formal equality, FRGs explicitly cite earlier civil rights movements for motivation and guidance, often quoting civil rights leaders in support of their work.<sup>114</sup> FRGs utilize strategies and tactics common to social movements.<sup>115</sup> They engage in public education activities through local public protests and national rallies in Washington DC, create awareness campaigns, write editorials and media releases, and make documentaries and movies.<sup>116</sup>

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formen.com/updates/news-updates/save-demands-apology-from-rep-zoe-lofgren/, archived at <http://perma.cc/B38T-J4QG>.

114. See Collier & Sheldon, *supra* note 13, at 19; see also *RADAR Alert: "First They Ignore You . . ."*, MEDIA RADAR (Nov. 23, 2009), <http://www.mediaradar.org/alert20091123.php>, archived at <http://perma.cc/6ZGQ-F2TG> (quoting Ghandi in responding to criticisms of their organization, "First they ignore you, then they ridicule you, then they fight you, then you win." The joint Slate/Salon attack pieces are a good indication that we're well past stage 1. Congratulations to all RADAR supporters and allies for getting us this far"); *SELF-RESPECT*, NAT'L PARENT ORG., <http://www.nationalparentsorganization.org/blog/733-self-respect> (last visited Feb. 28, 2015), archived at <http://perma.cc/X2WH-8YXL> ("I am again reminded of the day Martin Luther King was shot in Memphis in 1968. He was there to support a strike by garbage collectors. The signs these men carried did not say 'Higher Wages.' They did not say 'More Paid Holidays.' The signs said, 'I Am a Man.' The oppressed men holding these signs never looked prouder. This was a statement of pride among men who were accustomed to shame and defeat. I know that you will join me in giving. You will be proud to say, 'I Am A Man. I Am A Father.'"); *Rebellion Quotes*, ALLIANCE FOR NON-CUSTODIAL PARENTAL RIGHTS (ANCPR) (Sept. 21, 2005), <http://ancpr.com/2005/09/21/rebellion-quotes/>, archived at <http://perma.cc/4BLE-6XKZ> (including quotes from Frederick Douglas, Eleanor Roosevelt, etc.).

115. Collier & Sheldon, *supra* note 13, at 19.

116. FRGs hold rallies across the country, with annual protests on Father's Day. For example, the National Congress of Fathers and Children of New Hampshire and the Fatherhood Coalition of Massachusetts co-hosted a Father's Day festival in Salem, New Hampshire, which included informational booths. *Call 2 Action!*, NAT'L CONG. FOR FATHERS & CHILDREN OF N.H., <http://www.nfcfnh.org/> (last visited Feb. 28, 2015), archived at <http://perma.cc/8CYM-UW6M>. Glenn Sacks, in his role at Fathers and Families, institutes "action alerts" asking members to engage in specific campaigns or protests on various issues. See Glenn Sacks, *Ask DSM to Include Parental Alienation in Upcoming Edition*, GLENN SACKS (May 25, 2012), <http://www.glennsacks.com/campaign.php?id=20>, archived at <http://perma.cc/3SYL-WGQM> (campaigning to ask DSM to include PAS in an upcoming edition); Glenn Sacks, *Dear Abby Changes Column in Response to Protest*, GLENN SACKS (June 15, 2009), <http://www.glennsacks.com/campaign.php?id=20>, archived at <http://perma.cc/KJW2-FAKP> (campaigning Dear Abby to change advice she provided in her column); Glenn Sacks, *Defeat Ohio Bill Raising Child Support Levels During the Great Depression*, GLENN SACKS (Oct. 12, 2010), <http://www.glennsacks.com/campaign.php?id=25>, archived at <http://perma.cc/SH77-WEA7> (asking members to help defeat an Ohio bill that would increase child support obligations); Glenn Sacks, *Fight Michigan Legislation Targeting Husbands, Boyfriends*, GLENN SACKS (Dec. 7, 2011), <http://www.glennsacks.com/campaign.php?id=26>, archived at <http://perma.cc/64X3-BDSE> (campaigning against a Michigan bill criminalizing a man's efforts to prevent a woman from getting an abortion); Glenn Sacks, *Protest Anti-Father Verizon Commercial*, GLENN SACKS (Nov. 30, 2004), <http://www.glennsacks.com/campaign.php?id=4>, archived at <http://perma.cc/G654-4B99> (campaigning against Verizon commercials deemed to be anti-father); Glenn Sacks, *Reunite Solomon Metalwala with His Daughter Maile*, GLENN

They utilize personal narratives and anecdotes, create advocacy groups and websites organized around their issue, and write books to share their experiences.<sup>117</sup> They create educational programming and conferences for groups of professionals who directly influence laws and decisions in cases involving IPV or child custody, such as attorneys, social workers, *guardians ad litem*, custody evaluators, mediators,

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SACKS (Dec. 16, 2011), <http://www.glennsacks.com/campaign.php?id=21>, archived at <http://perma.cc/V68B-TQH8> (campaigning Washington courts to find domestic violence and child abuse allegations false and give a father custody of his daughter); Glenn Sacks, *Support CA Shared Parenting Bill AB 1307*, GLENN SACKS (Apr. 24, 2005), <http://www.glennsacks.com/campaign.php?id=6>, archived at <http://perma.cc/CGM7-PQW5> (campaigning to create a rebuttable presumption of “shared parenting” in California); Glenn Sacks, *Tell San Francisco Weekly That Parental Alienation Is Real, False DV Allegations Are Common*, GLENN SACKS (Mar. 3, 2011), <http://www.glennsacks.com/campaign.php?id=28>, archived at <http://perma.cc/5CWT-DVRC> (campaigning members to write letters to the editor criticizing a newspaper (*San Francisco Weekly*) for its article about family law cases when abusive fathers were awarded custody); see also *Special Reports*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://saveservices.org/reports/> (last visited Feb. 28, 2015), archived at <http://perma.cc/WG2D-XQKA>. For examples of awareness campaigns, see Scott Adams, *2013 False Allegation of Domestic Violence Awareness Campaign—Hold False Accusers Accountable*, CHILDREN’S RIGHTS FLA. (Jun. 28, 2013), <http://childrensrightsflorida.wordpress.com/2013/06/28/243/>, archived at <http://perma.cc/38QV-RGSH>; 2011: *False Allegations Awareness Month*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/dvlp/campaigns/faam-2011/> (last visited Feb. 28, 2015), archived at <http://perma.cc/G258-5GQ6>. Examples of FRG documentaries include: *FAQ*, FATHERFIGURE, <http://fatherfigurevideo.com/about-the-documentary/faq> (last visited Feb. 28, 2015), archived at <http://perma.cc/PB7D-EBLX>; Matt Allen, *Film-maker Examines Fathers Rights in America*, MENSRIGHTS.COM (Feb. 24, 2012, 2:23 PM), <http://www.mensrights.com/index.php/articles/filmmaker-examines-fathers-rights-in-america.html>, archived at <http://perma.cc/7CQ5-A9XG>; *A Father’s Rights*, WILLIAMFAIN.COM, <http://www.williamfain.com/a-fathers-rights.html> (last visited Feb. 28, 2015), archived at <http://perma.cc/NM8F-MCMM>; *Independent Film to be Produced on Controversial Subject of Female on Male Domestic Abuse*, DOMESTIC ABUSE HELPLINE FOR MEN AND WOMEN (May 30, 2012, 4:53 PM), <http://domesticviolenceresourcesformen.blogspot.com/2012/05/independent-film-to-be-produced-on.html>, archived at <http://perma.cc/3T7J-YQ8Y>; *Guilty Until Proven Innocent is the Beginning of a Necessary National Dialogue*, INNOCENTDADS.ORG, <http://www.innocentdads.org> (last visited Feb. 28, 2015), archived at <http://perma.cc/Z8YH-AQLC>; *We Are on a Mission!*, BIG BAD DAD, <http://www.bigbaddadthemovie.com/> (last visited Feb. 28, 2015), archived at <http://perma.cc/2X5M-UYYP>; *Bob Geldof on Fathers*, YOUTUBE (Apr. 24, 2012), <http://www.youtube.com/watch?v=JhkbYvkRO-g>, (documentary on UK family court system); *F4J People Power Documentary*, YOUTUBE, <http://www.youtube.com/watch?v=25jEk6xVbMI#t=118> (last visited Feb. 28, 2015), archived at <http://perma.cc/WML3-ZT8J>.

117. See, e.g., STEPHEN BASKERVILLE, *TAKEN INTO CUSTODY: THE WAR AGAINST FATHERS, MARRIAGE, AND THE FAMILY* (2007) (a book written by a board member of the FRG, the American Coalition for Fathers and Children); *Taken Into Custody: The War Against Fathers, Marriage, and the Family*, AMAZON, <http://www.amazon.com/Taken-Into-Custody-Against-Marriage/dp/1581825943> (last visited Feb. 28, 2015), archived at <http://perma.cc/M6UL-CZPB> (describing the book as “espos[ing] the greatest and most destructive civil rights abuse in America today”); see also John Flaherty, *Reasons for Revolution*, FATHERS UNITE, [http://www.fathersunite.org/other\\_great\\_resources.html](http://www.fathersunite.org/other_great_resources.html) (last visited Feb. 28, 2015), archived at <http://perma.cc/KFV4-NUNS>.

psychologists, and judges.<sup>118</sup> They engage in impact litigation, petition and lobby for law reform and create their own research.<sup>119</sup>

## II. ONE FRG EXAMPLE: MEN AND WOMEN AGAINST DISCRIMINATION

This section utilizes one state FRG, Men and Women Against Discrimination (MAWAD), to introduce FRM goals and tactics. Though regional and state FRGs vary throughout the country, they identify similar goals and coordinate through national organizations, conferences and meetings, shared literature and media releases, and

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118. For an example of an FRG-created accreditation program, see *Accreditation, STOP ABUSIVE AND VIOLENT ENVIRONMENTS*, <http://www.saveservices.org/accreditation/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/D7LC-FQN3>. For an example of FRG-created training materials, see *Groundbreaking Domestic Violence Education & Training DVDs*, CAL. ALLIANCE FOR FAMILIES & CHILDREN (2009), *available at* [http://www.cafcusa.org/docs/DVD\\_Catalog.pdf](http://www.cafcusa.org/docs/DVD_Catalog.pdf) (last visited Feb. 28, 2015), *archived at* <http://perma.cc/QME6-3UVZ>. For examples of FRG-sponsored national conferences, see *VIDEO: False Allegations Summit*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/2011/06/video-false-allegations-summit-in-america-do-the-accused-deserve-a-hearing/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/D2KN-CUKB> (video recording of the 2011 “False Allegations Summit” sponsored by SAVE); *see also* Press Release, Stop Abusive and Violent Environments, Women Need Not Fear: Event to Spotlight Super Bowl Hoax, PR NEWSWIRE (Jan. 24, 2011), <http://www.prnewswire.com/news-releases/women-need-not-fear-event-to-spotlight-super-bowl-hoax-114479324.html>, *archived at* <http://perma.cc/4LX5-LLCM> (promoting the “Super Bowl Hoax Anniversary,” sponsored by SAVE and the Eagle Forum, on January 27, 2011, at the Heritage Foundation in Washington, D.C.); *From Ideology to Inclusion 2009: Post Conference Follow Up*, CAL. ALLIANCE FOR FAMILIES & CHILDREN (Aug. 10, 2009), <http://www.cafcusa.org/news/2009/08/from-ideology-to-inclusion-2009-post.html>, *archived at* <http://perma.cc/WQ8R-4PXP> (providing follow-up coverage of the conferences “From Ideology to Inclusion 2009: New Directions in Domestic Violence Research and Intervention,” sponsored by the California Alliance for Families and Children in Los Angeles, CA (June 26–28, 2009) and “From Ideology to Inclusion: Evidence-Based Policy and Intervention in Domestic Violence,” sponsored by California Alliance for Families and Children in Sacramento, CA (Feb. 15–16, 2008)); Press Release, The Conflict Between Federal Domestic Violence Policies and Traditional Family Values, RADAR (Oct. 1, 2008), *available at* <http://www.mediadar.org/docs/RADARconf-2008-10-01.pdf>, *archived at* <http://perma.cc/6V7V-K67R> (advertising RADAR’s 2008 conference on The Conflict Between Federal Domestic Violence Policies and Traditional Family Values) [hereinafter *The Conflict Between Federal Domestic Violence Policies and Traditional Family Values*]; *Families and Fathers Conference 2005: Conference Overview and Goals*, FAMILY RIGHTS COAL. OF MICH. (May 24, 2005), <http://web.archive.org/web/20050524202058/http://www.fathers05.org/>, *archived at* <http://perma.cc/2229-JPL6> (describing the 2005 conference “Families and Father’s Conference—Healing Our Families: A Time for Change,” sponsored by ACFC, Dads of Michigan, Fathers Rights Coalition of Michigan, Fathers for Equal Rights of America, and Citizens for Parental Rights in Detroit, Michigan, and noting that the program overview states, “[u]nlike the foreign menaces of World War II and the international battle fronts of today, the greatest enemy we Americans now face is the one destroying us from within by dismantling our families one at a time. . . . it is the most effective terrorist organization our nation has ever faced.”).

119. For a discussion of FRM impact litigation, see Part III, *infra*. For a discussion of lobby efforts, see Part V, *infra*.

lobbying and protest efforts. MAWAD provides an illustration of the impact of the FRG movement on IPV public debates, policies, and laws.

### A. History of MAWAD

MAWAD was an FRG founded in West Virginia in 2004.<sup>120</sup> Its official goals included creating a legal presumption of joint physical custody, reforming child support, reforming IPV services to be “unbiased as to gender,” ending parental alienation tactics “condoned and encouraged by the Family Law system,” and increasing grandparent and extended family rights.<sup>121</sup> Although MAWAD’s members’ areas of activism included child support, paternity, and child protection services, most of its activities focused on IPV. Between 2004 and 2009, MAWAD engaged in public education activities advocating a gender symmetry theory of IPV and focusing on the harm of false allegations.<sup>122</sup> They won a lawsuit they brought against the public funding mechanism for IPV services in state court (before losing the appeal).<sup>123</sup> They created original research about IPV and false allegations,<sup>124</sup> and successfully lobbied for a bill creating new sanctions for false allegations of IPV or child abuse made during custody proceedings.<sup>125</sup>

### B. MAWAD Rhetoric and Strategies

Like the broader FRG movement, MAWAD utilized equality and civil rights language. It changed its initial name, “Men Against Discrimination (MAD) Men United” to “Men and Women Against

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120. See Lawrence Smith, *Male Victims Subject of Domestic Violence Conference*, W. VA. RECORD (April 13, 2007), <http://wvrecord.com/news/193439-male-victims-the-subject-of-domestic-violence-conference>, archived at <http://perma.cc/DSH9-SADS> (posting of newspaper notice inviting people to an organizational meeting for the newly-formed group, MAD in Parkersburg at the Wood County Library on Jan. 8, 2005) [hereinafter Smith, *Male Victims*].

121. See *About Us: Vision Statement for MAWAD, MEN AND WOMEN AGAINST DISCRIMINATION* [hereinafter MAWAD, *About Us*] (on file with author) (stating that MAWAD’s mission is “[t]he implementation of Family Law practices regarding responsibility for children, that provide a presumption of equal custody and parenting time; [t]he provision of Services pursuant to the West Virginia Domestic Violence Act that are unbiased as to gender; [f]air and equitable practices regarding child support determination; [t]he end of the emotional abuse of children through parental alienation tactics that are condoned and encouraged by the Family Law system; [and] [t]he recognition of the importance of grandparents and extended family in the life of children”).

122. See *infra* notes 129–51 and accompanying text.

123. See *infra* Part III.A.

124. See *infra* Part IV.A.

125. See *infra* Part IV.A.

Discrimination” (MAWAD) in 2007.<sup>126</sup> MAWAD’s very name insinuated that it was a progressive civil rights organization working against discrimination, even more so after it altered its name to include women. Its tagline was “Truth, Justice and Equality in Family Law” and its vision statement was “[t]o promote respect, fairness, gender equality and importance of both parents to children through education and raising awareness of corrupt legal family services, family social services practices, and social attitudes.”<sup>127</sup> MAWAD’s mission statement utilized equality language in several provisions, advocating for a “provision of services pursuant to the West Virginia Domestic Violence Act that are unbiased as to gender,” “fair and equitable practices regarding child support determination,” and “a presumption of equal custody and parenting time.”<sup>128</sup>

MAWAD presented different self-identities at different times, promoting itself to the media as a “child advocacy organization,”<sup>129</sup> “advocates of non-custodial parents’ rights,”<sup>130</sup> shared parenting activists,<sup>131</sup> a civil rights or anti-discrimination organization,<sup>132</sup> a domestic violence organization advocating on behalf of male victims,<sup>133</sup> an advocacy organization for men falsely accused of IPV or child

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126. Based on author’s analysis of MAWAD’s website, Men Against Discrimination changed its name to Men and Women Against Discrimination (MAWAD) sometime between June 20, 2007 and November 9, 2007. I will use MAWAD to refer to the organization and its activities, regardless of whether it was using MAD or MAWAD at the time of the activity.

127. See MAWAD, *About Us*, *supra* note 121.

128. *Id.*

129. Lawrence Smith, *Group Says Bulk of Domestic Violence Cases Clog, Cost Court System*, W. VA. RECORD (Oct. 5, 2007), <http://wvrecord.com/news/202108-group-says-bulk-of-domestic-violence-cases-clog-cost-court-system>, archived at <http://perma.cc/RX6H-DAJ5> (describing MAWAD as a “children’s advocacy group”).

130. Darlene J. Taylor, *Collecting Unpaid Child Support Can Be a Long Process*, THE EXPONENT TELEGRAM (Nov. 21, 2006), [http://www.theet.com/news/local/collecting-unpaid-child-support-can-be-a-long-process/article\\_17e488ec-1c3c-5eaf-b7fb-21c47b766234.html](http://www.theet.com/news/local/collecting-unpaid-child-support-can-be-a-long-process/article_17e488ec-1c3c-5eaf-b7fb-21c47b766234.html), archived at <http://perma.cc/Q4ZS-V7K9> (interviewing Tim Fittro, MAWAD’s statewide director about child support enforcement and referring to Men Against Discrimination (now MAWAD) as “advocates of non-custodial parents’ rights”).

131. Glenn Sacks, *West Virginia Shared Parenting Activists Tackle False Allegations in Divorce*, GLENN SACKS (Oct. 21, 2007), archived at <http://perma.cc/Y3M9-DSM2>.

132. Tammie Toler, *MAWAD: Dads Deserve to Raise Kids, Not Just Write Checks*, BLUEFIELD DAILY TELEGRAPH (May 18, 2007), [http://www.bdtonline.com/archives/mawad-dads-deserve-to-raise-kids-not-just-write-checks/article\\_13ca86a3-0b0f-573f-9604-a23a2d6e5fd9.html](http://www.bdtonline.com/archives/mawad-dads-deserve-to-raise-kids-not-just-write-checks/article_13ca86a3-0b0f-573f-9604-a23a2d6e5fd9.html), archived at <http://perma.cc/AFK4-JZ8J> (describing MAWAD as a grassroots organization striving for the theme “Truth, Justice and Equality in Family Law” and attempting to change the West Virginia Family Court culture and atmosphere that robs children of their fathers and extended family); see also Staff, *Anti-Discrimination Group to Participate in Hearing*, THE HERALD DISPATCH (Jan. 28, 2008), <http://www.herald-dispatch.com/x607062859>, archived at <http://perma.cc/4T9K-WENY>.

133. Smith, *Male Victims*, *supra* note 120 (reporting on a conference co-sponsored by MAWAD).

abuse,<sup>134</sup> and a grassroots organization dedicated to educate the public about the truth about domestic violence.<sup>135</sup> Even as it advertised itself as part of the IPV community, MAWAD presented itself as the other side of the IPV narrative, casting itself as the opposition to the West Virginia Coalition Against Domestic Violence (WVCADV) and IPV advocates.<sup>136</sup>

MAWAD coordinators argued that they were entitled to present their beliefs about IPV (false allegations and gender-symmetry) in mainstream IPV forums, including conferences for IPV and child abuse professionals.<sup>137</sup> A MAWAD Regional Coordinator escorted out of a child abuse conference by a state trooper for his disruptive behavior sued the conference organizers for breach of contract, intentional infliction of emotional distress and sexual discrimination.<sup>138</sup> When the WVCADV denied MAWAD's request for an organizational booth at its Summit on Violence Against Women and instead issued an invitation to MAWAD members to attend and participate in a respectful way, MAWAD organized a counter-protest and press conference across the street.<sup>139</sup> MAWAD frequently claimed victim status, as one coordinator explained to a reporter, "We feel like it's a concerted effort by the [West Virginia] Crime Victims Compensation Fund, VOCA [Victims of Crime Act, implemented by the U.S. Department of Justice Office of Victims of Crime Assistance] and the Coalition [WVCADV] to prevent us from telling our side of the story."<sup>140</sup>

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134. Lawrence Smith, *Victims of False Domestic Violence Reporting Detail Experiences*, W. VA. RECORD (Oct. 5, 2007), <http://wvrecord.com/news/202143-victims-of-false-domestic-violence-reporting-detail-experiences>, archived at <http://perma.cc/YF4R-S4F3> [hereinafter Smith, *Victims of False DV*].

135. Scott Finn, *Billboard Alleges Discrimination Against Men in Domestic Violence Cases*, W. VA. PUB. BROAD., Oct. 20, 2007; see also Lawrence Smith, *Divide in Domestic Violence Community Evident in Charleston*, W. VA. RECORD (October 5, 2007), <http://wvrecord.com/news/202142-divide-in-domestic-violence-community-evident-in-charleston>, archived at <http://perma.cc/3NYN-L6PZ> [hereinafter Smith, *Divide*] (discussing MAWAD's attempt to participate in a domestic violence conference in order to educate the public about false allegations of domestic violence).

136. During his speech at the Family Preservation Festival on August 15–16, 2008, Ron Foster described how MAWAD coordinators knew they found the right advertising campaign when "it made for some very upset domestic violence advocates." Ron Foster (WV) of M.A.W.A.D.—Part 1, YOUTUBE (uploaded Aug. 23, 2008), <http://www.youtube.com/watch?v=AUiHqozQ3A8> [hereinafter Ron Foster (WV) Part 1] (Part 1 of his speech at the *Family Preservation Festival*, Aug. 15–16, 2008); Ron Foster (WV) of M.A.W.A.D.—Part 2, YOUTUBE (uploaded Aug. 23, 2008), [http://www.youtube.com/watch?v=EaaACU\\_bbBw](http://www.youtube.com/watch?v=EaaACU_bbBw) [hereinafter Ron Foster (WV) Part 2]; see also Smith, *supra* note 135 (describing MAWAD's protests outside of a IPV conference co-sponsored by WVCADV).

137. Smith, *Divide*, *supra* note 135.

138. *Id.* (describing a lawsuit filed by MAWAD Coordinator, Ron Foster, with the assistance of a Kanawha County prosecutor; the lawsuit was dismissed by a Kanawha County Circuit Court Judge).

139. *Id.*

140. *Id.*

MAWAD coordinators engaged in a media campaign to share their two messages: IPV is gender neutral and most IPV allegations are false. They rented several billboards in the state and created radio advertisements and media reports.<sup>141</sup> They offered a \$10,000 monetary reward “to help stop ‘false claims’ of child abuse, sexual abuse and domestic violence for reporting false claims of abuse to anyone who could prove false allegations were used against him or her in a custody case.”<sup>142</sup> They wrote letters to the editor in local newspapers, one of which resulted in a family court judge complaint that a MAWAD coordinator was engaging in the unauthorized practice of law.<sup>143</sup> They organized a dinner for “domestic violence awareness”

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141. One billboard stated that forty-two percent of West Virginia homicide victims were male, including “three . . . cases in which women killed their male partners,” and asked people to “help protect all victims.” WVCADV stated that the billboard was misleading and irresponsible, because it erroneously implied that women killed the male victims. See Finn, *supra* note 135.

142. Earn \$10,000 for information and news story resulting in the prosecution of an individual for false allegations of abuse in a West Virginia family court. Men Against Discrimination is so convinced that some people are guilty of using false claims of abuse, false claims of domestic violence and other outright lies in court to obtain leverage in contested cases of divorce and child custody that we feel compelled to offer a reward to stop this drain on our court resources. The children of our state are the ones who suffer the most in these tragic situations and the damage can never be undone. It is our hope that a few highly publicized cases of criminal prosecution will end the use of this terrible tool to break up families. We know of no case where an individual making false accusations has been fully prosecuted but we are aware of many cases where the individual being falsely accused has been prosecuted even where the original accused recanted the accusation. Help us save our families and children from distortion and lies. When children see that liars win in court, the lesson they learn is that liars win in life.

*News Release: Men Against Discrimination Launches \$10,000 Reward Program*, MEN AND WOMEN AGAINST DISCRIMINATION (July 16, 2006) (on file with author); see also Finn, *supra* note 135; Glenn Sacks, *ACFC Affiliate Offers \$10,000 for Reward for Conviction for a False Accusation in a Divorce*, GLENN SACKS (Mar. 24, 2007), archived at <http://perma.cc/938U-DCYA>.

143. Schermerhorn, the Regional III Director of MAWAD, who denied that he ever advertised himself as a divorce attorney, told the West Virginia Record that he suspected his ex-wife’s attorney filed the complaint for unauthorized practice of law against him in retaliation for an attorney ethics complaint he filed against her in October 2007 and his subsequent appeal of the Lawyer Disciplinary Counsel’s decision to close his complaint against her in May 2008. See Lawrence Smith, *Hampshire Man Investigated for Unauthorized Practice of Law*, W. VA. RECORD (July 11, 2008), <http://wvrecord.com/news/213640-hampshire-man-investigated-for-unauthorized-practice-of-law>, archived at <http://perma.cc/X6EM-TK8Q>. The complaint against Schermerhorn was actually filed by Berkeley Family Court Judge Sally G. Jackson for a letter to the editor he wrote in *The Journal* in Martinsburg on behalf of MAWAD encouraging anyone going through a divorce to contact him because he “as well as numerous members are knowledgeable of the divorce laws and could possibly give better advice than some high-dollar attorneys.” Lawrence Smith, *Bar Delays Action in Complaint Against Man Accused of Unlawful Practice*, W. VA. RECORD, Aug. 1, 2008, <http://wvrecord.com/news/213996-bar-delays-action-in-complaint-against-man-accused-of-unlawful-practice>, archived at <http://perma.cc/ZCL3-T3R9>.

focusing on false allegations and VAWA Reform and held candlelight vigils and protests in support of fathers falsely accused of IPV or child abuse.<sup>144</sup> MAWAD co-sponsored a statewide conference focusing on male victims of IPV during which its members shared stories of being the victims of false allegations of IPV and child abuse.<sup>145</sup>

MAWAD coordinators created relationships with sympathetic local newspaper journalists and politicians to promote and sponsor their legislation.<sup>146</sup> MAWAD's statewide director unsuccessfully ran for the West Virginia House of Delegates.<sup>147</sup> MAWAD's coordinators testified before the state legislature and filed an ethics complaint against a family court judge who testified against their bill.<sup>148</sup> They

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Though the committee dismissed the complaint, it issued a warning to Schermerhorn to be "careful not to cross the line between political advocacy and rendering legal advice." Lawrence Smith, *Committee: Judge Made Baseless Complaints*, W. VA. RECORD (Nov. 14, 2008), <http://wvrecord.com/news/215863-committee-judge-made-baseless-complaints>, archived at <http://perma.cc/3EET-PQA5>. Schermerhorn filed an ethics complaint against Judge Jackson alleging she abused her authority by filing a frivolous complaint against him in an attempt to intimidate citizens into silence and violate his constitutional First Amendment right to free speech. This complaint was also dismissed. Lawrence Smith, *Judge Used Powers to Squelch Criticism of Family Law Matters, Complaint Alleges*, W. VA. REC. (Jan. 2, 2009), <http://wvrecord.com/news/216670-judge-used-powers-to-squelch-criticism-of-family-law-matters-complaint-alleges>, archived at <http://perma.cc/2QAU-M6YP>.

144. Lawrence Smith, *Stage Set in Charleston for VAWA Reform*, W. VA. REC. (Oct. 30, 2008), <http://wvrecord.com/news/215638-stage-set-in-charleston-for-vawa-reform>, archived at <http://perma.cc/SB4V-XS3N> [hereinafter Smith, *Stage Set*].

145. Smith, *Male Victims*, *supra* note 120 (reporting on a conference held in observance of National Crime Victims Rights Week in Charleston on April 25, 2007, "Domestic Violence and Sexual Assault: Not Just Problems for Women." The conference was sponsored by the US Department of Justice, Office for Victims of Crime, Men Against Discrimination (now MAWAD), the Domestic Violence Counseling Center, Healing through Creativity, the National Coalition for a New Perspective on Domestic Violence, and the West Virginia State University School of Social Work).

146. At the 2008 Family Preservation Festival in Washington, D.C., Ron Foster explained that MAWAD was "very successful early on in finding a person within the media that was very sympathetic to our causes." Ron Foster (WV) Part 1, *supra* note 136; see also Smith, *Stage Set*; *supra* note 144 (describing a "domestic violence awareness dinner" at the Charleston Marriott co-sponsored by MAWAD, the Domestic Violence Counseling Center, Healing Through Creativity, and African-Americans for VAWA Reform organized for the same night at Vice President Biden's campaign visit to Charleston. Speakers at the event described how VAWA has led to the break-up of families and creates financial incentives for false allegations. Attendees included Assistant Kanawha County Prosecutor Mark Plants and State Senator Dan Foster).

147. Roger Adkins, *A Flip of the Coin: McCrady Wins Toss, Spot on Delegate Ballot; Candidates Wanted Public Vote*, PARKERSBURG NEWS AND SENTINEL (May 30, 2008), <http://www.newsandsentinel.com/page/content.detail/id/505855/A-Flip-of-the-Coin.html>, archived at <http://perma.cc/D8X8-V6KV>.

148. MAWAD filed a complaint against Kanawha County Family Law Judge, Mike Kelly, in conjunction with a "Fatherless Day rally" held at the state Capitol. The complaint alleged that when Judge Kelly testified before the state legislature on February 7 and 26, 2008, about proposed 'shared parenting' custody laws, he stated that he rarely

provided a report on IPV to the governor calling into question the amount of money West Virginia spent on IPV prevention and services.<sup>149</sup> Between 2004 and 2008, MAWAD coordinated with national organizations to promote its West Virginia agenda and assist with national projects.<sup>150</sup> In addition to its media campaign, MAWAD filed a lawsuit against the funding mechanism of domestic violence services, created its own research to support its goals, and proposed and passed legislation.<sup>151</sup>

### C. National Contacts

Though primarily focused on West Virginia state laws, MAWAD maintained national connections. Like other local and state FRGs, MAWAD participated in a national network of FRGs through official affiliations, shared resources, co-sponsorships of events, state legislation advocacy projects, and national advocacy. The FRG movement is not limited to small, localized grassroots organizations, but is an increasingly organized social movement providing an opposition to the IPV movement.<sup>152</sup>

MAWAD was an affiliate of the American Coalition for Fathers and Children (ACFC), a national FRG based in Washington, DC that promotes the elimination of gender bias in family courts, “equal, shared parenting,” and child support reform.<sup>153</sup> Though ACFC’s goals

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follows child custody agreements, as he was directed to do under the current statute unless a parent is found unfit. Lawrence Smith, *Complaint Lodged Against Family Law Judge Who Testified to Not Following Child Custody Law*, W. Va. Record, (June 27, 2008), <http://wvrecord.com/news/213500-complaint-lodged-against-family-law-judge-who-testified-to-not-following-child-custody-law>, archived at <http://perma.cc/5VLX-FDR8>.

149. RON P. FOSTER, MEN AND WOMEN AGAINST DISCRIMINATION FINAL REPORT TO GOVERNOR JOE MANCHIN III: STATISTICAL ANALYSIS WV POLICE CRIME STATISTICS AND COURT CASELOADS INCLUDING DOMESTIC VIOLENCE 7 (Sept. 28, 2007) (on file with author).

150. See, e.g., Smith, *Male Victims*, *supra* note 120 (describing a 2007 conference co-sponsored by MAWAD, the United States Department of Justice, and other state and national organizations).

151. See *Complaint, Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, No. 08-C-1056 (Kanawha Cnty. W. Va. Cir. Ct., filed June 3, 2008) [hereinafter MAWAD Complaint] (on file with author); see also *2007 Legislative Initiatives*, MEN & WOMEN AGAINST DISCRIMINATION, archived at <http://perma.cc/KL2B-SYFP>; Ron Foster (WV) Part 1, *supra* note 136.

152. See, e.g., *2008 Initiatives*, MEN & WOMEN AGAINST DISCRIMINATION, archived at <http://perma.cc/TR4A-4XY2>.

153. *Affiliates*, AM. COAL. FOR FATHERS & CHILDREN, <http://www.acfc.org/education-activism/affiliates/> (last visited Feb. 28, 2015), archived at <http://perma.cc/EGX2-U677> (listing current and prior affiliates). ACFC goals include: promoting equal parenting time for biological parents, eliminating gender bias in the family law system, and reforming child support; see *ACFC Mission Statement*, AM. COAL. FOR FATHERS & CHILDREN, <http://www.acfc.org/mission/> (last visited Feb. 28, 2015), archived at <http://perma.cc/K8S7-4QZ6>. ACFC representatives frequently appear on national media outlets; *ACFC in the*

do not explicitly address IPV, their articles and newsletters frequently reference false allegations of IPV and identify IPV advocates as their opponents.<sup>154</sup> ACFC leaders visited West Virginia on several occasions to testify in front of the West Virginia Legislature and participate in MAWAD events and protests.<sup>155</sup>

MAWAD also invited the founder of the Children's Initiative for Sharing Parents Equally (CRISPE) to West Virginia on several occasions.<sup>156</sup> CRISPE was a national organization based in San Diego known for its purple bus that traveled the country to promote a presumption of equal parenting and warn about the danger of false allegations.<sup>157</sup> In 2007, CRISPE drove its bus to Charleston, West

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*News*, AM. COAL. FOR FATHERS & CHILDREN, <http://www.acfc.org/article-archive/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/R8KS-EJBW>.

154. See *E-Newsletter Archive*, AM. COAL. FOR FATHERS & CHILDREN, <http://www.acfc.org/e-newsletter-archive/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/7JLE-GFJ9> (referencing IPV organizations as opponents in legislative "warfare" and detailing instances of false abuse allegations and IPV perpetrated by women against men). In its publication, "Family Violence in America: The Truth about Domestic Violence and Child Abuse," ACFC concludes that divorce and child custody disputes are actually the cause, rather than result, of family violence and that current IPV policy destabilizes families, which contributes to IPV and child abuse. The publication further suggests that statutory protection of parental rights and a legal presumption of equal and shared parenting will reduce incidences of IPV and child support. BASKERVILLE, *supra* note 47, at 3-4. In its manual on how to start an ACFC affiliate organization, ACFC describes most of those who call them about IPV as "victims of false allegations of domestic abuse," and explains that "[t]he [protection] order was taken out against them as a strategic maneuver in a divorce, or is an action by a person who is, in fact, the abuser" and that "[i]t's a sad truth that many divorces are accompanied by false allegations of physical abuse or child sexual abuse." AM. COAL. FOR FATHERS & CHILDREN, DEVELOPING YOUR LOCAL SHARED-PARENTING GROUP—A GUIDE AND MANUAL OF BEST PRACTICES 20, 23 (John G. Maguire et al. eds., 2004), *available at* <http://www.innocentdads.org/acfmanual.pdf>, *archived at* <http://perma.cc/7GXE-9YV8>.

155. See *Men and Women Against Discrimination Weekend Events*, MEN AND WOMEN AGAINST DISCRIMINATION (on file with author) (describing event in Charleston including speeches by the ACFC executive director, ACFC president, ACFC board member, and founder of CRISPE); see also Tammy Toler, *NFL Champ Fights For His Rights as a Father*, DADSDIVORCE (Jan. 18, 2008), <http://dadsdivorce.com/articles/nfl-champ-fights-for-his-rights-as-a-father-2/>, *archived at* <http://perma.cc/2KMM-TSDQ>.

156. Larry Kerkman, CRISPE's founder and president was an invited speaker at MAWAD's Charleston rally on January 14, 2008. *CRISPE President Presents to West Virginia Legislators*, CRISPE FORUM (Jan. 14, 2008, 3:42 PM), <http://crispe.org/forum/index.php?topic=225.0>, *archived at* <http://perma.cc/U2TU-WJ4B>. Larry Kerkman also toured West Virginia with CRISPE's purple bus in August 2007, stopping for MAWAD-organized rallies Wheeling, Parkersburg, Charleston, and Clarksburg. See *Bulletin Board*, CHARLESTON GAZETTE (Aug. 14, 2007), <http://charleston-gazette.vlex.com/vid/bulletin-board-64347105>, *archived at* <http://perma.cc/S2YS-QKQL>.

157. Children's Rights for Initiative for Sharing Parents Equally (CRISPE) identifies itself as a "non profit, genderless, nonpartisan, and educational organization working to improve the wellbeing of children by ensuring that children have access to both their parents equally." *Mission Statement*, CHILDREN'S RIGHTS INITIATIVE FOR SHARING PARENTS EQUALLY, <http://www.crispe.org> (last visited Feb. 28, 2015), *archived at* <http://perma.cc>

Virginia, where it provided a tour to West Virginia Governor Manchin and over thirty-five state legislators.<sup>158</sup>

MAWAD coordinated with Fathers 4 Justice (F4J) and the United Civil Rights Councils of America (UCRCoA). F4J is an international FRG based in the UK, perhaps best known for its protests involving members scaling famous buildings in superhero costumes and a plot to kidnap Prime Minister Tony Blair's son.<sup>159</sup> UCRCoA identifies itself as a conservative non-partisan educational foundation promoting integrity and transparency in the government and includes family

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/66N3-YTUE. Like ACFC, CRISPE only references IPV in terms of false allegations. CRISPE's promotional brochure states that:

Parental Alienation is domestic violence and child abuse! False accusations rule Family Court. Lying is common and many Family Court industry workers coach people to lie, including many attorneys and advocates. False accusations of child abuse, sexual assault, and domestic violence, are much more prevalent than valid incidents; yet, few if any false accusers and the professionals who promote the lying are held accountable. False allegations are made for retribution, greed, and to gain child custody. FALSE accusers need to be held accountable as well as the professionals that promote the accusations. And [sic] so destructive that it harms everything it touches, particularly OUR children! DO NOT let anyone tell you that parental alienation does not exist, everyone but ideologues knows.

BROCHURE, CHILDREN'S RIGHTS INITIATIVE FOR SHARING PARENTS EQUALLY, *available at* [http://www.californiamenscenters.org/files/CRISPE\\_brochure\\_polished\\_070419\\_with\\_box\\_PDF95.pdf](http://www.californiamenscenters.org/files/CRISPE_brochure_polished_070419_with_box_PDF95.pdf) (last visited Feb. 28, 2015), *archived at* <http://perma.cc/P2CE-J5RP>.

158. MAWAD invited Larry Kerkman and the CRISPE bus to West Virginia to meet with state politicians over a three-day period in September 2007. CRISPE provided a tour to Governor Manchin and reported that CRISPE and MAWAD visitors spoke with him about the national need for shared parenting laws. Marcy Ganz, *W. Virginia Governor visits CRISPE*, CHILDREN'S RIGHTS INITIATIVE FOR SHARING PARENTING EQUALLY (Sept. 23, 2007), <http://crispe.org/index.php/CRISPE-NEWS/West-Virginia.html>, *archived at* <http://perma.cc/N7JQ-ZNVB>.

159. *Our Campaigns*, FATHERS 4 JUSTICE, <http://www.fathers-4-justice.org/our-campaign/our-campaigns> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/JA3X-TNLN> (identifying F4J as "the campaign against a fatherless society" with four current campaigns: "Equal Rights. Equal Parenting. Equal Love."; "Keeping Families Together"; "Child Support Reform"; and "Anti-Male Discrimination"). On its international website, F4J claims to be the world's largest equal parenting campaign and the third highest supported campaign group in the UK behind Greenpeace and Amnesty International. *Our Story*, FATHERS 4 JUSTICE, <http://www.fathers-4-justice.org/about-f4j/our-story/org/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/CA65-TY4X>. Infamous protests include members in superhero costumes scaling famous buildings, including the Royal Courts of Justice, Buckingham Palace, the Tower Bridge, the London Eye, and the Lincoln Memorial, as well as flour-bombing Prime Minister Tony Blair and plotting to temporarily kidnap his son. *Profile: Fathers 4 Justice*, BBC NEWS, [http://news.bbc.co.uk/2/hi/uk\\_news/3653112.stm](http://news.bbc.co.uk/2/hi/uk_news/3653112.stm) (last updated Apr. 22, 2008, 3:10 PM), *archived at* <http://perma.cc/HW7D-9DGS>. Mentions of IPV on the United States website include that "[s]tudies show that one million allegations of domestic violence filed each year are unnecessary or false." *Donald's Peaceful Protest*, FATHERS 4 JUSTICE, <http://www.fathers-4-justice.us/book/export/html/47>, (last visited Feb. 28, 2015), *archived at* <http://perma.cc/734N-TLAB>. For more information about the history of F4J in the UK, see Collier, *Fathers 4 Justice*, *supra* note 19, at 512–16.

courts as a focus area.<sup>160</sup> Both organizations were co-sponsors for MAWAD's National Fatherless Day Rally in Charleston on June 13, 2008, along with ACFC and CRISPE.<sup>161</sup> F4J members also participated in Governor Manchin's signing of a Parental Alienation Awareness Proclamation on April 22, 2008.<sup>162</sup> MAWAD coordinated with the Parental Alienation Awareness Organization (PAAO) to organize Parental Alienation Awareness Day activities in West Virginia, including the state's first candlelight vigil for Parental Alienation at the statehouse in Charleston on April 25, 2008.<sup>163</sup> PAAO's mission

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160. The United Civil Rights Councils of America (UCRCoA) has a "foundational focus on restoring and protecting the entire traditional nuclear family unit" with purposes including punishing false allegations, judicial accountability, equal parenting, stopping most CPS removals, domestic violence fairness, rights to jury trials in family law, parenting time enforcement, abolishing prison for failure to pay child support, ending permanent alimony, overhauling child support, widespread paternity fraud, and solving relocation issues. *About Us*, UNITED CIVIL RIGHTS COUNCILS OF AM., <http://unitedcivilrights.org/about.html> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/TS2L-JP3J>.

161. West Virginia's first National Fatherless Day Rally was held on June 13, 2008, at the north steps of the West Virginia State Capitol in Charleston, West Virginia, to discuss "such topics as the injustices they have seen in the family court system, the need for change and how to create it" and to "formally announce the filing of a complaint with the Judicial Investigation Commission against a sitting family court judge . . ." In discussing the need for the rally, MAWAD's Tim Fittro stated, "[a]llegations of family violence are the weapon-of-choice in divorce strategies. Lawyers, and paralegals in women's shelters, call them 'The Silver Bullet'. False abuse allegations work effectively in removing men from their families." Brett Dunlap, *Parents' Rights Rally Planned for Today*, PARKERSBURG NEWS AND SENTINEL (June 13, 2008), <http://www.newsandsentinel.com/page/content.detail/id/506302.html>, *archived at* <http://perma.cc/PB4H-GJUY>.

162. *PAOO-US Dedicated to Stopping Parental Alienation*, PARENTAL ALIENATION AWARENESS ORG. U.S. (Nov. 23, 2008), <http://www.prlog.org/10145258-paao-us-dedicated-to-stopping-parental-alienation.html>, *archived at* <http://perma.cc/P4NH-DP4D>. In addition to West Virginia, at least sixteen governors signed the proclamation recognizing Parental Alienation Day in their states, including Governor Bob Riley (Alabama), Governor Mike Bebee (Arkansas), Governor Rell (Connecticut), Governor Crist (Florida), Governor Sonny Perdue (Georgia), Governor Daniels (Indiana), Governor Vilsack (Iowa), Governor Fletcher (Kentucky), Governor John E. Baldacci (Maine), Governor Martin O'Malley (Maryland), Governor Haley Barbour (Mississippi), Governor Schweitzer (Montana), Governor Heineman (Nebraska), Governor Gibbons (Nevada), and the Governors of New York and Oklahoma. *See April 25, 2013 is . . . Parental Alienation Awareness Day*, A CASE FOR PARENTAL ALIENATION, <http://april25.weebly.com/april-25-parental-alienation-awareness-day.html> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/7EYH-XYHS> (containing pdf files of the proclamations). The campaign also included over one hundred mayors from the United States and Canada who signed proclamations for their city or town. For links to pdf documents of the proclamations, see *Proclamations*, PA AWARENESS DAY, <http://www.paawarenessday.com/proclamations> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/2NM2-GBCT>.

163. Press Release, Parental Alienation Awareness Organization, Governor Joe Manchin III Dedicated to Stopping Parental Alienation (Nov. 22, 2008), *available at* [http://unitedcivilrights.org/members/PAAD-WV-Gov-111808/PAAO-US\\_Press\\_Release\\_112208-primopdf.pdf](http://unitedcivilrights.org/members/PAAD-WV-Gov-111808/PAAO-US_Press_Release_112208-primopdf.pdf), *archived at* <http://perma.cc/74B4-7DBW>. Parental Alienation Day was also celebrated in Charleston on April 29, 2011, and April 25, 2012; *PAAD Events 2011*, PARENTAL ALIENATION AWARENESS DAY, <http://paawarenessday.com/events2011.asp> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/34NR-E4YF>;

is to educate the public and professionals about Parental Alienation and Hostile Aggressive Parenting.<sup>164</sup>

MAWAD also worked with Stop Abusive and Violent Environments (SAVE) and Respecting Accuracy in Domestic Abuse Reporting (RADAR).<sup>165</sup> These national FRGs are more transparent about their focus on IPV policy and laws and significantly more blunt in their use of misogyny. In 2012, the Southern Poverty Law Center included SAVE on its list of *Misogyny: The Sites*, explaining that SAVE engages in “lobbying to roll back services for victims of domestic abuse and penalties for their tormentors, while working to return the focus to the ‘true victims of abuse’—the falsely accused.”<sup>166</sup> SAVE assisted with the creation of model language used by MAWAD for their sponsored bill to criminalize false allegations in custody cases.<sup>167</sup> Through their Domestic Violence Legislative Project (DVLDP), SAVE offers state FRGs assistance through model statutes, special reports, summary tables, and lobbying support addressing issues of false allegations of IPV and child abuse.<sup>168</sup> SAVE incorporated MAWAD’s research into many of its reports.<sup>169</sup>

*Parental Alienation Awareness Day April 25, 2012 Events*, PARENTAL ALIENATION BLOGSPOT (Apr. 18, 2012), <http://parentalalienation.blogspot.com/2012/04/parental-alienation-awareness-day-april.html>, archived at <http://perma.cc/6AG3-B925>.

164. The Parental Alienation Awareness Organization (PAAO) organizes Parental Alienation Awareness Day, also known as Parental Alienation and Hostile Aggressive Parenting Awareness Day. The event began in Toronto, Canada in 2006, and has expanded into several countries. It is now held in April to fall within child abuse awareness month in the United States. The PAAO website also includes many links to FRGs. *History of PAAD & PAAO*, PARENTAL ALIENATION AWARENESS DAY, <http://paawarenessday.com/history.asp> (last visited Feb. 28, 2015), archived at <http://perma.cc/TDV6-W4LP>.

165. SAVE is a national group based out of Maryland that self-identifies as a “victim-advocacy organization working for legal reform.” In its “About SAVE” section, SAVE states, “Victims are being turned away, the innocent are being falsely accused, and families are being harmed. At the heart of the problem is a legal system that has created bloated definitions, weakened due process, and removed the presumption of innocence.” *About SAVE*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/principles/> (last visited Feb. 28, 2015), archived at <http://perma.cc/7WZT-8HKG>. SAVE’s publications include: *The Use and Abuse of Domestic Restraining Orders*; *Most DV Educational Programs Lack Accuracy, Balance, and Truthfulness*; *Fifty Domestic Violence Myths*; *Incentives to Make False Allegations of Domestic Violence*; and *What is the Cost of False Allegations of Domestic Violence. Special Reports*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/reports> (last visited Feb. 28, 2015), archived at <http://perma.cc/EX5K-E8FL>.

166. *Misogyny: The Sites*, *supra* note 18.

167. See STOP ABUSIVE AND VIOLENT ENVIRONMENTS, MODEL LANGUAGE TO CURB FALSE ALLEGATIONS OF DOMESTIC VIOLENCE (June 6, 2011), available at <http://www.saveservices.org/wp-content/uploads/False-Allegations-Model-Language.pdf>, archived at <http://perma.cc/QL7U-5Q9L>.

168. *Domestic Violence Legislative Project*, STOP ABUSIVE AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/dvlp/> (last visited Feb. 28, 2015), archived at <http://perma.cc/7FAU-Q5UM>.

169. See, e.g., *West Virginia Amendments to the Domestic Relations Code*, STOP ABUSIVE

RADAR focuses on national advocacy efforts, with a particular emphasis on preventing the reauthorization of Violence Against Women Act (VAWA).<sup>170</sup> Like SAVE, RADAR produces its own reports and research detailing that IPV is gender-neutral and that IPV is not only ineffective and based on false premises, but dangerous to women, men, children, and the American economy.<sup>171</sup> MAWAD joined RADAR and other FRGs in their efforts to reform federal IPV policy. MAWAD signed RADAR's "Declaration of the VAWA Reform Coalition," along with more than eighty other FRGs and men's rights organizations, claiming VAWA-funded IPV programs and policies are discriminatory, unnecessary, ineffective, and potentially dangerous, and requesting that the media and education groups "portray the domestic violence issue in an accurate and balanced manner. . ."<sup>172</sup>

As a part of the VAWA Reform Coalition, MAWAD members attended high school and college football games to distribute information on "Fix VAWA Now!"<sup>173</sup> In October 2008, MAWAD protested

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AND VIOLENT ENVIRONMENTS, <http://www.saveservices.org/pdf/West-Virginia.pdf> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/BF7C-PQXW>.

170. *Latest News and Commentary*, MEDIA RADAR, <http://mediaradar.org> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/TC7T-2NMR>.

171. *RADAR Flyers to Distribute*, MEDIA RADAR, [http://www.mediadar.org/radar\\_flyers.php](http://www.mediadar.org/radar_flyers.php) (last visited Feb. 28, 2015), *archived at* <http://perma.cc/UV6A-YECM>.

172. The Declaration includes the following points regarding IPV and false allegations:

- (8) Whereas, state laws define partner abuse broadly and provide incentives to file questionable and even false allegations of abuse; (9) Whereas, allegations of partner abuse have become so commonplace that the legal system has become overwhelmed with minor and false claims. Such complaints divert resources away from the true victims of domestic violence, weaken families, send children into single-parent households, and impose additional burdens on taxpayers for social welfare programs; (10) Whereas, VAWA-funded programs have engaged in widespread discriminatory practices against male victims of domestic violence, even though Congress intended that men were entitled to such protections. . . . (14) Whereas, divorce courts in most states are required to consider partner abuse in their child custody determinations, and some courts use trivial or false allegations of partner abuse to separate a child from one of his or her parents, thus placing the child at risk; (15) Whereas, most instances of partner aggression are minor in nature, and while such cases may benefit from counseling, they do not require legal intervention; (16) Whereas, VAWA-funded programs and policies often prohibit couple counseling and preclude partner reconciliation; (17) Whereas, a variety of VAWA programs and policies inappropriately induce family break-up, thus depriving children of the love and guidance of one of their parents and placing them at greater risk of child abuse and other problems; (18) Whereas, many domestic violence programs are ineffective and ideologically-driven, placing victims at greater risk of violence.

DECLARATION OF THE VAWA REFORM COAL., RADAR (2009), *available at* <http://www.mediadar.org/docs/VAWA-Reform-Coalition-Declaration.pdf>, *archived at* <http://perma.cc/S5XQ-5UT6>.

173. *RADAR Alert: 2008: Building Success Upon Success!*, MEDIA RADAR (Dec. 22, 2008), <http://www.mediadar.org/alert20081222.php>, *archived at* <http://perma.cc/TG8A-84YB>.

a campaign rally for Vice President Joe Biden in Ohio because of Biden's role in the original VAWA legislation.<sup>174</sup> In addition, RADAR co-sponsored a conference with Eagle Forum at the Heritage Foundation on October 1, 2008, (the beginning of Domestic Violence Awareness month) entitled "The Conflict between Federal Domestic Violence Policies and Traditional Family Values."<sup>175</sup> Among its panel of speakers was one of the authors of MAWAD's research on protection orders in Cabell County, West Virginia.<sup>176</sup>

MAWAD coordinators served as guest speakers for FRGs in other states and participated in national FRG events.<sup>177</sup> The National Family Preservation Festival was an annual rally in Washington D.C. focusing on fathers' rights and family law reform initially organized by ACFC.<sup>178</sup> A MAWAD coordinator spoke at the festival in 2008, offering tips on how to file lawsuits against state IPV organizations and engage in media awareness campaigns to educate the public about the gender-neutral nature of IPV and the prevalence of false allegations.<sup>179</sup> By 2010, the festival expanded to include a lobby day, a tribute, balloon event, candlelight vigil, and a parental justice march, and boasted the participation of many FRGs and prominent men's rights organizations.<sup>180</sup>

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174. *Id.* ("Biden repeatedly highlighted his role in securing passage of the Violence Against Women Act.").

175. The Conflict Between Federal Domestic Violence Policies and Traditional Family Values, *supra* note 118, at 2.

176. *Id.* (listing Benjamin Foster's presentation, "VAWA: Victimized all Taxpayers Act?").

177. *See, e.g.,* Sommer Brokaw, *Activists Rally for Changing Custody Law*, *The Charlotte Post* (June 14, 2010), <http://www.thecharlottepost.com/index.php?src=news&srctype=detail&category=News&refno=2703>, archived at <http://perma.cc/CHV2-4TJJ> (reporting that Ron Foster, regional coordinator for Men against Discrimination, participated in a Charlotte, North Carolina rally sponsored by Kids Need 2 Parents in support of a shared parenting bill in North Carolina).

178. The National Family Preservation Festival was first organized in 2007 with the mission "to secure and guarantee the continuation of the American Family with the passage of federal legislation that recognizes and protects our Fundamental Rights." *See Our Mission Statement*, DCRALLY2007, [http://www.dcrally2008.com/mission\\_statement.php](http://www.dcrally2008.com/mission_statement.php) (last visited Feb. 28, 2015), archived at <http://perma.cc/YQ5P-88PM>; *see also Home Site of the DCRally2007*, DCRALLY2007, <http://www.dcrally2007.com/> (last visited Feb. 28, 2015), archived at <http://perma.cc/6BXD-H2CC>.

179. Ron Foster (WV) Part 1, *supra* note 136; Ron Foster (WV) Part 2, *supra* note 136.

180. In addition to ACFC, F4J, PAAO, and SAVE, the following organizations participated in the 2010 Festival: A Kids Right, California Men's Centers, Connecticut DCF Watch, CPS Watch Legal Team, Enlightened Stepmom's Group, Equal Justice Foundation, Fathers & Families, Fight CPS, Illinois Fathers, N.J. Parents against DYFS, National Association of Noncustodial Moms, National Coalition for Child Protection Reform, National Coalition for Men, National Congress for Fathers and Children of New Hampshire, National Foster Parent Coalition for Allegation Reform, Parental Alienation Syndrome Maryland Support Group, Parental Rights, Parents in Action, Pennsylvania Families Association, Shared Parenting Works, and the Family Defense Center. DC RALLY FOR

## III. FRG LAWSUITS ABOUT INTIMATE PARTNER VIOLENCE SERVICES

A. *MAWAD v. FPSB*

In 2008, MAWAD filed a lawsuit against the West Virginia Family Protection Services Board of West Virginia (the FPSB).<sup>181</sup> The lawsuit did not claim any specific instances of discrimination, but instead challenged the FPSB's legislative rules as discriminatory on their face and asserted a violation of MAWAD's First Amendment rights.<sup>182</sup> The MAWAD complaint alleged that the FPSB unlawfully delegated licensing standards to the WVCADV by requiring family protection programs to certify at least one-third of their direct services providers as "certified domestic violence advocates" through the WVCADV and by mandating outreach staff at licensed programs attend at least two advocate certification trainings per year through the WVCADV.<sup>183</sup> The complaint further alleged that the FPSB violated the equal protection clause of the West Virginia Constitution "because its certification and licensure procedures result[ed] in discrimination in the provision of services on the basis of sex."<sup>184</sup> In the Complaint, MAWAD stated that they "wish[ed] to advocate against the incidence of domestic violence and to assure that programs funded by the State of West Virginia receive fair allocation of funds without necessity that participants comply with the ideology, certification requirements, or gender bias" of the WVCADV.<sup>185</sup> MAWAD argued that the delegation of authority to WVCADV deprived MAWAD and its constituents of "an opportunity for free expression of their speech,

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FAMILY RIGHTS, WAYBACK MACHINE, <http://web.archive.org/web/20110218235751/http://dcrallyforfamilyrights.com/> (last visited Feb. 28, 2015), archived at <http://perma.cc/248A-RVD3>.

181. MAWAD Complaint, *supra* note 151. MAWAD defined itself in the complaint as: [A] non-profit charitable corporation organized to protect the rights of children under the age of eighteen years to access and relationship [sic] with both parents regardless of gender and to promote fairness and gender equality in the implementation of the purposes of the West Virginia Domestic Violence Act and the manner in which services are provided pursuant to that Act to the citizens of the State of West Virginia.

*Id.* ¶ 1.

182. *Id.* ¶¶ 20, 25.

183. *Id.* ¶¶ 13, 14, 16, 18, 20 (alleging that FPSB delegation to WVCADV was in violation of Article V, Section I of the West Virginia Constitution). The Complaint states that the advocate certification programs provided by WVCADV are funded through federal grants under 42 U.S.C. § 3796(g)(g) for use to develop and strengthen victim service programs involving crimes against women, and that the first purpose of the certification program is to ensure that "domestic violence advocates promote the safety and well-being of women and children who are victims of abusive relationships." *Id.* ¶¶ 22, 23.

184. *Id.* ¶ 20 (referring to Article II, Section IV of the WV Constitution and alleging a violation of West Virginia Code § 191-2-6.4.).

185. MAWAD Complaint, *supra* note 151, ¶ 24.

thoughts and ideas relative to domestic violence” by depriving them of the opportunity to apply for program funding or become certified advocates.<sup>186</sup> They also asserted that requiring membership in and certification by WVCADV “constitute[s] [an] unlawful political test or oath as a precondition to the receipt and enjoyment of the privileges of citizenship in the State of West Virginia.”<sup>187</sup> The lawsuit requested injunctive relief prohibiting FPSB from granting funds to domestic violence programs until addressing specific laws and procedures.<sup>188</sup>

Following oral arguments on summary judgment motions, the Circuit Court of Kanawha County, West Virginia, issued summary judgment in favor of MAWAD on October 2, 2009.<sup>189</sup> Judge James C. Stucky held that FPSB’s delegation of licensing standards to WVCADV exceeded the authority the state legislature granted FPSB.<sup>190</sup> He found that the perpetrator intervention programs are gender specific, which conflict with the clear intent of the legislature to provide gender-neutral programming.<sup>191</sup> Judge Stucky further held that three licensing rules adopted by FPSB and WVCADV created “an actual well-founded and real chilling effect on the plaintiff and its constituent members’ exercise of their First Amendment rights to advocate the gender-neutral nature of domestic violence programs . . . .”<sup>192</sup> The Circuit Court found the rules in question to be “null and void.”<sup>193</sup> FPSB appealed the decision to the West Virginia Supreme Court, who stayed the Circuit Court’s order.<sup>194</sup> Amicus Curiae Briefs were filed by the WVCADV and by the National Network to End Domestic Violence, Domestic Violence Legal Empowerment and Appeals Project, and the Battered Women’s Justice Project.<sup>195</sup>

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186. *Id.* ¶ 25.

187. *Id.* ¶ 26.

188. *Id.* ¶ 28.

189. Findings of Fact and Conclusions of Law and Decision of the Court, *Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, No. 08-C-1056, 2009 WL 8671085 at \*11 (W. Va. Cir. Ct. Mar. 17, 2010).

190. *Id.* at \*9.

191. *Id.* at \*9–\*10.

192. *Id.* at \*11.

193. *Id.*

194. *Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, 725 S.E.2d 756, 761, 761 n.3 (W. Va. 2011).

195. Brief for West Virginia Coalition Against Domestic Violence, Inc. as Amicus Curiae Supporting Appellants/Defendants, *Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, 725 S.E.2d 756 (W. Va. 2011) (No. 35558), 2010 WL 5691086; Brief for National Network to End Domestic Violence, Domestic Violence Legal Empowerment and Appeals Project, and Battered Women’s Justice Project as Amici Curiae Supporting Appellees, *Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, 725 S.E.2d 756 (W. Va. 2011) (No. 35558), 2010 WL 5691087; Brief for National Network to End Domestic Violence et al. as Amici Curiae Supporting Appellants, *Men & Women Against Discrimination v. The Family Protection Services Board*, 725 S.E.2d 756, 761, 763–64 (W. Va. 2011) (No. 35558), 2010 WL 5691087.

The West Virginia Supreme Court held that MAWAD never had standing to assert its claim, as MAWAD did not allege any actual injury to its organization or members and did not cite a single instance of discrimination.<sup>196</sup> Not only was MAWAD never denied a license or funding from the Board; MAWAD never even applied.<sup>197</sup> The Court disagreed with the Circuit Court's decision to grant standing based on the chilling effect of an overbroad statute on the organizations' speech, and held that nothing in FSPB's legislative rules chilled MAWAD's speech.<sup>198</sup>

Although the Court reversed the summary judgment on the basis of standing, it turned to the merits of the case and further held the Circuit Court lacked any basis for invalidating FSPB's legislative rules.<sup>199</sup> There was no violation of MAWAD's First Amendment rights, nor was there any violation of equal protection rights.<sup>200</sup> The Court found that MAWAD could and did espouse its gender-neutral theories regarding IPV without fearing repercussions from FSPB.<sup>201</sup> In response to MAWAD's claim that certification as domestic violence advocates would add legitimacy to its message, the court stated that "[n]othing in the First Amendment gives any person a right to *more credible* speech . . ." <sup>202</sup> The Court further commented on the equal protection challenges by finding that all domestic violence victims in West Virginia, regardless of sex, have access to emergency shelter and services, and that offering separate housing for male victims was acceptable practice under the law.<sup>203</sup> In addition, the Court held that requiring instruction about the history of domestic violence for direct service providers does not mandate discrimination.<sup>204</sup>

### *B. Other State Lawsuits*

MAWAD was only the latest FRG to file a lawsuit against IPV funding organizations or direct service providers. Early FRGs had success reforming child support and child custody laws through lawsuits.<sup>205</sup> As FRGs shifted towards a new focus on IPV, they began to file equal protection lawsuits against IPV direct service providers, funders, and states. Although these lawsuits were generally

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196. *MAWAD v. FSPB*, 725 S.E.2d at 762, 764.

197. *Id.* at 762.

198. *Id.* at 763.

199. *Id.* at 764.

200. *Id.* at 764–65.

201. *Id.* at 763.

202. *MAWAD v. FSPB*, 725 S.E.2d at 763–64.

203. *Id.* at 764–65.

204. *Id.* at 765.

205. DRAGIEWICZ, EQUALITY, *supra* note 78, at 15–16.

unsuccessful, they provided FRGs with another forum to change the public discussion about IPV.

In 1999, the Coalition for the Preservation of Fatherhood (CPF) and six of its members filed a federal lawsuit against all of the Superior Court District Court and Family and Probate Court judges in Massachusetts seeking declaratory and injunctive relief.<sup>206</sup> The Plaintiffs requested that the Court declare the state protective order statute unconstitutional because it permitted judges to grant temporary restraining orders through ex parte hearings and constituted an impermissible restriction on Plaintiff's Second Amendment rights.<sup>207</sup> They further requested declaratory and injunctive relief from the Commonwealth of Massachusetts Probate and Family Court system for its "wide spread [sic] bias against males in its judgments. . . . [which] evidences itself in the decisions of the Court pertaining to child custody, child support, division of property, and visitation."<sup>208</sup> The U.S. District Court dismissed all three counts of the complaint, holding that the plaintiffs failed to allege either a state action or a cognizable constitutional deprivation and the request for injunctive relief against the judges for discriminatory decisions was barred under § 1983.<sup>209</sup> The U.S. Court of Appeals for the First Circuit affirmed the decision.<sup>210</sup>

In 2000, members of several FRGs filed a federal lawsuit against Minnesota challenging state laws that fund shelters and services for victims of domestic violence.<sup>211</sup> Suing "[o]n behalf of themselves and other male resident taxpaying citizens similarly situated," Plaintiffs requested a declaratory judgment finding the Minnesota Battered Women's Act unconstitutional and an injunction prohibiting the

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206. This included 345 judges. *Nollet v. Justices of the Trial Court of the Commonwealth of Massachusetts*, 83 F.Supp. 2d 204, 206 (D. Mass. 2000), *aff'd*, 248 F.3d 1127 (1st Cir. 2000).

207. The Massachusetts protective order statute is found at: MASS. GEN. LAWS ch. 209A, §§ 3B, 4 (2000). See *Complaint, Nollet v. Justices of the Trial Court of the Commonwealth of Massachusetts*, 83 F. Supp.2d 204 (D. Mass. 2000), *aff'd*, 248 F.3d 1127 (1st Cir. 2000), available at <http://www.fatherhoodcoalition.org/cpf/federalsuit.htm>, archived at <http://perma.cc/6D9L-Z325>.

208. See *Complaint, Nollet v. Justices of the Trial Court of the Commonwealth of Massachusetts*, *supra* note 207.

209. *Nollet*, 83 F. Supp.2d at 214.

210. *Nollet v. Justices of the Trial Court of the Commonwealth of Massachusetts*, 248 F.3d 1127, \*1 (1st Cir. 2000).

211. Eleven plaintiffs identified themselves as members of the R-Kids Legal Action Committee, six plaintiffs filed as members of the National Coalition of Free Men, Twin Cities Chapter, and one plaintiff filed as a member of the Men's Defense Association. See *Amended Complaint at ¶ 1, Booth v. Hvass*, 2001 WL 1640141 (D. Minn. Aug. 13, 2001); *Booth v. Hvass*, 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 also *Garrett, supra* note 9, at 341–42.

state from spending any funds in support of the Act.<sup>212</sup> The Amended Complaint claimed that the cumulative effect of the Act created a prejudicial atmosphere against men and included specific critiques of IPV educational material and handouts created by the Domestic Abuse Intervention Project and the Minnesota Legal Services Corporation.<sup>213</sup> The Court noted that none of the plaintiffs alleged that they had ever sought nor wished to seek shelter services, let alone that they were denied such services because they were men, nor had any of the plaintiffs been the petitioner or respondent in a protection order case.<sup>214</sup> Consequently, the U.S. District Court held that plaintiffs lacked standing and had failed to allege a direct injury in fact.<sup>215</sup>

In 2003, Eldon Ray Blumhorst, with the National Coalition of Free Men, filed a sex-discrimination lawsuit against ten Los Angeles shelters claiming they failed to offer him emergency shelter because he was a man.<sup>216</sup> The trial court sustained the shelters' demurrers to the first amended complaint without leave to amend and dismissed the action.<sup>217</sup> In 2005, the Court of Appeal, Second

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212. See Amended Complaint at ¶ 3, 13–14, *Booth v. Hvass*, 2001 WL 1640141 (D. Minn. Aug. 13, 2001).

213. Plaintiffs claimed that the prejudicial atmosphere against men was created by the Minnesota Battered Women's Act's funding of IPV public education programs and advocates. Plaintiffs included the *Power and Control Wheel* published by the Domestic Abuse Intervention Project (as Exhibit 1) as "[a]n illustration of such sexist hate literature against men . . . fund[ed] under and through the Minnesota Battered Women's Act." See Amended Complaint at ¶ 12, *Booth v. Hvass*, 2001 WL 1640141 (D. Minn. Aug. 13, 2001). In another example, Plaintiffs referred to a manual created by the Minnesota Legal Services Coalition entitled *Getting Court Orders for Protection from Abuse Harassment*, which Plaintiffs claim as "expressly premised on the notion, unsubstantiated by any empirical data gathered by qualified scholars in peer-reviewed journals, that all or nearly all—i.e., 'over 95%' of—domestic violence is inflicted by men upon women." *Id.* at ¶ 11. The Amended Complaint further states that battered women's shelters pressure the state to publish "fanatical, irrational, hysterical, sexist literature which maliciously and falsely defames and seeks to generate social and political hatred against men in general, portraying them as the basic cause of all domestic violence and associated acts of cruelty in American society." *Id.* at ¶ 12.

214. *Booth v. Hvass*, 2001 WL 1640141 at \*3 (D. Minn. Aug. 13, 2001), *aff'd*, 302 F.3d 849 (8th Cir. 2002), *cert. denied*, 123 S. Ct. 883 (2003).

215. *Id.* at \*3, \*5.

216. The National Coalition for Men stated that they tested IPV shelters to document whether they discriminate by sex by having plaintiff contact the defendant shelters claiming to be a domestic violence victim needing shelter to escape his violent partner between December 9, 2002, and December 14, 2002. Although Plaintiff stated that he was previously a victim of IPV by an ex-wife, he acknowledged that he was not a victim, nor seeking shelter, at the time of the calls in December 2012. Brief of Appellant at 6, *Blumhorst v. Jewish Family Services of Los Angeles*, No. B170904 (Cal. Ct. App. Feb. 14, 2005).

217. *Blumhorst v. Jewish Family Services of Los Angeles*, 2003 WL 25737047 at \*1 (Cal. Super. Ct. Nov. 12, 2003). The Court stated that the shelters were exempt from Government Code section 11135 (which protects people from discrimination from program or activities conducted, operated, or administered by the State of California)

District, Division 5, California, sustained the lower court decision, holding that Blumhorst lacked standing because he alleged no actual injury (as he acknowledged that he was not a victim of domestic violence seeking emergency shelter at the time in which he called shelters to requesting services), and that the statutes do not provide standing to civil rights testers.<sup>218</sup>

In 2007, the National Coalition of Free Men again sued California challenging several state statutes establishing IPV programs and programs for inmate mothers on equal protection grounds.<sup>219</sup> The trial court denied the petition, and the Court of Appeals, Third Appellate District, reversed in part.<sup>220</sup> The appellate court upheld the ruling on inmate mother programs, but held that the statutes specifically establishing programs for female victims of IPV and their children should be revised to be gender neutral.<sup>221</sup> The court found that the gender classification in the statutes was not necessary, because most of the programs funded through the statutes already offered services to male victims of domestic violence.<sup>222</sup> FRGs counted the Woods decision as a win and legitimization of their claim that IPV funding and services were discriminatory towards men.<sup>223</sup>

FRGs enjoyed limited, if any, victories through their impact litigation efforts. Nonetheless, their lawsuits required states and IPV service providers to invest time and money to defend against the lawsuits. They also forced IPV service providers to respond to their funders, the government and the public about the FRG allegations of sex discrimination. Although none of the lawsuits actually included a plaintiff denied services by any IPV program, FRGs used their impact litigation to create a forum to change public discussion

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under section 11139 (which states section 11135 “shall not be interpreted in a manner that would adversely affect lawful programs which benefit . . . women”). The Court further held that Government Code section 11139 was not unconstitutional. *Blumhorst v. Jewish Family Services of Los Angeles*, 24 Cal. Rptr. 3d 474, 482 (Cal. Ct. App. 2005).

218. *Blumhorst*, 24 Cal. Rptr. 3d at 477, 481–82.

219. *Woods v. Horton*, 84 Cal. Rptr. 3d 332 (Cal. Ct. App. 2008). Plaintiffs David Woods, Gregory Bowman, Ray Blumhorst, and Patrick Neff were members of the National Coalition of Free Men at the time of the lawsuit and their attorney, Mark E. Angelucci, of the Men’s Legal Center, served as the president of the Los Angeles chapter he founded. See *NCFM Successes*, NAT’L COAL. FOR MEN (Jan. 11, 2009), <http://ncfm.org/ncfm-home/ncfm-successes/>, archived at <http://perma.cc/8CHQ-3JAN>.

220. *Woods v. Horton*, 84 Cal. Rptr. 3d at 332.

221. *Id.*

222. *Id.* at 347 (“Most of the programs funded by DHS and all of the programs funded by OES offer services on a gender-neutral basis, showing th[at] classification is not necessary.”).

223. Molly Dragiewicz and Yvonne Lindgren, *The Gendered Nature of Domestic Violence: Statistical Data for Lawyers Considering Equal Protection Analysis*, 17 AM. U. J. GENDER SOC. POL’Y & L. 229, 230 (2009).

about IPV from a focus on victim safety and to a discussion of formal equality.<sup>224</sup>

#### IV. CREATION AND DISSEMINATION OF NEW RESEARCH

FRM arguments often utilize “truthiness”—truths that people instinctually believe or wish to believe are true, even if directly contradicted by empirical evidence.<sup>225</sup> The narratives that serve as the basis of modern FRM rely on broader narratives: the old archetype of the vindictive and dishonest nature of women and newer narrative of reverse sexism, identifying men (particularly white, middle and upper-class men) as victims of systematic oppression.<sup>226</sup> These narratives, often accepted by the public, include the idea that family courts discriminate against men and that mothers frequently and successfully make false allegations against men to obtain custody of children.<sup>227</sup>

As FRGs grew increasingly sophisticated, they learned to not only address mainstream research on IPV, but create their own research as well. They criticize research which does not support their goals and point to research they claim supports their assertions about the gender-symmetry nature of IPV and the false nature of most IPV and child abuse allegations.<sup>228</sup> Most of the FRG lawsuits cited to the same bibliography created by a professor at California State University, Long Beach.<sup>229</sup> When they identified gaps in the mainstream research, they created their own studies. Though many of these studies utilize questionable research techniques and draw conclusions with no basis in the data, they are routinely cited by other

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224. The equal protection claim provides strong rhetoric, promoting both the idea of discrimination against men by IPV victim service providers and a gender-symmetry theory of IPV. DRAGIEWICZ, EQUALITY, *supra* note 78, at 15–16.

225. Stephen Colbert is credited for coining the term “truthiness” to describe a “truth that comes from the gut, not books.” See *Word of the Year: 2006*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/info/06words.htm> (last visited Feb. 28, 2015), archived at <http://perma.cc/3NCY-5QAK>. The American Dialect Society later refined the definition of truthiness as “the quality of preferring concepts or facts one wishes to be true, rather than concepts or facts known to be true.” *Id.*

226. See, e.g., DRAGIEWICZ, EQUALITY, *supra* note 78, at 16–17.

227. See, e.g., *id.* at 17–18.

228. *Id.* at 15–16.

229. *E.g.*, Amended Complaint, Booth v. Hvass, 2001 WL 1640141 (D. Minn. Aug. 13, 2001), *aff'd*, 302 F.3d 849 (8th Cir. 2002), *cert. denied*, 123 S. Ct. 883 (2003), at ¶ 20 (“[t]he plaintiffs offer for judicial notice a bibliography compiled by Dr. Martin S. Fiebert of the Department of Psychology at California State University, Long Beach, of one hundred seventeen scholarly investigations . . . documenting the approximately equal rates of domestic violence for men and women.”); Brief of Appellant at 19, Blumhorst v. Jewish Family Services of Los Angeles, 24 Cal. Rptr. 3d 474 (Cal. Ct. App. 2005) (No. B170904) (referencing Fiebert’s bibliography); Brief of Appellants at 22, Woods v. Horton, 84 Cal. Rptr. 3d 332 (Cal. Ct. App. 2008) (No. C056072) (referencing Fiebert’s bibliography).

FRGs and seemingly take on a life of their own through incorporation into other FRG reports and references from media. More troubling, they are cited by state legislatures as the basis for new laws.

This section provides the example of MAWAD's *Cabell County Protection Order Evaluation*, by outlining its findings and critiquing its techniques and conclusions. Next, follows a review of the various citations to MAWAD's research from other FRGs and the media. The section then provides other examples of research produced and used by FRGs, as well as forums created to share that research.

### A. MAWAD Research

#### 1. Cabell County Civil Protection Order Study

MAWAD released its *Cabell County Petitions for Protective Orders Evaluation* on October 1, 2007.<sup>230</sup> The Cabell Evaluation, written by a MAWAD Regional Coordinator, purported to analyze all of the civil protective order petitions filed in Cabell County, West Virginia in 2006, to:

look for discriminatory trends in the issuance or denial of cases based on gender and to determine the extent to which the gender of a judge may determine how they rule in various gender mixes between Petitioner and Respondent. . . . [and] examine[] the time wasted on cases that did not include the issuance of a protective order.<sup>231</sup>

The research considered the following data: the gender of the petitioner, the gender of the respondent, the gender of the judge, and the outcome of the final protective order hearing.<sup>232</sup>

The Cabell Evaluation found that final domestic violence protective order (DVPO) cases were dismissed in seventy-six percent of all cases, with dismissal rates for women filing against men the same as the dismissal rate for men filing against women.<sup>233</sup> Most dismissals

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230. RON P. FOSTER, CABELL COUNTY PETITIONS FOR PROTECTIVE ORDERS EVALUATION (2007) [hereinafter CABELL EVALUATION] (on file with author).

231. *Id.* at 1. The author states he analyzed 1,303 civil protective order cases filed in Cabell County, West Virginia in 2006, which include the total petitions (1,316) less the cases dismissed due to "lack of jurisdiction" (13). *Id.*

232. The author coded the outcomes from the final protective order hearings in the following categories: Protective Order Issued (POI), Dismissed for Petitioner's Failure to Appear (DFA), Dismissed for Failure to Show Cause (DFSC), Petitioner Terminated DVP (PTVP), and Dismissed Other Reason (DO). *Id.* at 1-2.

233. The Cabell Evaluation found that seventy-six percent of all the protection order cases studied were ultimately not issued. The author further broke this down by gender,

occurred after the petitioner failed to appear at the final hearing.<sup>234</sup> The author concluded that a high overall dismissal rate proves that “[t]he vast majority of court time is wasted when it comes to Domestic Violence petitions for protective orders.”<sup>235</sup> The author then inexplicably jumped to his next conclusion, stating:

[s]ome Magistrates, Police officers, lawyers, court officials and especially individuals at large believe that the DV petitions and the courts are used to gain leverage in divorce, child custody or relationship battles and a coercive tactic to obtain power and control over another. This study seems to confirm those suspicions.<sup>236</sup>

The concluding section next discussed information provided by the WVCADV about the gendered nature of IPV.<sup>237</sup> The author stated that the Cabell Evaluation findings undermined the WVCADV because the results indicate that women filing protection orders against women have the highest success rate and because the rates of voluntary dismissals by male and female petitioners were similar.<sup>238</sup> “If Domestic Violence is all about male dominance, power and control over women as the WVCADV teaches, then it would be very unlikely that any women would ever find it necessary to file against another woman.”<sup>239</sup> The Cabell Evaluation ended its concluding section by introducing other studies that indicate women commit as much, if not more, IPV against men.<sup>240</sup>

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finding that seventy-eight percent of the protective orders filed by women against men and seventy-eight percent of the protective orders filed by men against women were dismissed. Seventy-two percent of the protective orders filed by men against men and forty-two percent of protective orders filed by women against women were dismissed. The Cabell Evaluation further concluded that the two family court judges were consistent in their rates of dismissal, in spite of the fact that one was male and one was female. *Id.* at 2–3.

234. According to the MAWAD data, protection orders were dismissed after the petitioner failed to appear for the final hearing in forty percent of the cases. *Id.* at 7 (computed by author by using data provided in the appendix of the Cabell Evaluation).

235. CABELL EVALUATION, *supra* note 230, at 3.

236. *Id.* at 4. Note the deliberate use of the terms “coercive” and “control.” “Coercive tactics to gain power and control over another” is a phrase used by IPV advocates in describing a pattern of IPV. IPV advocates have long held that abusers may use the court system, including the protective order process, as a tactic to abuse or harass their victims. See Nina W. Tarr, *The Cost to Children When Batterers Misuse Order for Protection Statutes in Child Custody Cases*, 13 S. CAL. REV. L. & WOMEN'S STUD. 35, 47 (2003).

237. CABELL EVALUATION, *supra* note 230, at 4.

238. *Id.*

239. *Id.*

240. The Cabell Evaluation, like many of the FRG lawsuits, references Martin S. Fiebert's bibliography. *Id.* at 4–5.

The Cabell Evaluation is problematic on many levels, starting with definitions. The author was either confused about the law when making his conclusions or he chose to deliberately mislead readers. The Cabell Evaluation explicitly connects the rate of civil protection orders granted with a rate of false allegations of IPV in custody cases.<sup>241</sup> It implies that DVPOs in West Virginia are limited to petitioners filing against an intimate partner with a child in common. To the contrary, West Virginia utilizes a very broad category of qualifying relationships for DVPOs.<sup>242</sup> In 2006 (as well as today), a petitioner could file for a protective order against a parent; stepparent; brother or sister; half-brother or half-sister; stepbrother or stepsister; father-in-law or mother-in-law; stepfather-in-law or stepmother-in-law; child or stepchild; daughter-in-law or son-in-law; stepdaughter-in-law or stepson-in-law; grandparent; step grandparent; aunt, aunt-in-law or step aunt; uncle, uncle-in-law or step uncle; niece or nephew; first or second cousin; any current or former household member, or an intimate partner.<sup>243</sup> West Virginia law also allows an adult to file for a protective order on behalf of a minor child.<sup>244</sup> The data provided in the Cabell Evaluation did not include any information about the relationship between petitioners and respondents, and it led readers to confuse the state's definition of domestic violence (which encompasses all household members and extended family) with MAWAD's definition of domestic violence (IPV against the parent of a child in common).<sup>245</sup> Without the missing information about the qualifying relationships between petitioners and respondents, the author's analysis of the implication of gender on petitioner's ability to obtain protective orders against intimate partners is meaningless.

The Cabell Evaluation further confused "dismissed" DVPOs with DVPOs based on "false allegations."<sup>246</sup> As the study conceded, most DVPOs were dismissed when the petitioner failed to appear in court.<sup>247</sup> There is absolutely no information about the allegations or evidence in those cases in which the petitioner did not appear for the final hearing, nor do we have any information about the reason the petitioner did not appear.<sup>248</sup> Similarly, we lack information about

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241. *Id.* at 5.

242. W. VA. CODE § 48-27-204 (2013) (defining "[f]amily or household members").

243. *Id.* § 48-27-204(7)–(8).

244. W. VA. CODE § 48-27-305(2) (2014).

245. CABELL EVALUATION, *supra* note 230, at 4.

246. *Id.* This mistake is more profound in the coverage of the study. *See infra* Part IV.C.

247. CABELL EVALUATION, *supra* note 230, at 3.

248. Petitioners fail to appear in court at protection order hearings for a number of reasons related to the case, including reconciliation, fear of retaliation, and successful protection from emergency order. W. VA. COAL. AGAINST DOMESTIC VIOLENCE, FALSE ALLEGATIONS OF ABUSE, OR NOT? UNDERSTANDING THE REALITY OF DOMESTIC VIOLENCE (2008),

the cases in which petitioners voluntarily dismissed their own petitions. Even in the nine percent of total cases in which the judge dismissed the case after a hearing, we only know that the petitioner did not provide sufficient evidence to prove domestic violence under the statutory definition.<sup>249</sup> We do not have enough information to conclude that a petitioner lied or made false allegations.<sup>250</sup> Furthermore, the findings indicated that judges did dismiss some DVPOs after holding final hearings,<sup>251</sup> suggesting that judges did not simply rubber stamp protection orders, but instead considered the evidence and made a ruling.

Analyzing West Virginia DVPO outcomes is not an ideal way to research IPV for all of the reasons stated above. Nonetheless, it is also important to note that MAWAD's data did not actually support the gender-symmetry theory of IPV they claimed it did. MAWAD compared the "success" rates of obtaining a final DVPO between female and male petitioners, while ignoring the actual numbers of petitioners.<sup>252</sup> More than three times as many women obtained final DVPOs against men than men obtained against women.<sup>253</sup> This was consistent with the MAWAD's data from the initial petitions, which indicated that more than three times as many women filed for DVPOs against men than men filed against women.<sup>254</sup> Contrary to the author's conclusion, those findings do not support MAWAD's theories about the gender-neutral nature of IPV.

The general conclusion that civil protection orders were an unnecessary waste of resources because the overall dismissal rate appeared high failed to provide any context. Of the Cabell County protection order cases litigated on the merits, 72.5% were granted.<sup>255</sup> While the overall percentage of cases that made it to a final hearing (33.23%) may appear low, it is actually a higher rate than many other areas of civil litigation.<sup>256</sup>

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available at [http://www.ncdsv.org/images/False%20Allegations\\_WVCADV\\_1.15.08.pdf](http://www.ncdsv.org/images/False%20Allegations_WVCADV_1.15.08.pdf), archived at <http://perma.cc/ZXM3-4SKE>. In addition, people miss court hearings for other reasons, including transportation challenges, work conflicts, and a lack of child care.

249. The nine percent was computed by author by using data provided in the appendix of the Cabell Evaluation. See CABELL EVALUATION, *supra* note 230, at 8.

250. There are undoubtedly some individuals who do lie in petitions for protection orders, but the Cabell Evaluation provides us with no information about the frequency of false allegations, nor the rate in which the judges dismiss those cases. *Id.*

251. *Id.* at 7.

252. *See id.* at 2–3.

253. *Id.* at 7.

254. *Id.*

255. Marjorie Anne McDiarmid, *Some Preliminary Observations on the Cabell County Data on Family Protective Orders*, at 1 (on file with author).

256. *Id.* (critiquing the Cabell Evaluation conclusions by pointing out that only 1.3% of civil cases filed in federal court, 9% of cases covered in the Civil Litigation Research Project, and 6% of cases in the Justice Department's Civil Justice Survey of State Courts reached trial).

The Cabell Evaluation conclusions were disconnected from the actual study. The author's conclusion that petitioners were using DVPOs to gain tactical advantages in other litigation offered no basis of support aside from an anecdotal comment that it was the belief of "[s]ome" anonymous "Magistrates, Police officers, lawyers, court officials and especially individuals at large."<sup>257</sup> This conclusion also erroneously assumed that most petitions for protective orders were filed against a party with whom the petitioner was married or shared a child in common; an assumption with no empirical support. The Cabell Evaluation actually provided no information about divorce or custody proceedings or the impact of IPV or protection orders on those cases, nor did it provide any support for the premise that men and women commit equal violence in intimate partner relationships.<sup>258</sup> Nonetheless, FRGs continue to use conclusions from the Cabell Evaluation to support their cause.

*2. Men and Women Against Discrimination Final Report to Governor Joe Manchin III: Statistical Analysis WV Police Crime Statistics and Court Caseloads Including Domestic Violence*

In 2007, MAWAD used their conclusions in the Cabell Evaluation in a *Final Report to Governor Joe Manchin III: Statistical Analysis WV Police Crime Statistics and Court Caseloads Including Domestic Violence*, purporting to "determine the effects of recent changes in Family Law in West Virginia on crime, caseloads, and individuals incarcerated due to Domestic Violence" and to determine if "VAWA and the Pro Arrest Law here resulted in reduction in the levels of domestic violence in West Virginia."<sup>259</sup> The Report to the Governor suggested that changes to the law broadening the definition of "domestic violence" under the protection order statutes in 1999 increased the number of court cases, causing the state additional expenses in new judges.<sup>260</sup> It summarized available crime

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257. CABELL EVALUATION, *supra* note 230, at 4.

258. *Id.*

259. RON P. FOSTER, MEN AND WOMEN AGAINST DISCRIMINATION FINAL REPORT TO GOVERNOR JOE MANCHIN III: STATISTICAL ANALYSIS WV POLICE CRIME STATISTICS AND COURT CASELOADS INCLUDING DOMESTIC VIOLENCE 2 (2007) [hereinafter REPORT TO GOVERNOR] (on file with author).

260. The Report's estimate of 6,000 additional DVPO cases a year is a mistake, as the author erroneously doubled his estimate of 3,000 additional cases a year in Magistrate Court to account for final DVPO hearings in Family Court, failing to understand that the same DVPO cases move from Magistrate Court to Family Court for final hearings. *Id.* at 4-5, 7.

data, including domestic violence homicides, to suggest that the rate of female perpetrators and male victims increased, most domestic violence convictions are for minor crimes, and that the overall rate of domestic violence increased with the passage of the pro arrest laws.<sup>261</sup> The Report to the Governor also mentioned the Cabell Evaluation as concluding that 76% of all DVPOs were dismissed and that men and women had similar success rates in obtaining a final DVPO and similar rates of voluntary dismissal, proving that both men and women are victims of IPV.<sup>262</sup> As with the Cabell Evaluation, many of MAWAD's conclusions were completely unconnected to their Report to Governor and lacked any factual support, but were instead repetitions of their core beliefs.<sup>263</sup>

### *B. Benjamin P. Foster's Use of the Cabell Evaluation*

#### *1. Analyzing the Cost and Effectiveness of Governmental Policies*

Dr. Ben P. Foster<sup>264</sup> used the Cabell Evaluation conclusions in an article initially published on the MAWAD website entitled

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261. *Id.* at 6, 10–12, 15–16, 23.

262. *Id.* at 5.

263. MAWAD's Report to the Governor included the following conclusions:

1) The overbroad definition of domestic violence has dramatically increased the caseload for judges, 2) The West Virginia Code places an incentive to file a false domestic violence claim in child custody and divorce cases, and many of the filings are false, 3) The standard should be "clear and convincing evidence" before any child loses significant contact with either parent, 4) There are limited and ineffective penalties for those who make false claims, i.e. one must have "repeatedly made fraudulent reports of domestic violence or child abuse". [sic] Stiffer penalties must be added to the West Virginia Code and prosecutors must prosecute the crime, 5) Women are becoming the offender more often and men more often are the victims of domestic violence consequently the training of court personnel, law enforcement and child protection personnel must be done without bias as to the nature of domestic violence, 6) The definition of domestic violence must be narrowed and more clearly defined to keep courts from ruling on outcomes of domestic disagreements, 7) The Supreme Court must mandate the collection of results based statistics on all cases including a breakdown by gender, 8) Services must be provided for male victims of domestic violence equivalent to those provided for female victims, 9) If these changes are adopted the number of cases will be reduced by thousands and the need for extra judges diminished.

*Id.* at 7.

264. Benjamin P. Foster is currently employed at the University of Louisville, School of Accountancy as a Professor. See Benjamin P. Foster, *CV*, available at <http://business.louisville.edu/profile/cvs/Fostervita.pdf> (last visited Feb. 28, 2015), archived at <http://perma.cc/YGK5-XFYL>. In addition, he presented his paper, *VAWA: Victimized All Taxpayers Act?*, at a RADAR and Eagle Forum conference entitled "The Conflict Between Federal Domestic Violence Policies and Traditional Family Values" on October 1, 2008. See *The Conflict Between Federal Domestic Violence Policies and Traditional Family Values*, *supra* note 118, at 2.

*Analysis of Domestic Violence Costs and the Potential Cost of False or Unnecessary Claims*<sup>265</sup> He published a subsequent version of the article in the journal *Cost Management* in 2008.<sup>266</sup> *Analysis* purported to analyze the costs of domestic violence in West Virginia.<sup>267</sup> He arrived at the estimated cost of West Virginia domestic violence policies by adding his estimates for the domestic violence-related costs for law enforcement,<sup>268</sup> family and magistrate courts,<sup>269</sup> public

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265. BENJAMIN P. FOSTER, ANALYSIS OF DOMESTIC VIOLENCE COSTS IN WEST VIRGINIA AND THE POTENTIAL COST OF FALSE OR UNNECESSARY CLAIMS, available at <http://wvcriminaldefenseattorney.files.wordpress.com/2008/11/false-unnecessary-domestic-violence-cases-wv-cost-analysis-doctor-ben-foster.pdf> (last visited Feb. 28, 2015), archived at <http://perma.cc/G789-MZ5K>. This paper was presented at the College of Business Diversity Event on October 31, 2007. See CV, *supra* note 264, at 12.

266. Benjamin P. Foster, *Analyzing the Cost and Effectiveness of Governmental Policies: The Domestic Violence Example*, 22 COST MGMT. 3 (2008) [hereinafter Foster, *Analyzing the Cost*].

267. *Id.* at 5.

268. In order to estimate the domestic violence-related costs of law enforcement, Foster used a 2005 West Virginia Crime Report stating that state police spent 21,830 hours and local enforcement spent 259,357 “hours related to domestic violence.” *Id.* at 8. Foster estimated an additional four hours in court time for every arrest “based on [his] discussions with police officers,” and multiplied the number of reported domestic violence arrests by four to estimate the total law enforcement time. *Id.* For salary, Foster used the publicly available data estimating \$27 per hour for state troopers and Putnam County Sheriff’s Department “and those of police force members from several small cities” to estimate \$19.50 per hour for local law enforcement (including salary, fringe, and payroll taxes). *Id.* Foster stated that he used the Huntington and Morgantown Police Department budgets to estimate overhead of \$35 and \$13.30 per hour respectively (he does not provide additional data about how he arrives at these numbers). *Id.* After multiplying the estimated hours and salary plus overhead costs, Foster estimated “nearly \$11 million in 2005.” Foster, *Analyzing the Cost*, *supra* note 266, at 8.

269. Foster attempted to estimate the total domestic violence related costs to courts by compiling the family court and magistrate court costs. *Id.* at 8-9. He added the salaries, fringe benefits, and payroll taxes for all West Virginia family court judges, family case coordinators, and secretaries/clerks. *Id.* He also included the cost of 80% of one full-time bailiff per family law judge (salaries, fringe benefits, payroll taxes, and estimated overhead). *Id.* Foster then estimated the overhead costs for family courts by using one 2007 newspaper article referring to new space in Greenbrier County rented for magistrate court at a rate of \$3,500 per month. *Id.* at 9. He used this unusual figure to estimate \$13,800 per year and allocated half of that space to each family court judge (\$6,900) and two-thirds of that estimate for each magistrate court judge (\$9,200). *Id.* Foster estimated a \$9.47 million cost for family court. Foster, *Analyzing the Cost*, *supra* note 266, at 9. Based on an unidentified “Family Court official,” Foster estimated that domestic violence cases require the same amount of time as other cases, so he multiplied the percentage of family court cases identified as domestic violence cases in 2005 by his total family court estimate and arrived at \$3.76 million. *Id.* To arrive at the estimate for magistrate court, Foster added the salaries, fringe benefits, and payroll taxes for all magistrate court judges, clerks, and assistants, estimates for office and court space, and an estimated \$2.9 million cost for bailiffs. *Id.* He estimated a total cost of \$27 million for magistrate court. Foster explained that “[a] conversation with a Magistrate Court Clerk indicated that domestic violence cases in the Magistrate Court typically required less time than other cases.” *Id.* He produced an estimate of over \$500,000 for magistrate court without any information about the number of cases nor any explanations of the way he allocated costs. *Id.* Foster stated that his final estimate of “over \$4.8 million” for court costs is low

defenders,<sup>270</sup> and the WVCADV.<sup>271</sup> Foster provided a total estimate of \$22.6 million in government domestic violence costs in West Virginia.<sup>272</sup> Foster attributed assumptions in his calculations to undisclosed employees in the court system and his own personal beliefs.<sup>273</sup> Foster further suggested that his estimate was low, and although he provided a list of personal costs of domestic violence to men falsely accused not included in his estimate, he did not address any financial costs to victims or the cost to the state when victims could not access services.<sup>274</sup>

In providing possible explanations for the increase in the number of domestic violence criminal investigations and arrests in West Virginia between 1999 and 2005, Foster incorrectly pointed to a change of the “definition of domestic violence” in the domestic relations

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because it does not include operating supplies and equipment for family court or magistrate court, nor does it include domestic violence related costs in Circuit Court, nor the cost of associated criminal cases. *Id.* at 9-10. Foster further explains that the state’s decision to expand the number of Family Court judges at a cost he estimates to be at least \$2.7 million per year “may have been unnecessary if not for domestic violence cases.” Foster, *Analyzing the Cost*, *supra* note 266, at 8–9.

270. Foster erroneously claimed that “Public Defenders are frequently provided for claimants of domestic violence,” then cited the Family Protection Services Board Annual Report FY 2004 to provide an estimate of \$335 per case for a total of \$490,000 per year. *Id.* at 9. The Family Protection Services Board Annual Report FY 2004 includes absolutely no mention about public defenders. It does, however, summarize the Civil Legal Assistance Programs, which included \$150,000 per year allocated to the Domestic Violence Legal Services Fund to pay for legal services for IPV victims provided by advocates, attorneys, and paralegals coordinating through Legal Aid of West Virginia and IPV programs, as well as additional legal services provided by volunteer attorneys or attorneys charging reduced fees. It is not clear how Foster arrived at his figure, nor why he attributed civil legal services to criminal public defenders. See FAMILY PROTECTION SERVICES BOARD, ANNUAL REPORT FY 2004 at 27 (2004), available at [http://www.wvdhhr.org/bcf/children\\_adult/dv/documents/fpsbannualreport2004.swf](http://www.wvdhhr.org/bcf/children_adult/dv/documents/fpsbannualreport2004.swf), archived at <http://perma.cc/MS2L-YGXZ>.

271. Foster, *Analyzing the Cost*, *supra* note 266, at 7–12.

272. *Id.* at 10.

273. *Id.* at 9 (referencing “[a] conversation with a Magistrate Court Clerk” and an estimate provided by “[a] Family Court Case Coordinator”).

274. In addition to the limitations suggested by Foster and described in footnotes 268 and 269, Foster suggests that there are other costs associated with domestic violence not included in his estimate, including: “Costs associated with criminal domestic violence cases including costs for: prosecutors and their assistants, Circuit Court judges and their assistants, parole officers, bailiffs, non-personnel operating expenses, capital building and equipment expenses, and incarceration”; “West Virginia State, County, and City Social Services Costs . . . particularly costs associated with accusations of, and investigations of alleged child abuse”; “Costs of batterer intervention programs”; “Costs borne by individuals including attorneys fees, lost time at work, and extra lodging costs”; “Opportunity cost of other goods and services that could be purchased or consumed by government entities or West Virginia citizens if lower taxes were possible”; and “Non-monetary costs of false domestic violence claims including: loss of time shared between a loving parent and child and emotional costs of falsely charged parties and their children.” *Id.* at 10, Table 2.

code, confusing criminal and civil statutes.<sup>275</sup> Foster suggested that one potential reason for the increase in domestic violence investigations in West Virginia was an increase in false or unnecessary claims, and continued to explain how a claim of domestic violence could benefit someone involved in a custody case.<sup>276</sup> Like MAWAD, Foster confused the category of intimate partners with children in common who might later engage in custody cases with the broader categories of relationships covered by the criminal and civil definitions of domestic violence.<sup>277</sup> Foster noted that while it only took one act of domestic violence as defined in the protection order statute to potentially affect a parent's visitation time with a child, there must be repeated fraudulent reports of domestic violence or child abuse or persistent interference with visitation before a judge could change the parenting plan under the law, which he concluded provided an incentive for false allegations.<sup>278</sup> Foster estimated the rate of false allegations of domestic violence by multiplying the estimated dismissal rate of emergency protection orders he identified from a 2004–05 WVCADV Data Summary by the estimated dismissal rate for final protection orders as determined by the Cabell Evaluation to estimate that

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275. Foster stated,

After 1998, the definition of “domestic violence or abuse” [in West Virginia (§ 48-27-202)] was expanded to: “Placing another in reasonable apprehension of physical harm; Creating fear of physical harm by harassment, psychological abuse or threatening acts.” The pre-1999 definition stated “Placing, by physical menace, another in fear of imminent serious bodily injury.”

*Id.* at 11. He theorized that this change in definition may have increased claims and investigations of domestic abuse, and resultant arrests. *Id.* Foster appears to have confused civil and criminal statutes. West Virginia Code section 48-27-202 is located within the Domestic Relations Chapter of the West Virginia Code in an Article entitled Prevention and Treatment of Domestic Violence. It defines domestic violence and abuse for the purposes of civil protection orders, child custody disputes, and child abuse and neglect. W. VA. CODE §§ 48-27-202, -9-201, -9-205, 49-1-3 (2014). Criminal acts of domestic violence are defined in § 61-2-28, with domestic battery consisting of

[a]ny person who unlawfully and intentionally makes physical contact force capable of causing physical pain or injury to his or her family or household member or unlawfully and intentionally causes physical harm to his or her family or household member or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor . . . .

The Code defines domestic assault as consisting of “[a]ny person who unlawfully uses force capable of causing physical pain or injury against his or her family or household member or unlawfully commits an act that places his or her family member in reasonable apprehension of immediately suffering physical pain or injury.” A third conviction of a domestic battery, domestic assault, or similar crime against a family or household member is a felony. W. VA. CODE § 61-2-28(d) (2013).

276. Foster, *Analyzing the Cost*, *supra* note 266, at 11–12.

277. *See supra* notes 242–49 and accompanying text.

278. Foster, *Analyzing the Cost*, *supra* note 266, at 11.

“80.6% of all domestic violence claims are false or unnecessary.”<sup>279</sup> Next, Foster multiplied his estimate of false or unnecessary protective orders by his estimated total costs of domestic violence to West Virginia to produce a total estimate of \$18,267,456 in government spending on “false or unnecessary claims” in West Virginia.<sup>280</sup>

In an abrupt turn, Foster also suggested that no-drop policies in criminal cases invalidate victim autonomy and could represent “an abusive power relationship between the justice system and victims.”<sup>281</sup> In Foster’s only references to victims, he implied that IPV policy and protection orders place them in increased danger and that the criminal justice system’s use of no drop policies was the real source of abuse.<sup>282</sup>

Foster concluded this article by suggesting that his findings of a high rate of false allegations, coupled with the nature of protection orders, negatively impacted procedural fairness.<sup>283</sup> He further

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279. The WVCADV Summary Data referenced by Foster was an Excel spreadsheet previously posted on the WVCADV website, detailing numbers of services provided by member organizations. Under the “Domestic Violence Petitions” section, WVCADV indicates that 105 Emergency Protection Orders (EPOs) were denied, 829 EPOs were dismissed, and 3,862 EPOs were granted. *WVCADV FY 2005–06 Data Summary* at 8, W. VA. COAL. AGAINST DOMESTIC VIOLENCE (July 28, 2007), available at [http://web.archive.org/web/\\*/http://www.wvcadv.org/images/WVCADV\\_FY\\_2004-05\\_Data\\_Summary\\_Final.xls](http://web.archive.org/web/*/http://www.wvcadv.org/images/WVCADV_FY_2004-05_Data_Summary_Final.xls), archived at <http://perma.cc/SAE4-6LXV> [hereinafter “WVCADV Data Summary”]. From this data, Foster concluded that 19.5% of EPOs were dismissed or denied. Foster, *Analyzing the Cost*, *supra* note 266, at 12 (stating that the WVCADV publication indicates that 934 of 4,796 emergency protective order petitions were denied). Foster refers to the Cabell Evaluation as case records for family court judges in Campbell [sic] County, WV for calendar year 2006, available from the organization Men and Women against Discrimination (MAWAD) who provided funding directly to Cabell County. *Id.* Foster acknowledges that “[u]sing denied or dismissed claims as an indication of false or unnecessary domestic violence claims could be criticized because claims denied, and particularly dismissed due to failure to appear or voluntarily terminated, could possibly have been legitimate,” but further explains that “claims for which protective orders are granted could possibly be false or unnecessary,” and concludes that “the number of protective orders issued for false or unnecessary claims could equal or exceed the number of legitimate claims for which protective orders are denied or dismissed.” *Id.* at 13.

280. Foster proceeds to explain that this figure only includes the identifiable government costs of “false and unnecessary claims,” and continues:

What price can be put on the time not shared between a loving parent and child because of a false or unnecessary claim? False or unnecessary claims of domestic violence impart extreme emotional costs on men and women who are subjected to them and to children of the parties involved. Domestic violence definitions now include emotional abuse. Fling false domestic violence claims should be considered severe emotional abuse of, and domestic violence against, the party falsely accused and any children caught up in the situation.

*Id.* at 14.

281. *Id.* at 13.

282. *Id.*

283. Foster, *Analyzing the Cost*, *supra* note 266, at 13.

asserted that “people’s perceptions of procedural justice impacts their compliance with court rulings” and that the changes in laws “may reduce compliance with court orders and actually lead to more domestic violence.”<sup>284</sup> In other words, respondents who violate DVPOs and harm victims may not be actual abusers, but may instead be non-abusive respondents wrongfully ordered to comply with a DVPO who were driven to their violence by what they perceived as procedural unfairness. Through the unexpected medium of an accounting journal, Foster concluded that IPV government policy and false allegations of IPV were the real threat to victims and children.

## *2. Norms and Costs of Government Domestic Violence Policies: A Critical Review*

In 2011, Foster published an article in the *Journal of Family and Economic Issues* using both the Cabell Evaluation and his *Analyzing the Cost* article to conclude that domestic violence policy in West Virginia incentivized false allegations.<sup>285</sup> *In Norms and Costs of Government Domestic Violence Policies: A Critical Review*, Foster also argued that current social norms encouraged “overly aggressive governmental response to claims of domestic violence,” provided incentives to file false claims, and provided insufficient penalty for filing false claims.<sup>286</sup> He suggested that men accused of domestic violence were stigmatized because of group norms created by feminist advocacy groups, while our society currently lacks enforcement mechanisms to stigmatize people filing false claims in the domestic violence area, and that “government inaction against false claims implicitly reinforced the apparent current norm that false domestic violence claims were acceptable.”<sup>287</sup> Foster introduced Eagle Forum, RADAR, and MAWAD as “norm entrepreneurs who work to change existing norms regarding domestic violence policy” and “raise awareness of false claims of domestic violence . . .”<sup>288</sup> As a critique of the social norm against IPV, he pointed out the increase in domestic violence arrests for crimes other than aggravated assault and homicide and suggested that “emotional discussions” between couples may now constitute “domestic violence” under new

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284. *Id.*

285. Benjamin P. Foster, *Norms and Costs of Government Domestic Violence Policies: A Critical Review*, 32 J. FAM. ECON. 140, 146 (2011) [hereinafter Foster, *Norms and Costs*].

286. *Id.* at 140.

287. *Id.* at 143.

288. Foster also references “The Conflict Between Federal Domestic Violence Policies and Traditional Family Values” conference hosted by the Heritage Foundation in October 2008. *Id.* at 142.

statutory definitions.<sup>289</sup> He posed the idea that IPV reform efforts not only harmed men falsely accused of domestic violence, but also harmed legitimate female victims because pro-criminalization policies stripped victims of any control over their cases and could actually increase lethality for female victims.<sup>290</sup>

Foster referenced *Analyzing the Cost* as demonstrating that 80.6% of domestic violence claims were false or unnecessary and that government spending on false or unnecessary domestic violence claims in West Virginia was more than \$18 million per year.<sup>291</sup> He again provided the West Virginia laws governing child custody as evidence of incentives for false allegations, because domestic violence and child abuse were listed as potential limiting factors for parenting time while repeated fraudulent reports or persistent interference with another person's access to the child must occur to constitute a limiting factor.<sup>292</sup> He further explained that "[f]alse and unnecessary domestic violence claims impart substantial external costs on the accused person and their loved ones, particularly any children involved . . . ." <sup>293</sup> He did not mention any costs to victims of IPV, their children, or the state.

Foster built on his earlier article to again argue that perceptions of procedural injustice in domestic violence cases may prevent respondents from following court orders, which may consequently increase incidences of IPV.<sup>294</sup> He again suggested that acts of IPV in violation of protection orders could be explained as violent responses to false allegations and procedural deficiencies rather than the acts of actual abusers abusing their intimate partners.<sup>295</sup> Foster's proposed solution to reduce incidences of serious acts of IPV was to enhance falsely accused people's perceptions of procedural justice by increasing penalties for false claims of IPV.<sup>296</sup>

### C. Coverage and Dissemination

In spite of the serious deficiencies in the Cabell Evaluation and subsequent articles, FRGs frequently cite this research to support their agenda. Several SAVE Special Reports and articles cite *Analyzing the Cost* to support the proposition that eighty-one percent of

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289. *Id.* at 145. As in *Analysis, Norms and Costs* confuses the definition of domestic violence located in the Domestic Relations section of the West Virginia Code with the statutes defining crimes. *See id.* at 144–45.

290. Foster, *Norms and Costs*, *supra* note 285, at 148–49.

291. *Id.* at 147.

292. *Id.* at 148.

293. *Id.*

294. *Id.* at 146–48.

295. *Id.* at 148.

296. Foster, *Norms and Costs*, *supra* note 285, at 148.

protection orders are false or unnecessary.<sup>297</sup> SAVE uses the study to refute research provided by IPV organizations, such as the ABA Commission on Domestic Violence.<sup>298</sup> RADAR also references the same article to support the premise that “four out of five allegations of domestic abuse are unnecessary or false.”<sup>299</sup> The claim that there is empirical evidence to support the premise that at least eighty percent of protection orders are false or unnecessary was reposted on FRG websites across the county.<sup>300</sup>

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297. *Research*, STOP ABUSIVE & VIOLENT ENV'TS (2011), <http://www.saveservices.org/camp/faam-2011/research-on-false-allegations-of-abuse/> (last visited Feb. 28, 2015), archived at <http://perma.cc/8NCA-ST4R> (“[a]n analysis of domestic violence restraining orders issued in 2006 in Campbell [sic] County, West Virginia concluded 81% were unnecessary or false”); *Special Report: Assault Upon Our Civil Rights*, STOP ABUSIVE & VIOLENT ENV'TS 14 n.53 (2013), <http://www.saveservices.org/wp-content/uploads/SAVE-Assault-Civil-Rights.pdf>, archived at <http://perma.cc/VLT6-3F54>; *Special Report: Domestic Violence-Related Immigration Fraud*, STOP ABUSIVE & VIOLENT ENV'TS 9 n.36 (Aug. 2010), <http://www.saveservices.org/downloads/VAWA-Funded-Immigration-Fraud>, archived at <http://perma.cc/7886-YRGP>; *Special Report: Estimated National Expenditures For Domestic Violence Services and Programs*, STOP ABUSIVE & VIOLENT ENV'TS 7–8 (Jan. 2011), <http://www.saveservices.org/pdf/SAVE-Estimated-National-Expenditures-for-DV.pdf>, archived at <http://perma.cc/H62M-U3HK> [hereinafter *Estimated National*]; *Special Report: Incentives to Make False Allegations of Domestic Violence*, STOP ABUSIVE & VIOLENT ENV'TS 1 n.4 (Aug. 2010), <http://www.saveservices.org/downloads/Perverse-Incentives>, archived at <http://perma.cc/265P-YY22> (citing *Analyzing the Cost* as an analysis of restraining orders concluding that eighty percent were unnecessary or false); *Special Report: The Use and Abuse of Domestic Restraining Orders*, STOP ABUSIVE & VIOLENT ENV'TS 7 n.27 (Feb. 2011), <http://www.saveservices.org/downloads/VAWA-Restraining-Orders>, archived at <http://perma.cc/64GD-GEEQ> (“[a] more recent analysis of domestic violence restraining orders issued in 2006 in Campbell [sic] County, West Virginia concluded [that] 81% were unnecessary or false.”); *Why Should Persons be Concerned about False Allegations of Domestic Violence?*, STOP ABUSIVE & VIOLENT ENV'TS, at 1 n.3, <http://www.saveservices.org/false-accused/domestic-violence/tips/why-should-persons-be-concerned-about-false-allegations-of-domestic-violence/> (last visited Feb. 28, 2015), archived at <http://perma.cc/C6TT-96X5>; Carey Roberts, *Restraining Orders Hurt Women*, STOP ABUSIVE & VIOLENT ENV'TS (Dec. 1, 2010), <http://www.saveservices.org/2010/12/restraining-orders-hurt-women/>, archived at <http://perma.cc/WC4K-B8XW>.

298. *Special Report: Myths of the ABA Commission on Domestic Violence: Detailed Findings*, STOP ABUSIVE & VIOLENT ENV'TS 12 n.48 (Aug. 2010), <http://www.saveservices.org/pdf/SAVE-Myths-of-ABA-Commission-on-DV-Detailed.pdf>, archived at <http://perma.cc/6N6E-HFZR> (citing “Cost Management” to disprove the ABA’s assertion that “mothers frequently invent allegations of child sexual abuse to win custody” is a myth).

299. *Victims of VAWA Call on Democratic Delegates to Fix VAWA Now!*, RADAR (Aug. 25, 2008), [http://www.mediadar.org/press\\_release\\_20080825.php](http://www.mediadar.org/press_release_20080825.php), archived at <http://perma.cc/W9JN-R2HV>.

300. See, e.g., Gregory A. Hession, *Restraining Orders Out of Control*, THE NEW AM. (July 28, 2008), <http://www.thenewamerican.com/usnews/crime/item/5779-restraining-orders-out-of-control>, archived at <http://perma.cc/P7TK-FRQQ>. Hession stated:

According to professor of accountancy Benjamin P. Foster, Ph.D, CPA, CMA, of the 4,796 emergency protective-order petitions issued in West Virginia in 2006, an estimated 80.6 percent “are false or unnecessary.” Foster acknowledges the duplicitous nature of many of the complaints: “In divorce and child custody cases, a party generally obtains favorable treatment when the other party has engaged in domestic violence.”

The Cabell Evaluation conclusions were further disseminated when SAVE and RADAR sent their special reports and articles to other FRGs and men's rights organizations, who then included the conclusions in their own reports and articles.<sup>301</sup> RADAR and the Eagle Forum included Professor Foster as a presenter on false allegations of IPV at "The Conflict Between Federal Domestic Violence Policies and Traditional Family Values" conference held at the Heritage Foundation in 2008.<sup>302</sup> ACFC included the Cabell Evaluation conclusions in a presentation at the "False Allegations Summit" in 2012.<sup>303</sup>

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*Id.* Hession also presented this article at the 2008 "The Conflict Between Federal Domestic Violence Policies and Traditional Values" conference co-sponsored by RADAR and Eagle Forum at the Heritage Foundation in Washington DC. *The Conflict Between Federal Domestic Violence Policies and Traditional Family Values*, *supra* note 118, at 2. One of Hession's quotes was incorporated into the title of a law review note: Brittany Pierce, "Any Liar Can Get an Order by Merely Asserting Fear": *Why Chapter 209A Must be Revamped to Protect Against the Issuance of Unnecessary Abuse Prevention Orders*, 47 NEW ENG. L. REV. 427, 427 (2012). According to Gregory Hession's website, he is an attorney specializing in family law whose Massachusetts bar license was suspended in 2013. *About MassOutrage and Gregory A. Hession, Jr.*, MASSOUTRAGE, <http://www.massoutrage.com/about/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/S6W3-X6SV>. Foster's article is also cited on the New Jersey Institute for the Advancement of Truth's website: *Restraining Orders Out of Control*, N.J. INST. FOR THE ADVANCEMENT OF TRUTH, [http://njiat.com/Christianlegalthelp\\_links.htm](http://njiat.com/Christianlegalthelp_links.htm) (last visited Feb. 28, 2015), *archived at* <http://perma.cc/D5JM-9P4Y>; *see also* *Domestic Violence*, FATHERS FOR EQUAL RIGHTS, <http://fathers4kids.com/issues/domestic-violence> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/5A22-PUK2> (reporting that "[f]athers' organizations now estimate that up to 80% of domestic violence allegations against men are false allegations."); *Ordure in the Court: On False Restraining Orders and What It Means To Get One*, RESTRAININGORDERABUSE.COM (June 19, 2013), <http://restrainingorderabuse.com/2013/06/19/ordure-in-the-court-on-false-restraining-orders-and-what-it-means-to-get-one/>, *archived at* <http://perma.cc/2J3W-6UDL>.

301. *See, e.g.*, Carey Roberts, *Awash in a Sea of False Allegations*, A VOICE FOR MEN (May 25, 2011), <http://www.avoicemen.com/miscellaneous/awash-in-a-sea-of-false-allegations/>, *archived at* <http://perma.cc/T4EP-6N7W> (referencing and linking Stop Abusive and Violent Environments, *What is the Cost of False Allegations of Domestic Violence?* (2010), <http://www.saveservices.org/downloads/False-DV-Allegations-Cost-20-Billion>, *archived at* <http://perma.cc/LQ5T-NZEU>); *see also* *Study—71% of Restraining Orders are Issued for Frivolous or False Reasons*, MD. INDEP. PARTY (March 16, 2009), <http://www.marylandindependentparty.org/MD4news.html>, *archived at* <http://perma.cc/7PJZ-XBVU> (including a full citation for the *Analyzing the Cost* article) [hereinafter MD. INDEP. PARTY]; Teri Stoddard, *Domestic Violence 101: Understand the Truth, Stop the Abuse: False Allegations*, EXAMINER.COM (Oct. 5, 2010), <http://www.examiner.com/article/domestic-violence-101-understand-the-truth-stop-the-abuse-false-allegations>, *archived at* <http://perma.cc/G8ZF-SAZ5> (citing the *Analyzing the Cost* article in support of the statement that "[e]ach year 2–3 million restraining orders are issued in the United States, of which as many as 80% are unnecessary or false").

302. *The Conflict Between Federal Domestic Violence Policies and Traditional Family Values*, *supra* note 118, at 2.

303. Michael McCormick, *Taking a Look at False Allegations and Future Potentials for Citizen Abuse*, FALSE ALLEGATION SUMMIT: FROM HERE TO WHERE? (June 30, 2012), [http://www.acfc.org/acfc/assets/File/False\\_Allegation\\_Powerpoint.pdf](http://www.acfc.org/acfc/assets/File/False_Allegation_Powerpoint.pdf), *archived at* <http://perma.cc/AP79-ERR6>.

More troubling, the Cabell Evaluation and subsequent articles were cited by the mainstream media. Local newspapers covered both the initial study and later reports in a positive light.<sup>304</sup> In the *West Virginia Record*, the state's legal journal, a journalist covered the Cabell Evaluation by stating that "[t]he release of a study indicating that most of the petitions for domestic violence protection orders may be used for leverage in a divorce or child custody proceeding comes as cold comfort to those who've experienced it firsthand."<sup>305</sup> In a second article by the same journalist, the *West Virginia Record* reported that "[t]he centerpiece of the Vienna-based children's advocacy group's rally was [the] release of two studies bolstering their claim that most petitions for domestic violence protective orders are false and frivolous, and used to gain the upperhand [sic] in a divorce or child custody proceeding."<sup>306</sup> The *West Virginia Record* articles were also posted on FRG websites and blogs, lending further legitimacy to the research.<sup>307</sup>

The media coverage extended beyond West Virginia and FRG websites. A blog on the *Huffington Post* about the abuse of protective orders in divorce proceedings cited the Cabell Evaluation,<sup>308</sup> as did two law review articles analyzing the ineffectiveness of IPV laws, one of which was cited in an appellate brief.<sup>309</sup> Politicians referenced

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304. For example, the Bluefield, West Virginia newspaper covered MAWAD's "Statistical Analysis of West Virginia Police Crime Statistics and Court Caseloads Including Domestic Violence" by weaving personal narratives of fathers who believed they were treated unfairly by the family court and the MAWAD findings. Tammie Toler, *MAWAD Fighting Stereotypes that Only Women are Abused*, BLUEFIELD DAILY TELEGRAPH (Oct. 31, 2008), <http://www.bdtonline.com/princeton/x519529048/MAWAD-fighting-stereotypes-that-only-women-are-abused>, archived at <http://perma.cc/DK4H-HA9T>.

305. Smith, *Victims of False DV*, *supra* note 134 (sharing individual stories of MAWAD members at a Charleston rally and reporting MAWAD's Cabell County study).

306. Smith, *Divide*, *supra* note 135.

307. See, e.g., *Our Blog: Fathers & Families New Digest*, NAT'L PARENTS ORG., <http://nationalparentsorganization.org/blog/153-fathers-families-n-153> (last visited Feb. 28, 2015), archived at <http://perma.cc/C5C4-H2JH>.

308. Liz Mandarano, *The Worst Thing a Woman Can Do in Divorce Proceedings—The Abuse of Orders of Protection*, HUFFINGTON POST BLOG (Apr. 13, 2011, 7:18 PM), [http://www.huffingtonpost.com/liz-mandarano/the-worst-thing-a-woman-c\\_b\\_837636.html](http://www.huffingtonpost.com/liz-mandarano/the-worst-thing-a-woman-c_b_837636.html), archived at <http://perma.cc/H2DK-3YPJ>.

309. See Thomas L. Hafemeister, *If All You Have is a Hammer: Society's Ineffective Response to Intimate Partner Violence*, 60 CATH. U. L. REV. 919, 959 (2011) (citing RADAR's report, "Without Restraint: The Use and Abuse of Domestic Violence Restraining Orders" in support of the statement: "[t]hose opposed to IPV reporting laws argue that they may generate frivolous reports (when filing criteria are too broad or the penalties for failing to file are too great) or spurious reports (when reports are used to obtain revenge or leverage following the dissolution of a relationship)."); see also Peter Slocum, Comment, *Biting the D.V. Bullet: Are Domestic-Violence Restraining Orders Trampling Second Amendment Rights?*, 40 SETON HALL L. REV. 639, 665 n.206 (2010) ("Professor Benjamin Foster, Ph.D., CPA, CMA, estimated that 80.6 percent of all of the restraining orders issued in Virginia [sic] during 2006 were 'false or unnecessary.'") The author

the Cabell Evaluation in support of new proposed legislation,<sup>310</sup> and the ABA Commission on Domestic Violence included a reference to it in a legislative update.<sup>311</sup> A group called the “Accuracy in Media” (AIM) erroneously attributed the eighty-one percent finding of false allegations in protection orders to a “2003 [sic] Campbell [sic] County, West Virginia study by the *Virginia Crime Commission*.”<sup>312</sup> The study was even (incorrectly) referenced in a 2011 Florida Senate Committee on Judiciary interim report reviewing the procedures and standards for protection orders, which stated that “[m]ore recently, Campbell [sic] County, West Virginia completed an analysis of domestic violence injunctions issued in 2006 and concluded that 81 percent were unnecessary or false.”<sup>313</sup>

In addition to the references to the Cabell Evaluation as evidence of a high percentage of false or unnecessary protection orders, the estimates of the “true costs” of false allegations incorporating the Cabell Evaluation are also frequently cited. The *West Virginia Record* again provided enthusiastic coverage, as did other FRG websites.<sup>314</sup>

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does add the caveat in the same footnote that “[t]his Comment expresses no opinion about the trustworthiness of such statistics.” *Id.* Slocum’s article was cited as authority in a brief to the New Hampshire Supreme Court, Brief of Craig T. Carmody at 7, *In re Carmody*, 164 N.H. 677, 62 A.3d 862 (2012) (No. 2012-0135). Peter Slocum, previously a New Jersey Deputy Attorney General, is currently an Assistant Counsel to the Governor of New Jersey. *Peter Slocum*, LINKEDIN, <http://www.linkedin.com/pub/peter-slocum/47/690/690> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/LY8R-TQY7>.

310. Luiz Simmons, a Maryland state delegate, was quoted in 2009 as saying that “false allegations of domestic violence have become widespread in our society. . . . An analysis published last year in the *Cost Management* journal concluded 71% of restraining orders are issued for frivolous or false reasons.” MD. INDEP. PARTY, *supra* note 301.

311. AM. BAR ASS’N COMM. ON DOMESTIC VIOLENCE, *West Virginia Bill to Criminalize False Abuse Charges*, 10 E-NEWSLETTER (Spring 2008), [http://www.americanbar.org/newsletter/publications/cdv\\_enewsletter\\_home/vol10\\_legislative.html](http://www.americanbar.org/newsletter/publications/cdv_enewsletter_home/vol10_legislative.html), *archived at* <http://perma.cc/BZ3S-R35Q>.

312. Alana Goodman, *Violence Against Accurate Reporting*, ACCURACY IN MEDIA (June 23, 2009), <http://www.aim.org/briefing/violence-against-accurate-reporting/>, *archived at* <http://perma.cc/ST27-G84K> (emphasis added) (incorrectly referencing the Cabell Evaluation as “[a] more recent 2003 Campbell County, West Virginia study by the Virginia Crime Commission showed that 81 percent of restraining orders issued in that area were unnecessary or based on fabrications”).

313. Fla. Comm. on Judiciary, *Review the Procedures and Standards for Securing Protective Injunctions*, I.R. 2011-127, (2011), *available at* <http://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-127ju.pdf>, *archived at* <http://perma.cc/7923-KTJX>. The Committee states that “[t]his report reviews the current procedures and standards governing the awards of injunctions for protection against domestic violence, repeat violence, sexual violence, and dating violence, in an effort to identify the extent to which misuse of the process is occurring, or may occur. . . .” *Id.*

314. Lawrence Smith, *Group Says Bulk of Domestic Violence Cases Clog, Cost Court System*, W. VA. RECORD (Oct. 5, 2007, 10:00 PM), <http://wvrecord.com/news/202108-group-says-bulk-of-domestic-violence-cases-clog-cost-court-system>, *archived at* <http://perma.cc/ZR8V-WSGS>; Smith, *Divide*, *supra* note 135 (reporting that a second MAWAD

In a special report entitled *Estimated National Expenditures for Domestic Violence Prevention and Control*, SAVE used the *Analyzing the Cost* estimate of a \$42.5 million cost to West Virginia for IPV programs and services to estimate that the United States spends \$4 billion a year in IPV and services.<sup>315</sup> In another *Special Report*, SAVE used their \$4 billion calculation to estimate the total cost to taxpayers of false allegations as \$20 billion a year.<sup>316</sup> This \$20 billion figure for false allegations was then cited by Phyllis Schlafly, the founder and president of the Heritage Foundation.<sup>317</sup> In addition, it appeared in a *Huffington Post* blog,<sup>318</sup> which was then cited by a law review article.<sup>319</sup>

FRGs used the Cabell Evaluation and subsequent articles in their federal and state lobbying efforts for IPV law reform. SAVE and RADAR used the research as part of their advocacy campaign to reform VAWA, and *Analyzing the Cost* is even cited in its VAWA Reform Coalition Petition.<sup>320</sup> At least one state law was changed using this research without subjecting it to any serious critique.<sup>321</sup>

#### D. Other Examples of FRM Research

SAVE and RADAR created their own research projects to study false allegations.<sup>322</sup> In 2011, SAVE issued its research findings that

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study showed that the time and resources lost in dealing with those dismissed petitions is \$18 million).

315. *Estimated National*, *supra* note 297.

316. To arrive at this calculation, SAVE uses a \$3 billion estimate for total cost of domestic violence services and adds its estimate for the cost of social problems associated with 175,000 children of divorced parents who made false allegations. They describe the calculations used to reach this number as the amount of money the United States spends on “fatherless” programs multiplied by .25 (their rate of IPV allegations made in custody proceedings) multiplied by .80 (their rate of false allegations). *Special Report: What is the Cost of False Allegations of Domestic Violence?*, STOP ABUSIVE & VIOLENT ENV'TS (2010), <http://www.saveservices.org/downloads/False-DV-Allegations-Cost-20-Billion>, archived at <http://perma.cc/LQ5T-NZEU>.

317. Phyllis Schlafly, *An Excellent Target for Spending Cuts*, WORLDNETDAILY (Feb. 1, 2011, 12:00 AM), <http://www.wnd.com/2011/02/258229/>, archived at <http://perma.cc/N24S-AGL6>.

318. David T. Pizarra, *The Easiest Lie*, HUFFINGTON POST (Nov. 4, 2011, 4:09 AM), [http://www.huffingtonpost.com/david-t-pizarra/the-easiest-lie\\_b\\_1070799.html](http://www.huffingtonpost.com/david-t-pizarra/the-easiest-lie_b_1070799.html), archived at <http://perma.cc/XCE9-7U7P>.

319. Alyse Faye Haugen, Comment, *When It Rains, It Pours: The Violence Against Women Act's Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1051 n.74, 1056 n.101 (2012) (citing both the Pizarra article in the *Huffington Post* and “the non-profit advocacy group Stop Abusive and Violence Environments” as “revealing that more than 700,000 individuals are falsely accused each year” and that taxpayers are burdened by false accusations of domestic violence).

320. *Declaration of the VAWA Reform Coal.*, RADAR (Feb. 7, 2009), <http://www.media radar.org/docs/VAWA-Reform-Coalition-Declaration.pdf>, archived at <http://perma.cc/S5XQ-5UT6>.

321. See *supra* Part I.D.

322. See, e.g., *Poll: Most Don't Want Violence Against Women Act*, STOP ABUSIVE & VIOLENT ENV'TS (Mar. 27, 2012, 10:00 AM), <http://www.cisionwire.com/stop-abusive>

one out of ten adults were falsely accused of domestic violence, child abuse, or sexual assault, with three quarters of all false allegations levied against men and nearly seven out of ten false accusers women.<sup>323</sup> Their survey results, which were reposted across FRG and men's rights websites and headlined a False Allegations Summit, were based on a phone survey asking people if they or anyone they knew had ever been falsely accused.<sup>324</sup>

SAVE engaged in an analysis of the information provided by mainstream IPV organizations and issued a Special Report finding that research and trainings funded through VAWA lacked "accuracy, balance, and truthfulness" and that "[t]he biases are found to be systematic, widespread, and highly resistant to correction."<sup>325</sup> The conclusion followed SAVE's comparison to IPV research and trainings to FRG research.<sup>326</sup> In response, SAVE created its own Accreditation Program for programs offering IPV Training, Education, and Public Awareness (TEPA).<sup>327</sup>

-and-violent-environments/r/poll--most-don-t-want-violence-against-women-act-c9237291, archived at <http://perma.cc/8PDG-XNMX>.

323. Teri Stoddard, Press Release, *One in 10 Falsely Accused of Abuse: Survey*, STOP ABUSIVE & VIOLENT ENV'TS (Oct. 17, 2011), <http://www.saveservices.org/2011/10/pr-one-in-10-falsely-accused-of-abuse-survey/>, archived at <http://perma.cc/KRT9-K3F9>.

324. See *Results*, STOP ABUSIVE & VIOLENT ENV'TS, <http://www.saveservices.org/falsely-accused/survey/results/> (last visited Feb. 28, 2015), archived at <http://perma.cc/HN8E-5PKH>; see also *Methods*, STOP ABUSIVE & VIOLENT ENV'TS, <http://www.saveservices.org/falsely-accused/survey/methods/>, archived at <http://perma.cc/SP5G-RXE3> (last visited Feb. 28, 2015); *S.A.V.E. Report on False Allegation Survey*, A VOICE FOR MEN (June 2, 2011), <http://www.avoiceformen.com/mens-rights/activism/s-a-v-e-report-on-false-allegation-survey/>, archived at <http://perma.cc/UH79-Y7HK>; *Survey Says: 11% Falsely Accused of Child Sexual Abuse and Domestic Violence*, EXAMINER.COM (June 4, 2011, 8:59 AM), <http://www.examiner.com/article/survey-says-11-falsely-accused-of-child-sexual-abuse-and-domestic-violence>, archived at <http://perma.cc/LQ3D-GY7X> (discussing the survey results and False Allegations Summit).

325. *Special Report: Most DV Educational Programs Lack Accuracy, Balance, and Truthfulness*, STOP ABUSIVE & VIOLENT ENV'TS (2012), <http://www.saveservices.org/downloads/SAVE-DV-Educational-Programs>, archived at <http://perma.cc/BB4R-XH76> [hereinafter *Most DV Educational Programs*] (providing critiques of research posted by the U.S. Department of Justice, National Network to End Domestic Violence, Futures without Violence, and the ABA Commission on Domestic Violence, as well as judicial and law enforcement education programs, for their bias against men); see also Robert Franklin, *SAVE: Feds Spend \$76.3 Million on False and Misleading Claims About Domestic Violence*, NAT'L PARENTS ORG. (Apr. 13, 2012), <http://nationalparentsorganization.org/blog/20750-save-feds-spend-76-3-million-on-false-and-misleading-claims-about-domestic-violence>, archived at <http://perma.cc/9DCN-LJFJ> (sharing the "blockbuster findings of a new report issued by the anti-domestic violence organization, Stop Abusive and Violent Environments (SAVE)" that "the federal government spends some \$76.3 million per year spreading false and misleading claims about violence between intimate partners").

326. *Most DV Educational Programs*, *supra* note 325.

327. *TEPA Accreditation Program Promotes Evidence-Based Policy and Practice*, STOP ABUSIVE & VIOLENT ENV'TS (Dec. 28, 2010), <http://www.saveservices.org/press-releases/tepa-accreditation-program-promotes-evidence-based-policy-and-practice/>,

In addition to creating new research about IPV, FRGs created new venues to showcase this research. For example, John Hamel, a licensed social worker frequently referenced by FRG materials and litigation, organized the National Family Violence Legislative Resource Center and co-hosted a conference in 2009 in Los Angeles, CA.<sup>328</sup> In November 2012, Hamel launched the Partner Abuse State of Knowledge Project (PASK), available on the website: [www.domesticviolence-research.org](http://www.domesticviolence-research.org), which purported to summarize a comprehensive review of the domestic violence research literature before concluding that most domestic violence is mutual.<sup>329</sup> PASK also created a new peer-reviewed journal, “Partner Abuse,” for which Hamel was the editor-in-chief.<sup>330</sup> In 2013, Hamel helped form the Association of Domestic

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*archived at* <http://perma.cc/G8N9-ZF5V>. For more detailed information, see *Approval Criteria*, STOP ABUSIVE & VIOLENT ENV'TS, <http://www.saveservices.org/service-providers/accreditation/tepa-approval-criteria/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/Q9RS-55HN>; *Components of the Accreditation Program*, STOP ABUSIVE & VIOLENT ENV'TS, <http://www.saveservices.org/service-providers/accreditation/components-of-the-accreditation-program/>, *archived at* <http://perma.cc/M6JP-7GY4> (last visited Feb. 28, 2015).

328. *John Hamel, LCSW—The Three Common Myths of Domestic Violence*, NAT'L PARENTS ORG., <http://www.nationalparentsorganization.org/blog/1131-john-hamel-lcsw-the>, *archived at* <http://perma.cc/KDR3-GPAH> (last visited Feb. 28, 2015); *see also* CAL. ALLIANCE FOR FAMILIES & CHILDREN, FROM IDEOLOGY TO INCLUSION 2009: NEW DIRECTIONS IN DOMESTIC VIOLENCE RESEARCH AND INTERVENTION (2009), *available at* <http://www.cafcusa.org/2009-conference-registration/Brochure.pdf>, *archived at* <http://perma.cc/8253-VBK7>; *Unprecedented Domestic Violence Study Affirms Need to Recognize Male Victims*, STOP ABUSIVE & VIOLENT ENV'TS (May 21, 2013), <http://www.saveservices.org/2013/05/unprecedented-domestic-violence-study-affirms-need-to-recognize-male-victims/>, *archived at* <http://perma.cc/3A2V-96H7> (reporting on PASK, “[t]he most comprehensive review of the scholarly domestic violence research literature ever conducted concludes . . . that women perpetrate physical and emotional abuse . . . at comparable rates to men” and describing the purpose of the project to bring together “a rigorously evidence-based, transparent and methodical manner, existing knowledge about partner abuse. . .”).

329. *New Domestic Violence Research Compilation Available*, AM. COAL. FOR FATHERS & CHILDREN (May 21, 2013), <http://acfc.org/>, *archived at* <http://perma.cc/5Q4T-8LT4>; *see also* *12 Page Finding at a Glance*, DOMESTIC VIOLENCE RESEARCH (Nov. 2012), [http://www.domesticviolenceresearch.org/pages/12\\_page\\_findings.htm](http://www.domesticviolenceresearch.org/pages/12_page_findings.htm), *archived at* <http://perma.cc/Z528-QDXN>.

330. *Partner Abuse: New Directions in Research, Intervention, and Policy* is a quarterly journal published by Springer Publications. The description of the journal on the publisher's website explains:

A basic premise of the journal is that partner abuse and family violence is a human problem, and that the particular role of gender in the etiology, perpetration and consequences of emotional and physical partner abuse cannot be assumed, but rather must be subjected to the same empirical scrutiny as any other factor. Just as treatment decisions ought to be based on sound assessment protocols, policies on partner abuse ought to be based on an understanding of the full range of available research, without regard to political considerations. The journal is therefore open to original research papers and articles on controversial subjects such as mutual abuse, family violence, female perpetrators, male victims, alternative types of batterer

Violence Intervention Programs (ADVIP) to advance “evidence-based” practices in the treatment of partner-abusive individuals and their families.<sup>331</sup> ADVIP refers members to the PASK website for “the most up-to-date and comprehensive data . . . .”<sup>332</sup> These forums use titles that imply they are providing widely-accepted research about IPV and purposely mislead anyone researching IPV into thinking their gender-symmetry theory of IPV is a generally accepted theory among social scientists.

## V. STATE LOBBYING

FRGs across the county engage in lobbying for state family law reform. MAWAD lobbied for several West Virginia bills focused primarily on creating criminal sanctions for false allegations of domestic violence or child abuse during custody cases, providing a way to contest presumed paternity, and creating statutory presumptions in favor of equal physical custody of children.<sup>333</sup> They succeeded in 2011 with the passage of a false allegations bill using model language developed SAVE.<sup>334</sup>

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intervention programs, couples and family counseling, and the limitations of current arrest and prosecution policies such as mandatory arrest and one-size-fits-all [sic] mandated batterer treatment.

*Partner Abuse: New Directions in Research, Intervention, and Policy*, SPRINGER PUBL'G CO., <http://www.springerpub.com/product/19466560#.UqtAR46AbzI> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/E52N-69BH>.

331. See, e.g., DOMESTIC VIOLENCE RESEARCH, *supra* note 329.

332. *Articles*, ASS'N OF DOMESTIC VIOLENCE INTERVENTION PROGRAMS, <http://www.battererintervention.org/research/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/N26J-F7W6>.

333. See *2007 Legislative Initiatives*, MEN & WOMEN AGAINST DISCRIMINATION, <http://web.archive.org/web/20071120103845/http://www.mawadwv.org/>, *archived at* <http://perma.cc/6H89-N5TZ> (last visited Feb. 28, 2015) (referencing West Virginia Senate Bill 504—Establishing Joint Parenting Act, Senate Bill 491—Relating to Contested Paternity, House Bill 2943—Relating to Joint Parenting Act and custody of children after divorce, and House Bill 2030—Providing a method in which males may contest allegations or presumptions of biological parentage under certain circumstances); see also *2008 Legislative Initiative*, MEN & WOMEN AGAINST DISCRIMINATION, <http://web.archive.org/web/20080908100751/http://www.mawadwv.org/> (last visited Feb. 28, 2015), *archived at* <http://perma.cc/9U65-38EZ> (referencing House Bill 4042—Relating to Joint Parenting Act and custody of children after divorce, House Bill 4002—Providing a method in which males may contest allegations or presumptions of biological parentage under certain circumstances, House Bill 3065—Providing a misdemeanor penalty if a person fails to make a reasonable, good faith attempt to return a minor child in a timely manner at the expiration of a lawful custody or visitation period, Senate Bill 316—Establishing Joint Parenting Act, and Senate Bill 43—Providing a method in which males may contest allegations or presumptions of biological parentage under certain circumstances).

334. See STOP ABUSIVE & VIOLENT ENV'TS, MODEL LANGUAGE TO CURB FALSE ALLEGATIONS OF DOMESTIC VIOLENCE (June 6, 2011), *available at* <http://www.save>

### A. *False Allegations Statutes*

In 2008, MAWAD proposed a state bill in West Virginia creating new criminal sanctions and civil liability for individuals making false reports of child abuse or neglect, physical or sexual abuse, or domestic violence by a parent.<sup>335</sup> The lead sponsor of the bill told a local journalist that he had seen statistics indicating that the state spent as much as \$18 million per year investigating and processing false abuse allegations.<sup>336</sup> Eldridge further explained that “[i]f the fathers or mothers are truly abusing the spouse, this bill will hold them accountable. At the same time, if they’re not truly abusing them, then there will be penalties for whoever filed it.”<sup>337</sup> In describing the bill to a journalist, MAWAD’s Region 4 Coordinator explained that the bill was proposed because a growing number of people used false allegations during Family Court to remove a parent from the house.<sup>338</sup> The proposed law provided criminal and civil sanctions for parents who make false allegations of IPV or child abuse in order to influence a custody decision.<sup>339</sup> The bill was successfully signed into law in West Virginia in 2011,<sup>340</sup> and FRGs across the county congratulated MAWAD on their success.<sup>341</sup> West Virginia was not alone; Oregon passed a similar bill in 2011.<sup>342</sup>

By drafting and lobbying for passage of these laws, FRGs validated their assertions that such laws were necessary. They essentially proposed a solution to prove the problem. In advocating for

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services.org/wp-content/uploads/False-Allegations-Model-Language.pdf, *archived at* <http://perma.cc/98GA-N52X>.

335. See the original draft of West Virginia H. B. 3065, introduced Jan. 9, 2008.

336. Michael C. Lewis, *Bill Would Criminalize False Abuse Charges*, MARTINSBURG JOURNAL NEWS (Mar. 10, 2008), <http://www.journal-news.net/page/content.detail/id/504523.html?nav=5006>, *archived at* <http://perma.cc/JL2E-5HPS> (sharing the story of a man who says he was falsely accused of child abuse nine times and describing the new state bill criminalizing false abuse charges).

337. *Id.*

338. *Id.*

339. See W. VA. CODE § 61-6-25 (West 2013).

340. *Id.* (enacting West Virginia House Bill 3065).

341. See, e.g., *Radar Alert: 2008: Building Success Upon Success*, RADAR (Dec. 22, 2008), <http://www.mediaradar.org/alert20081222.php>, *archived at* <http://perma.cc/XN44-EHEJ> (“MAWAD got new legislation passed that makes it a crime to make false claims of domestic violence to influence court proceedings over custody.”).

342. Oregon House Bill 2183 (2011) (“[c]reates an offense of making a false report of child abuse” and was signed into law on July 6, 2011); see also Amy J.L. Baker, *Oregon House Passes Bill Outlawing Purposely False Child Abuse Claims*, PSYCHOLOGY TODAY (May 13, 2011), <http://www.psychologytoday.com/blog/caught-between-parents/201105/oregon-house-passes-bill-outlawing-purposely-false-child-abuse>, *archived at* <http://perma.cc/C4NA-GTZW>; House Bill 2183, OR. LIVE, <http://gov.oregonlive.com/bill/2011/HB2183/>, *archived at* <http://perma.cc/5JVT-GQM9>.

the West Virginia law, MAWAD used the Cabell Evaluation to prove that false allegations of IPV were rampant.<sup>343</sup> They failed to describe the actual findings and limitations of the Cabell Evaluation. They also failed to disclose to the media and public that the proposed law was redundant, as there was already a law against making a false report to police and lying under oath in court.<sup>344</sup> The same was true in Oregon, where IPV and child abuse advocates warned that the true impact of the new law would be to scare victims of IPV and protective parents from disclosing abuse during custody proceedings, which would ultimately increase the safety threat to children.<sup>345</sup> West Virginia custody laws already included a provision in which false allegations of child abuse or IPV were limiting factors used against a parent in a custody determination.<sup>346</sup>

### *B. Equal Physical Custody Presumption Statutes*

Mandatory presumptions creating equal physical custody schedules for parents are the newest and fastest growing issue within the FRG movement. Although these proposed reforms, often referred to as “shared custody,” sound like progressive attempts to encourage

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343. See Lewis, *supra* note 336 (describing the proposed bill and referencing the Cabell Evaluation); see also Smith, *Victims of False DV*, *supra* note 134.

344. W. VA. CODE § 61-6-20(3-4) (West 2014).

Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein . . . . Any person who violates this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county jail not more than six months, or both fined and confined.

*Id.* Lying under oath in court carries the penalties of perjury: “[a] person convicted of perjury or subornation of perjury shall be confined in the penitentiary not less than one nor more than ten years.” *Id.* § 61-5-3.

345. Jeff Mapes, *Oregon House Passes Bill Outlawing Purposely False Child Abuse Claims*, THE OREGONIAN (May 3, 2011, 10:19 PM), [http://www.oregonlive.com/politics/index.ssf/2011/05/controversial\\_bill\\_on\\_child\\_ab.html](http://www.oregonlive.com/politics/index.ssf/2011/05/controversial_bill_on_child_ab.html), archived at <http://perma.cc/TRF6-Q2W3> (quoting the executive director of the Children’s Center as explaining why the law was unnecessary and warning that the bill would create “even greater barriers for our citizens to protect kids”).

346. W. VA. CODE § 48-9-209(a)(5), (b) (1)(A-B) (2014) (“Parenting plan; limiting factors” including “[h]as repeatedly made fraudulent reports of domestic violence or child abuse” as a limiting factor in a permanent parenting plan which may allow the court to increase parenting time in order to make up for any lost parenting time or “repair any adverse effect upon the relationship between the child and the other parent” resulting from the fraudulent reports, order supervision or restrictions, or order a party to post a bond).

co-parenting, they have the potential to create sweeping change in how judges determine custody arrangements between parents unable to reach an agreement on their own. They would remove judicial discretion and any consideration of the needs or best interests of individual children, and instead require children of litigating parents to split their time equally between two separate households without regard to the unique circumstances in each case. Equal physical custody presumptions also carry particular and significant dangers to IPV victims and their children.

The FRM was already largely successful in reforming most state laws to create presumptions in favor of joint legal custody or shared decision-making.<sup>347</sup> Today, FRGs propose statutory presumptions in favor of placing a child in each parent's home fifty percent of the time.<sup>348</sup> FRGs use statistics showing an increase in single mother homes as evidence that the "best interest of the child" standard employed by most states in child custody proceeding is anti-child in nature and ignores the basic need all children have for a paternal figure in their lives.<sup>349</sup> FRGs also argue that the custody process is excessively interventionist and that a mandatory presumption in favor of equal physical custody would properly remove the government from the role interfering with families and engaging in gender bias against men.<sup>350</sup>

MAWAD proposed an equal custody statute in 2007 and 2008, and also requested the state legislature create a committee to study the impact of an equal physical custody presumption.<sup>351</sup> The proposed

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347. Erin Bajackson, Note, *Best Interests of the Child—A Legislative Journey Still in Motion*, 25 J. AM. ACAD. MATRIM. LAW. 311, 325–27 (2013).

348. Once through committee, many of the bills are "watered down" to create a mandatory minimum time of 35% or 40% that a child should spend in each parent's home. A legal presumption in favor of equal or shared physical custody is controversial and generally disfavored by IPV advocates, because of research indicating that joint custody for parents who engage in IPV against the other parent is harmful to children. Other groups oppose shared custody, particularly for young children, because it ignores research on attachment and child well-being. Another critique of shared custody is that it provides a one-size-fits-all solution inappropriate in child custody proceedings; See *E-Newsletter Archive*, AM. COAL. FOR FATHERS & CHILDREN (Apr. 5, 2013), <http://www.acfc.org/e-newsletter-archive/452013listserve/>, archived at <http://perma.cc/QHY8-FGLC> (discussing the significant opposition to a Nebraska shared custody bill LB22, which includes the "usual suspects" [i] [l]awyers and domestic violence groups").

349. See Crowley, *Taking Custody*, *supra* note 6, at 225–26 (summarizing interviews with FRG leaders about child custody who believe the proceedings are anti-child).

350. *Id.* at 230–34.

351. S. Con. Res. 67 (W. Va. Feb. 28, 2008), available at [http://web.archive.org/web/20080914060531/http://www.legis.state.wv.us/Bill\\_Text\\_HTML/2008\\_SESSIONS/rs/BILLS/scr67%20org.htm](http://web.archive.org/web/20080914060531/http://www.legis.state.wv.us/Bill_Text_HTML/2008_SESSIONS/rs/BILLS/scr67%20org.htm), archived at <http://perma.cc/F49Y-6VVQ> ("Requesting the Joint Committee on Government and Finance study the effects of legislation relating to joint parenting passed by the Legislature in 2001 to determine if further improvements, including any presumptions related thereto, need to be made and if the legislation is

law would mandate family court judges in West Virginia to create a fifty–fifty schedule for all children unless there was clear and convincing evidence that one parent was “unfit,” the same standard used in child dependency cases in which the state removes children from their parent’s care.<sup>352</sup> The vast majority of parents able to mediate a schedule in the best interests of their children would not be subject to a court presumption (although the statute would influence those negotiations). The greatest impact of the presumption would be on contested cases in which parents were unable to reach an agreement, often indicating a high level of conflict or intimate partner violence.<sup>353</sup>

FRGs in many states proposed equal physical custody statutes, and they appear to be getting closer to full passage. FRGs successfully advocated for the Minnesota legislature to pass an equal custody bill in 2012, and the Florida legislature to pass an equal custody bill in 2013, only to have both governors veto them.<sup>354</sup> Arizona passed a law in 2012 encouraging joint parenting by adding maximum time

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being implemented fully.”). A MAWAD representative spoke to the Judiciary Subcommittee B—Joint Parenting Study in Dec. 2008, about why joint custody with equal parenting time should be ordered in every case and how protection orders were being abused in order to obtain custody. W. VA. LEG. OFFICE OF REFERENCE & INFORMATION, *Joint Parenting Study*, 10 INTERIM HIGHLIGHTS, 19–20 (2008), available at [http://www.legis.state.wv.us/committees/interims/int\\_highlights/Interim\\_2008\\_issue7.pdf](http://www.legis.state.wv.us/committees/interims/int_highlights/Interim_2008_issue7.pdf), archived at <http://perma.cc/26Y2-DG8Z>. In addition, MAWAD presented a study directly to the governor. REPORT TO GOVERNOR, *supra* note 259.

352. W. VA. LEG. OFFICE OF REFERENCE & INFORMATION, *Foster Children and Equal Parenting*, 9 INTERIM HIGHLIGHTS 7 (2007), available at [http://www.legis.state.wv.us/committees/interims/int\\_highlights/Interim\\_2007\\_issue7.pdf](http://www.legis.state.wv.us/committees/interims/int_highlights/Interim_2007_issue7.pdf), archived at <http://perma.cc/M3G8-XKZR> (reporting that MAWAD’s State Director presented to the committee about how equal parenting was important for children’s welfare and presented statistics show that “children who grow up in fatherless homes were more likely to: have behavioral disorders, commit suicide, run away and drop out of school than those children who grow up in a two parent home”).

353. H.B. 2943 (W. Va. 2007) (providing that “[i]n the event that parents cannot reach agreement of the parenting arrangement, it is the specific intent of the statute that parents have a rebuttable presumption of equal time with the children”).

354. In Minnesota, Governor Dayton vetoed a bill that would have increased minimum parent time from 25% to 35%. Sasha Aslanian, *Dayton Vetoes Bill That Would Have Given Divorced Parents More Presumed Custody*, MPR NEWS (May 24, 2012), <http://minnesota.publicradio.org/display/web/2012/05/24/joint-custody-bill-veto>, archived at <http://perma.cc/4UAB-R3PJ>. In Florida, the legislature passed an alimony reform bill limiting the availability of alimony and creating a custody presumption that equal time-sharing by both parents is in the best interests of the child absent extraordinary circumstances. On May 1, 2013, Governor Rick Scott vetoed SB 718, citing his concern for the retroactive provision of the alimony changes. Steve Bousquet, *Gov. Rick Scott Vetoes Alimony Bill; OK’s Campaign Finance, Ethics Bills*, MIAMI HERALD (May 2, 2013, 6:01 PM), <http://www.miamiherald.com/2013/05/01/3374846/gov-rick-scott-must-act-by-midnight.html>, archived at <http://perma.cc/X94E-5G68>; Barbara Peters Smith, *Alimony Bill Veto Brings Relief, Outcry*, HERALD-TRIBUNE (May 3, 2013, 2:10 PM), <http://www.heraldtribune.com/article/20130503/article/130509901?template=printpicart>, archived at <http://perma.cc/39H2-6EN7>.

with both parents to the best interest analysis, and Arkansas passed a law in 2013 defining the presumption in favor of joint custody as the “approximate and reasonable equal division of time” with the child by both parents individually.<sup>355</sup> State legislatures also proposed legal presumptions in favor of equal physical custody in Alabama, Colorado, Florida, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New York, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming.<sup>356</sup> FRGs gathered enough

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355. Arizona Senate Bill 1127, which passed in August 2012 and went into effect January 2013, encourages joint parenting by changing the best interests criteria to include maximum time with both parents. The bill was revised before passage to include an exception for abusive parents. Alia Beard Rau, *New Custody Law Begins Jan. 1: Changes Designed to Level Time Spent With Each Parent*, ARIZ. REPUBLIC (Dec. 25, 2012, 9:18 PM), <http://www.azcentral.com/arizonarepublic/local/articles/20121220new-custody-law-begins-jan.html>, archived at <http://perma.cc/9L4P-Q9LA>. Arkansas Senate Bill 901 redefined the joint custody presumption following divorce to include equal parenting time and creating a law that enables a judge to modify joint custody to sole custody if “a parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending joint-custody arrangement.” S.B. 901 (Ark. 2013), available at <http://www.arkleg.state.ar.us/assembly/2013/2013R/Acts/Act1156.pdf>; see also ARK. CODE § 9-13-101(a)(1)(A).

356. S.B. 196 (Ala. 2011), available at <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/PrintFiles/SB196-int.pdf>, archived at <http://perma.cc/7TJ6-95BA> (“[T]he Alabama Children’s Family Act”) (creating a legal presumption in favor of equal physical custody unless the parents have otherwise agreed to a parenting plan outlining a residential schedule or one of the parents is found unfit.); S.B. 15-129 (Col. 2015) (“Preserving the Parent-Child Relationship”) (ordering courts to grant “substantially equal parenting time and access to a child unless it finds such orders are clearly not in the child’s best interest” and requiring courts to grant an expedited hearing to a parent subject to a temporary or permanent protection order requesting modification of provisions related to parenting time.); S.B. 1248 (Florida 2015) (“creating a presumption that approximately equal time-sharing by both parents is in the best interests of the child”); H.B. 624 (Hawaii 2015) (creating a legal presumption “that custody and visitation shall be shared equally” when the parents live in the same county or school district, “unless the court finds that a parent is unable to provide for the best interests of the child or there is sufficient evidence of any past or current family violence between the parents or by a parent in the presence of the child”); H.B. 5425 (Illinois, 2014) (“Dissolution-Parenting Time”) (creating a legal presumption that “the involvement of each parent for equal time and not less than 35% of residential parenting time per week” is in the child’s best interests.). In 2011, Iowa Fathers proposed HF345, a bill creating a rebuttable presumption in favor of joint physical custody if requested by either parent. It passed the House in March 2011. *House Passes Joint Physical Care Legislation*, IOWA HOUSE REPUBLICANS (Mar. 17, 2011), <http://www.iowahouserepublicans.com/house-passes-joint-physical-care-legislation>, archived at <http://perma.cc/Y6GV-MFMY>; see also L.D. 346 (Maine 2015), available at [http://legislature.maine.gov/legis/bills/display\\_ps.asp?LD=346&snm=127](http://legislature.maine.gov/legis/bills/display_ps.asp?LD=346&snm=127), archived at <http://perma.cc/9ZKL-MQ8B> (“An Act to Require Shared Parenting of Minor Children When the Parents Separate”) (stating that “[t]he court shall start with the presumption that shared parenting is in the best interest of the child unless there is proof of domestic abuse, drug use or neglect in the family.”); *Update on Some of the Bills of the 2011 Legislative Session of Interest to Family Law Practitioners*, MD. JUSTICE (Apr. 15, 2011), <http://www.mdjustice.org/node/1697>, archived at <http://perma.cc/6NTB-T5WS> (discussing how

Maryland House Bill 1132 created a presumption that joint legal and equal physical custody is in the best interest of the child); H.B. 0888 and S.B. 0650 (Maryland 2015) (“Family Law-Rebuttable Presumption of Joint Custody”) (creating a rebuttable presumption in favor of “joint legal custody” and “joint physical custody for approximately equal periods of time”). In Massachusetts, HB 1400 was proposed in 2009 to establish a presumption of shared legal and physical custody. Members of FRG Fathers and Families testified at the hearing on the bill. Terri Stoddard, *MA Getting Closer to Equal Parenting via HB 1400*, EXAMINER.COM (Sept. 25, 2009), <http://www.examiner.com/article/ma-getting-closer-to-equal-parenting-via-hb-1400>, archived at <http://perma.cc/WUN4-6CJV>. In 2015, the National Parents Organization found sponsors to propose Massachusetts H.D. 3201 and S.D. 1061, “An Act Relative to Child-Centered Family Law,” to create a legal presumption in favor of shared parenting. *Child-Centered Family Law*, NAT’L PARENTS ORG. BLOG (Feb. 13, 2015), <http://nationalparentsorganization.org/component/content/article/16-latest-news/22190-massachusetts-you-made-a-difference>, archived at <http://perma.cc/BC37-Z9DE>; Rebecca Shiemke, *Presumption of Joint Custody (HB 5267) Introduced in Michigan*, MICH. POVERTY LAW PROGRAM (Fall 2005) (explaining why a presumption of joint physical custody is not in children’s best interests); see also H.B. 4141 (Michigan 2015) (creating a presumption of joint custody, defined as a schedule in which “the child resides alternatively for specific and substantially equal periods of time with each parent,” unless there is “clear and convincing evidence that a parent is unfit, unwilling, or unable to care for the child” and stating that “[a] parent may only be determined to be unfit under this section if the parent’s parental rights are subject to termination . . .”); S.B. 565 (Missouri, 2015) (creating a presumption of “joint physical and joint legal custody of the child to both parents equally in the absence of any compelling circumstances” or parental agreement, erasing child support obligations for parents sharing joint legal and physical custody, and requiring judges to attend three hours of annual training on parental alienation); LB 437 (Nebraska, 2015) (creating a presumption of joint custody in which each parent has at least 35% of time with a child absent parental unfitness or evidence of abuse), available at <http://nebraskalegislature.gov/FloorDocs/104/PDF/Intro/LB437.pdf>, archived at <http://perma.cc/5NXE-8W4K>. Nebraska FRGs supported a similar bill that stalled in the Judiciary Committee in 2013. Joe Duggan, *‘Shared Parenting’ in Child Custody Cases Stalls in Committee*, OMAHA.COM (Apr. 25, 2013, 12:00 AM), <http://www.omaha.com/article/20130425/NEWS/710149993/1707>, archived at <http://perma.cc/SG9E-EPK9>. S.B. 2382 (New York, 2015) (creating a statutory presumption of joint custody unless the court finds that joint custody “would be detrimental to the child.”). New York’s “Shared Parenting Bill,” SB 949 (S00949) was also proposed in 2013. Jeremy Maynard, *Shared Parenting is Parental Equal Rights—Other States Have it But Not NY . . . Yet*, EXAMINER.COM (Apr. 3, 2013, 9:20 PM), <http://www.examiner.com/article/shared-parenting-is-parental-equal-rights-other-states-have-it-but-not-ny-yet>, archived at <http://perma.cc/X64Y-MQUE>. S.B. 610 (North Carolina, 2013) (creating a legal presumption in favor of joint responsibility, defined as “each parent will share as close as possible to equal amount of time with the child, but not less than thirty-five percent (35%) of the amount of time with the child.”). In 2011, Oregon HB 3064, a bill establishing “automatic joint custody and parenting time order upon filing and service of petition in marital annulment, separation and dissolution proceedings,” stalled in committee. *House Bill 3064*, THE OREGONIAN, <http://gov.oregonlive.com/bill/2011/HB3064/> (last visited Feb. 28, 2015), archived at <http://perma.cc/289S-69UE>. It was sponsored on behalf of Matt Minahan of Dads America. *Id.* In 2009, HB 3402 was introduced into the legislative session at the request of Matt Minahan of Dads America, to create a “rebuttable presumption in child custody cases that joint legal custody and joint physical custody are in [the] best interests of children.” *House Bill 3402*, THE OREGONIAN, <http://gov.oregonlive.com/bill/2009/HB3402/> (last visited Feb. 28, 2015), archived at <http://perma.cc/FY8S-KSFC>. The bill was not enacted. *Id.* South Carolina HB 4095, proposed in 2011, would have created a rebuttable presumption of equal parenting time when couples share joint legal custody, unless a party proves by clear and convincing evidence that equal parenting time is not in a child’s best

signatures in North Dakota to add a 2014 ballot measure proposing to create a legal presumption in favor of equal parenting time.<sup>357</sup>

Equal physical custody laws move custody determinations away from a best interests standard looking at the child's needs, relationships, and safety, and instead use a parent's rights framework in which a parent has an absolute right to half (or a "substantial amount") of a child's time absent clear evidence that the parent is unfit.<sup>358</sup> FRGs advocating for equal physical custody presumptions

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interest. Robert Franklin, *SC Shared Parenting Bill Has Governor's Support*, NAT'L PARENTS ORG., (Dec. 22, 2011), <http://www.nationalparentsorganization.org/blog/20886-sc-shared-parenting-bill-has-governor-s-support>, archived at <http://perma.cc/3GCM-VKQ9>. In 2011, South Dakota passed House Bill 1255, before it was narrowly rejected by the state senate. *House Bill 1255*, S.D. LEGISLATIVE RESEARCH COUNCIL (2011), [http://legis.sd.gov/Legislative\\_Session/Bills/Bill.aspx?Bill=1255&Session=2011](http://legis.sd.gov/Legislative_Session/Bills/Bill.aspx?Bill=1255&Session=2011), archived at <http://perma.cc/M2DQ-2U5G>. Tennessee HB 2916 and SB 2881 (2010) initially mandated equal physical custody, but was modified before it was enacted to provide for equal opportunity for each parent to spend time with their children following a divorce. Joe White, *Equal Parenting Time Sponsor Agrees to Compromise*, NASHVILLE PUB. RADIO, (Apr. 13, 2010), <http://nashvillepublicradio.org/blog/2010/04/13/equal-parenting-time-sponsor-agrees-to-compromise/>, archived at <http://perma.cc/TPN5-4QV4>. In 2011, proposed shared parenting bills in Texas included HB 1229, HB 2554, and SB 522. *May 2011 Newsletter*, AM. COAL. FOR FATHERS & CHILDREN (2015), <http://www.acfc.org/e-newsletter-archivemay52011listserv/>, archived at <http://perma.cc/Y3E7-VD77>. H.B. 35 (Utah, 2015) ("Parent-Time Schedule Amendments") (creating a rebuttable presumption that a parent-time schedule with a minimum of 145 overnights is in the best interests of a child). H.B. 220 (Vermont, 2015) ("An act relating to shared parental rights and responsibilities and equal parent-child contact") (directing family courts, "[t]o the extent that is reasonable and in the best interests of the child . . . [to] order shared parental rights and responsibilities and equal parent-child contact, unless physical harm or significant emotional harm to the child, other children, or either parent is likely to result"); H.B. 1110 (Washington, 2015) ("Concerning shared parental responsibility") (creating a "presumption that it is in the best interests of the child to establish a shared residential schedule that provides each parent with substantially equal time and contact with the child"). In 2011, the FRG Dads of Wisconsin supported a shared parenting bill, AB-54 and participated in the hearing. *Equally Shared Parenting Legislation Being Enacted Nationally*, ACFC, <http://www.acfc.org/news/equally-shared-parenting-gaining-national-traction/> (last visited Feb. 28, 2015), archived at <http://perma.cc/L4ZB-MMGW>. H.B. 0137 (Wyoming, 2015) (directing the family court to "enter an order of joint legal or shared custody" unless there is a preponderance of evidence that is not in the child's best interests).

357. North Dakota initiated Statutory Measure #6 (amending the law to "create a presumption that each parent is a fit parent and entitled to be awarded equal parental rights and responsibilities by a court unless there is clear and convincing evidence to the contrary. . . ."). OFFICIAL BALLOT LANGUAGE FOR MEASURES APPEARING ON THE ELECTION BALLOT (Nov. 4, 2014), available at [http://vip.sos.nd.gov/pdfs/measures%20Info/2014%20General/Official\\_Ballot\\_Language\\_2014\\_General.pdf](http://vip.sos.nd.gov/pdfs/measures%20Info/2014%20General/Official_Ballot_Language_2014_General.pdf), archived at <http://perma.cc/79LW-Q3N9>. The measure lost. See *Official Results General Election—November 4, 2014*, ND VOICES (Nov. 17, 2014), <http://results.sos.nd.gov/resultsSW.aspx?text=BQ&type=SW&map=CTY>, archived at <http://perma.cc/EJF9-H7MY>.

358. Terminology varies between states, with some utilizing the more traditional term, "joint custody" to refer to joint physical custody and others using the terms "shared custody" or "equal custody" to refer to physical custody or "parenting time" with children. Shared physical custody, which addresses where a child resides, is different than joint legal custody, which mandates that parents discuss and agree on important legal

use formal equality claims to suggest that a strong presumption in favor of equal or joint physical custody is the only way in which men can overcome the family court's bias against them.<sup>359</sup> They argue that any best interests analysis that includes the history of caretaking or relationship with the child creates an unfair bias against men. FRGs point to the growing number of children raised in single-mother homes as the cause of social ills, and argue that joint physical custody statutes would decrease fatherlessness.<sup>360</sup> Many concede that joint physical custody arrangements would decrease child support payments from fathers, but argue that children need their fathers more than they need access to financial support.<sup>361</sup> In their advocacy of equal custody presumptions, FRGs argue that fathers' rights are, in fact, children's rights, often conflating the two issues.<sup>362</sup>

Legal presumptions in favor of equal physical custody raise many concerns for researchers, children's rights advocates, women's rights advocates, and state bar associations, but they are particularly frightening to IPV advocates, who worry that such parenting schedules would increase danger to IPV victims and their children.<sup>363</sup>

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decisions concerning their children. Though each state bill varies, they all establish a presumption in favor of shared physical custody, in some cases defining shared custody through a minimum percentage of time with each parent between 35% and 50%. See *supra* note 355 for descriptions of various state bills using the terms "joint", "shared", or "equal" custody with different minimum percentages of parenting time.

359. See Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests Standard*, 77 LAW & CONTEMP. PROBS. 69, 77 (2014).

360. See, e.g., Linda Nielson, *Shared Parenting is Preventative Medicine for Kids*, THE CHARLOTTE OBSERVER (Feb. 28, 2015), <http://www.charlotteobserver.com/opinion/op-ed/article11372036.html>, archived at <http://perma.cc/S984-R9VE>.

361. See *supra* note 31.

362. See *supra* text accompanying note 9.

363. A legal presumption in favor of shared physical custody is controversial and generally disfavored by IPV advocates, because of research indicating that joint custody between an abusive partner and a victim is dangerous to victims and harmful to children. See Jaffe et al., *supra* note 37, at 501–03 (providing the following findings IPV abusers following separation in relation to parenting: (1) "[s]pousal abuse does not necessarily end with separation of the parties"; (2) "[i]n extreme cases, domestic violence following separation is lethal, especially in the case of the more abusive relationships"; (3) "[p]erpetrators of domestic violence are more likely to be deficient if not abusive as parents"; (4) "[i]ndividuals who have a pattern of abuse of their partners (ACV) and those who commonly resolve conflicts using physical force (CIV) are poor role models for children"; (5) "[a]busive ex-partners (ACV) are likely to undermine the victim's parenting role"; and (6) "[a]busive ex-spouses (ACV) may use family court litigation as a new forum to continue their coercive controlling behavior and to harass their former partner"); see also Martha Albertson Fineman, *Domestic Violence, Custody, and Visitation*, 36 FAM. L.Q. 211, 213–14 (2002) (noting that researchers have found that "separation is often the most dangerous time for a woman" leaving an abusive partner and describing a batterer's use of the legal system as a new means of control over a victim.); GABRIELLE DAVIS, ET AL., *The Dangers of Presumptive Joint Physical Custody*, in THE BATTERED WOMEN'S JUSTICE PROJECT (2010), available at [http://www.bwjp.org/files/bwjp/articles/Dangers\\_of\\_Presumptive\\_Joint\\_Physical\\_Custody.pdf](http://www.bwjp.org/files/bwjp/articles/Dangers_of_Presumptive_Joint_Physical_Custody.pdf), archived at <http://perma.cc/MKZ9-53GH>

IPV abusers frequently use the legal system and visitation with their children to further abuse their victims and continue their control over their victims' lives.<sup>364</sup> Furthermore, separation increases lethality risks to victims and their children, so custody arrangements immediately following a victim's separation from an abuser may have serious safety implications.<sup>365</sup> Presumptions in favor of equal physical custody could place IPV victims and their children at great risk. Children's advocates point to the negative impact of sustained conflict on children and argue that shared physical custody is not in all children's best interests.<sup>366</sup>

Presumptions in favor of equal physical custody with specific exceptions for IPV are generally rejected by both FRGs and IPV advocates.<sup>367</sup> FRGs resist such exceptions because they fear women

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(summarizing research on mandatory joint physical custody); D. Lee Khachaturian, Comment, *Domestic Violence and Shared Parental Responsibility: Dangerous Bedfellows*, 44 WAYNE L. REV. 1745, 1768-70 (1999); Spielberger, *supra* note 20, at 63-64.

Other groups oppose shared custody, particularly for young children, because it ignores research on attachment and child well-being. Attachment theorists oppose legal presumptions in favor of equal physical custody because they ignore the need infants and small children have for a primary attachment and stability and may cause children developmental challenges. See Jennifer E. McIntosh, *Guest Editor's Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law*, 49 FAM. CT. REV. 418, 420, 422-24 (2011) (introducing and summarizing the issue of the implications of attachment theory on family court custody decisions).

Still others question the assumption that there are any demonstrative benefits from joint custody arrangements, pointing to research that shows physical custody arrangements following a divorce is not a predictor of children's subsequent mental, emotional, or behavioral well-being. See Christy M. Buchanan & Parissa L. Jahromi, *A Psychological Perspective on Shared Custody Arrangements*, 43 WAKE FOREST L. REV. 419, 419 (2008); see also DAVIS ET AL., *supra* note 362, at 12-14 (summarizing research on mandatory joint physical custody). Another critique of shared custody is that it provides a one-size-fits-all solution inappropriate in child custody proceedings. See, e.g., *Custody and Parenting Time: Summary of Current Information and Research*, PARENTAL INVOLVEMENT WORKGROUP SUBCOMMITTEE OF THE STATE FAMILY LAW ADVISORY COMMITTEE 9 (March 2011), available at [http://courts.oregon.gov/OJD/docs/OSCA/cpsd/court\\_improvement/familylaw/CustodyPTR.pdf](http://courts.oregon.gov/OJD/docs/OSCA/cpsd/court_improvement/familylaw/CustodyPTR.pdf), archived at <http://perma.cc/M985-VWM5>.

In some states various interest groups worked together to defeat bills establishing legal presumptions in favor of joint or equal custody. See e.g., *Coalition Formed to Address Concerns About Shared Parenting Measure on November Ballot*, ACLU OF NORTH DAKOTA, <http://www.aclund.org/coalition-formed-to-address-concerns-about-shared-parenting-measure-on-november-ballot.html> (last visited Feb. 28, 2015), archived at <http://perma.cc/J49P-K87J> (describing how the North Dakota Council on Abused Women's Services, the North Dakota Women's Network, Prevent Child Abuse North Dakota, American Association of University Women, the American Civil Liberties Union of South Dakota, and the Family Law Section of the State Bar Association of North Dakota formed the "Keeping Kids First" Coalition to fight a ballot measure creating an equal custody presumption).

364. See Khachaturian, *supra* note 363, at 1769-70.

365. DAVIS ET AL., *supra* note 363, at 12-14.

366. See, e.g., Jaffe et al., *supra* note 37, at 502, 510.

367. See, e.g., DAVIS ET AL., *supra* note 363, at 16 (summarizing research on mandatory joint physical custody).

will lie about IPV in order to avoid sharing equal custody with the fathers of their children.<sup>368</sup> IPV advocates express their concern that IPV victims will be unable to advocate for themselves in family court or fail to meet the evidentiary standard because of the hidden nature of IPV, and consequently be forced into dangerous custody arrangements with their abusers.<sup>369</sup>

In several states in which FRGs were unable to successfully push a shared custody bill through the legislature, they requested special committees or work groups to study the issue. In Minnesota, Connecticut, and Massachusetts, FRG members were appointed to these groups.<sup>370</sup> FRGs used the work groups as an opportunity to encourage members to participate at hearings and voice their support of shared custody.<sup>371</sup> The final reports generally included recommendations

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368. See, e.g., Glenn Sacks, *How to Bring Back Our Fathers*, GLENN SACKS.COM, <http://glennsacks.com/column.php?id=4> (last visited Feb. 28, 2015), archived at <http://perma.cc/ADC8-HEJ5>.

369. DAVIS ET AL., *supra* note 363, at 16–17.

370. Members of the Minnesota Joint Physical Custody Presumption Study Group included representatives from the following FRGs: Minnesota Fathers and Families Network and the Center for Parental Responsibility. MINN. JOINT PHYSICAL CHILD CUSTODY PRESUMPTION STUDY GRP. REPORT 1, N.1 (2009), available at [http://www.mncourts.gov/Documents/0/Public/NewsPostings/MN\\_Joint\\_Physical\\_Child\\_Custody\\_Presumption\\_Study\\_Group\\_Report\\_2009\\_DSprint.pdf](http://www.mncourts.gov/Documents/0/Public/NewsPostings/MN_Joint_Physical_Child_Custody_Presumption_Study_Group_Report_2009_DSprint.pdf), archived at <http://perma.cc/BWN7-NHF6>. The Connecticut Task Force to Study Legal Disputes Involving the Care and Custody of Minor Children included the chair of the Connecticut Executive Committee at the National Parents Organization. Rita Fuerst Adams, *Two Members Appointed to Connecticut Task Force on Child Custody Law*, NAT'L PARENTS ORG. (Sept. 29, 2013), <http://nationalparentsorganization.org/component/content/article/16-latest-news/21303-two-members-appointed-to-connecticut-task-force-on-child-custody-law>, archived at <http://perma.cc/B22B-QXH9>. Massachusetts Governor Patrick appointed members of FRG groups the National Parent Organization and the Fatherhood Coalition to the Working Group on Child-Centered Family Laws, although the member from the Fatherhood Coalition resigned. Rita Fuerst Adams, *Massachusetts Governor's Office Names Ned Holstein to Working Group on Child-Centered Family Laws*, NAT'L PARENTS ORG., available at <http://nationalparentsorganization.org/blog/16-latest-news/20386-mass-working-group> (last visited Feb. 28, 2015), archived at <http://perma.cc/M8HA-NL6C>; Joe U., *Fatherhood Coalition Withdraws from the Governor's Working Group on Child Centered Family Law* (Oct. 11, 2013), <http://www.fatherhoodcoalition.org/newsite/content/fatherhood-coalition-withdraws-governors-working-group-child-centered-family-law>, archived at <http://perma.cc/QN7N-HZYM>.

371. *Illinois Family Law Study Committee*, ILL. FATHERS, <http://www.illinoisfathers.org/illinois-family-law-study-committee> (last visited Feb. 28, 2015), archived at <http://perma.cc/GE7P-YXN9> (Illinois FRG describing the Illinois Family Law Study Committee as “the most substantially influential legislative maneuver to our membership base” and providing contact information for the committee members and information about upcoming committee meetings); Mark Cyzyk, *Could Shared Parenting Become the Presumption in Maryland?*, NAT'L PARENTS ORG. (Oct. 16, 2013), available at <http://www.nationalparentsorganization.org/component/content/article/16-latest-news/21320-could-shared-parenting-become-the-presumption-in-maryland>, archived at <http://perma.cc/D8SM-RZEE> (encouraging FRG members to attend regional public hearings held by the Commission on Child Custody Decision-Making); *Testify on Connecticut Shared Parenting and Child Custody Issues*, NAT'L PARENTS ORG., (Dec. 18, 2013), available at <http://nationalparentsorganization.org/recent-articles/16-latest-news/21419-testify-on>

against a shared parenting presumption change at that time.<sup>372</sup> Not to be deterred, the same FRGs who requested the work groups either contested or ignored the resulting reports and offered new equal custody bills which would fundamentally change family law.<sup>373</sup> Proposed bills for a presumption in favor of equal custody are already on many states' legislative agenda again in 2015.<sup>374</sup>

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-connecticut-shared-parenting-and-child-custody-issues, *archived at* <http://perma.cc/6JYN-KZG7>.

372. The Minnesota Joint Physical Child Custody Presumption Study Group Report, which included members of FRGs, IPV advocates, family law experts, social workers, and citizens, made the following recommendations: that the Minnesota Legislature collect data from current custody and child support court outcomes and that any statutory changes “increasingly promote and allow for the cooperative agreement between the parties,” “consider the individual needs of children and families, including the child’s support system of extended family members, friends, and community,” and “consider the essential importance of the safety of children and parents.” The Study Group also recommended amending the current statute “to make it clear that current law provides no presumption for or against joint physical custody, except in cases of domestic abuse, in which case there would be a rebuttable presumption against joint physical custody” and that “if the Legislature chooses to enact a presumption of joint physical custody, it include a clear definition of the term and how it relates to a determination of parenting time.” MINN. JOINT PHYSICAL CHILD CUSTODY PRESUMPTION STUDY GRP. REPORT, *supra* note 370, at 21; *see also* MD. DEP’T OF LEGISLATIVE SERV., CHILD CUSTODY: BACKGROUND AND POL’Y IMPLICATIONS OF A JOINT CUSTODY PRESUMPTION 11 (2011), *available at* [http://dls.state.md.us/data/polanasubare/polanasubare\\_coucrijuscivmat/Child-Custody.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_coucrijuscivmat/Child-Custody.pdf), *archived at* <http://perma.cc/4CH9-K4PP> (providing “no conclusive recommendation either for or against a presumption of joint physical custody but did recommend that the legislature fund an enhanced data collection project in order to gather more information on child custody patterns.”). In 2013, the Maryland legislature formed the Maryland Commission on Child Custody Decision Making. Among its responsibilities include the evaluation of advantages, disadvantages, and impact on children of joint physical custody. *Maryland Commission on Child Custody Decision Making*, MD. DEP’T OF FAMILY ADMIN. (2013), <http://www.mdcourts.gov/family/cccdm.html>, *archived at* <http://perma.cc/DF6E-A8RF>. The Connecticut Task Force to Study Legal Disputes Involving the Care and Custody of Children included the chair of the Connecticut Executive Committee at the National Parents Organization. SUE A. COUSINEAU ET AL., TASK FORCE TO STUDY LEGAL DISPUTES INVOLVING THE CARE & CUSTODY OF MINOR CHILDREN: REPORT AND RECOMMENDATIONS 9 (Jan. 31, 2014), *available at* [http://www.cga.ct.gov/jud/tfs/20131001\\_Task%20Force%20to%20Study%20Legal%20Disputes%20Involving%20the%20Care%20and%20Custody%20of%20Minor%20Children/TF%20to%20Study%20Legal%20Disputes%20Involving%20the%20Care%20&%20Custody%20of%20Minor%20Children%20Report%20&%20Recommendations.pdf](http://www.cga.ct.gov/jud/tfs/20131001_Task%20Force%20to%20Study%20Legal%20Disputes%20Involving%20the%20Care%20and%20Custody%20of%20Minor%20Children/TF%20to%20Study%20Legal%20Disputes%20Involving%20the%20Care%20&%20Custody%20of%20Minor%20Children%20Report%20&%20Recommendations.pdf), *archived at* <http://perma.cc/KF4M-74SM> (failing to recommend a presumption for equal physical custody after studying the issue and voting against it). *But see* Adam W. Lasker, *LawPulse: Is a Family-Law Overhaul on the Way?*, 100 ILL. B. J., 458 (2012), *available at* <http://www.isba.org/ibj/2012/09/lawpulse/isafamilylawoverhaulontheway>, *archived at* <http://perma.cc/G35J-SMX4> (Illinois Family Law Study Committee unanimously recommending “that Illinois should adopt a statutory presumption that it is in a child’s best interest to spend at least 35 percent of their time with each parent”).

373. *See, e.g.*, MINN. JOINT PHYSICAL CHILD CUSTODY PRESUMPTION STUDY GRP. REPORT, *supra* note 370, at 21.

374. Jonathan Ellis, *Shared Parenting Could Be New Divorce Outcome*, USA TODAY (Jan. 27, 2014, 8:29 PM), *available at* <http://www.usatoday.com/story/news/nation/2014>

## CONCLUSION

FRGs throughout the country experienced some success in re-framing the public policy discussion about IPV by claiming the right to be included in family law reform discussions focused on IPV. By creating and promoting their own research, they are providing the “facts” they need to support their goal of changing the focus from IPV victim safety to false allegations and parental alienation. By utilizing formal equality language and identifying themselves as a civil rights movement, FRGs distract the public and politicians from their misogynist undertones and narratives and threaten decades of IPV reform in family law.

IPV laws and services are too important to place in the hands of those who deny or minimize the impact of IPV on victims and children. Likewise, debates about family law reform must be informed by research that has some claim to legitimacy. The uncritical acceptance and dissemination of research produced by FRGs evidences deeper narratives in our society which warns that most women alleging IPV or child abuse are liars and that family courts regularly engage in gender bias against men. These narratives must be acknowledged and addressed before we can engage in a healthy debate about the role of the government in IPV, the role of state courts in custody determinations, and what custodial arrangements are in the best interests of children.