

9-2017

The Fight for Legal Recognition of Same-Sex Parenting Rights in The United States

Nancy Tresil

The Graduate Center, City University of New York

[How does access to this work benefit you? Let us know!](#)

Follow this and additional works at: http://academicworks.cuny.edu/gc_etds

 Part of the [Law Commons](#)

Recommended Citation

Tresil, Nancy, "The Fight for Legal Recognition of Same-Sex Parenting Rights in The United States" (2017). *CUNY Academic Works*.
http://academicworks.cuny.edu/gc_etds/2426

This Thesis is brought to you by CUNY Academic Works. It has been accepted for inclusion in All Graduate Works by Year: Dissertations, Theses, and Capstone Projects by an authorized administrator of CUNY Academic Works. For more information, please contact deposit@gc.cuny.edu.

THE FIGHT FOR LEGAL RECOGNITION OF SAME-SEX PARENTING RIGHTS IN THE
UNITED STATES

by

NANCY TRESIL

A Master's thesis submitted to the Graduate Faculty in M.A. in Liberal Studies in partial
fulfillment of the requirements for the degree of Masters of Arts, The City University of New

York

2017

© 2017

NANCY TRESIL

All Rights Reserved

THE FIGHT FOR LEGAL RECOGNITION OF SAME-SEX PARENTING RIGHTS IN THE
UNITED STATES

by

NANCY TRESIL

This manuscript has been read and accepted for the Graduate Faculty in M.A. in Liberal Studies
in satisfaction of the thesis requirement for the degree of Master of Arts.

Date

Monica Varsanyi

Thesis Advisor

Date

(Executive officer)

Elizabeth Macaulay-Lewis

THE CITY UNIVERSITY OF NEW YORK

ABSTRACT

The Fight for Legal Recognition of Same-Sex Parenting Rights in The United States

by

Nancy Tresil

Advisor: Monica Varsanyi

This thesis focuses on how same sex couples within the United States claim specific parenting rights and to what extent can law promote social change. Since certain beliefs, values, and behaviors are accepted by some cultural groups or organizations in a society, many same sex couples believe that they should obtain an equal amount of legal entitlement instead of being limited or restricted from certain rights. The theoretical approach incorporates the concepts of legal consciousness and the importance of legal recognition. Legal consciousness is a form of legal awareness and empowerment of people involving issues in regards to the law. The concept additionally focuses on whether or not people interact with the law and decide if they wish to either engage or even disengage themselves in certain practices. By integrating the exploration of social movements, I then include examples of how such movements seek to rely on litigation and are formed in order to shift public opinion and policies that are in favor of same-sex couples parenting rights. Next, I indicate in what ways social movements can promote economic, legal, and social change for same sex couples since individuals have the ability to share and reflect their ideas about the law through several organizations and legal practices. Last, I incorporate the

DeBoer v. Snyder case and describe how Michigan's ban on same-sex marriage was overturned, allowing same-sex couples to legally parent and jointly adopt children. My conclusion explains ways in which social change, acceptance, and legal recognition can occur for same-sex couples who fight for specific parenting rights.

keywords: LGBT, same-sex parenting, same-sex marriage, legal consciousness, legal recognition, social movements

TABLE OF CONTENTS

ABSTRACT	iv
CHAPTER	
1. INTRODUCTION	1
2. LITERATURE REVIEW	15
3. DEBOER V. SNYDER CASE STUDY	29
CONCLUDING ANALYSIS	35
WORKS CITED	41

Chapter 1

Introduction

Many same-sex couples do not receive full protection of the law when it comes to legal parenting rights. Before same-sex marriage became legal in all 50 states in 2014, same-sex couples were denied certain rights and privileges that were granted to heterosexual couples. Various restrictions were placed on familial structures and although many same-sex couples made the decision to adopt or form their own family through foster care, this alternative did not fully grant them the access to receive equal parenting rights. According to Teresa LeAnn Reeves, author of *The Impact of Legal Status on Sexual Minority and Parental Stress for Parents in Same-sex Relationships* (2011: 3), there is a discrepancy with regards to legal status for same-sex couples who make the decision to become parents. Since the law does not legally recognize same-sex parenting in every state, many same-sex couples believe that their relationship is only acknowledged by their close associates. Same-sex couples, who experience legal restrictions as parents, often face stressors in relation to their sexual orientation (p. 4). These particular stressors include feeling discriminated, experiencing guilt due to the choice of their sexual preference, feeling stigmatized by others, and encountering psychological distress.

Research Question

Some states, such as Alabama, Kansas, Kentucky, Nebraska, North Carolina, and Wisconsin, only allow one legal parent in same-sex couples, even if two people share the same values, parenting roles, or consider themselves co-parents. In addition, many other states such as Texas, Alabama, Virginia, Michigan, North Dakota, and South Dakota do not allow unmarried same-sex couples to adopt, resulting in the inability to have second-parent adoptions. However,

if same-sex couples are considered legally married, then both spouses are granted the right to become legal parents. In other words, these states do not allow second-parent adoptions if same-sex couples are not considered legally married. Some concerns have been expressed by courts that children being raised by same-sex couples would be negatively influenced in ways that could affect their psychological development, self-esteem, and even peer or social relationships. Particularly, after reaching adolescence, critics of same-sex parenting argue that children may be vulnerable to being teased or harassed, and face challenges that other children of heterosexual couples do not experience. On the other hand, many same-sex couples do not agree with these views and do not want to have fewer parenting rights than heterosexual parents.

My research question states the following: If many individuals recognize the limitations of law, especially within the same-sex community, why do they believe that it should still be a fundamental component that should protect their parenting rights? There is a need for the study of same-sex parenting, specifically because scholars have mainly focused only on same-sex marriage and the social, political, and religious issues that accompany this institution. When seeking to understand legal rights related to same-sex parenting, my research indicates that the concept of same-sex marriage must also be addressed since parental rights are not always granted to same-sex couples. Same-sex couples who are not married and make the decision to become parents either jointly through adoption, or through foster care are not always recognized by the law. Within my studies, I focus on the experiences that many same-sex couples face as they fight for the parental rights that heterosexual couples acquire. My research additionally predicts that many same-sex couples lean more toward obtaining legal recognition by being involved in social movements since doing so may promote social change and societal acceptance.

Same-Sex Joint Adoption Issues

Many same-sex couples find adoption as a culmination of their attempts to receive and be granted legal recognition and parenting rights. Mishra (1996: 1) mentions that in the previous years, many prejudices and stereotypes have lead adoption agencies to have great discretion with regards to their placement decisions. Some agencies have even bypassed same-sex couples who wish to jointly adopt and prefer only married heterosexual couples. As a result, many lesbian and gay applicants often hide their sexual orientation from adoption agencies and courts, in order to successfully adopt (p. 1). Although every state allows adults to individually adopt, some states do not allow joint adoption for same-sex couples. As a result, same-sex couples are not entirely allowed to enjoy the same duties that heterosexual parents acquire nor do they believe that they are allowed obligations to their children. There are many instances where only one legal parent has the ability to make imperative decisions leaving both parents within a same-sex couple feeling that the legal process has entirely ignored their responsibility and reality as both same-sex couples and parents. Mishra explains that "the agency preference for legally married heterosexual couples, which is not required by statute, can often be a veil for anti-gay prejudice".

According to Mishra (1996: 1), there are three stereotypes as to why various adoption agencies prefer heterosexual married couples as opposed to unmarried same-sex couples, which include the following: 1). Home stability does not always occur since lesbians and gay men do not form long-term committed relationships. 2). Same-sex couples are more likely than heterosexual couples to abuse children sexually. 3). Compared to children who are raised by heterosexual couples, children raised by lesbian and gay parents are more likely to turn out lesbian or gay themselves. There is also the belief that children who are raised by lesbian and gay couples often grow up to experience certain anti-gay biases and social stigmatization.

The ability for same-sex couples to become adoptive or foster parents are limited due to stereotypes and lack of protection by the law. Although adoption laws vary by state, the main concern of most policies is to make decisions that would benefit the best interest of the child/children. Mishra mentions that while some states have moved forward to recognize the relationship between most same-sex couples, allowing individual or joint adoption to occur, other states deny and prohibit the possibility for same-sex parent adoption (p.1). The author states, "In the absence of coherent legislative guidance, courts have evaluated adoption petitions according to the principle that "the state's primary concern is to promote the welfare of children," and have allowed gays and lesbians to adopt" (p.1). Because of all this controversy, the focus is still on litigation relying on same-sex marriage as the root of same-sex couples gaining legal parental status.

Parenting Issues for Same-Sex Couples

According to Bateman (2015), since the 1990s, within the United States, same-sex parenting has increasingly become visible prompting many scholars to observe studies of the LGBT community experiencing a "baby boom". Some states however permit foster parenting but prohibit adoptive parenting, while others prohibit both, allowing only married heterosexual couples to adopt. There are some cases where judges may deny lesbian mothers the right to have custody of their child since many judges typically rely on stereotypes and prejudice to rule out their decision (p. 3). Bateman mentions how judges "tend to view homosexuality as unnatural or sinful and the idea of a lesbian parenting a child as abnormal and damaging" (p. 3). There are even some cases where lesbian mothers prove to be caring and competent parents but are still denied the rights to have custody due to the fear that the child's social development would be negatively affected. As a result, same-sex parents typically face extreme challenges with regards

to having children than heterosexual couples. Additionally, same-sex couples have to take more precaution and be more thoughtful as to how these children are cared for in a cultural and legal climate that often are contentious with the interest of same-sex parenting.

When addressing gay fathers, very little research has been done focusing on the issues that gay men face. Bateman expresses that scholars believe that the reason behind the limited research is because fathers are viewed as less important parents, who tend to be "anti-child or anti-family" (p. 3). Instead, more studies have been conducted focusing on gay men who were in previous heterosexual relationships and had children instead of gay men who become fathers to partners who already have children or plan on having children. Fathers who were in previous heterosexual relationships and had children usually hide their sexual orientation from their children or ex-wives in order to maintain their visitation rights. The author mentions that there is no research which indicates that children experience any negative impact due to their father's sexual preference (p. 3). However, fathers who are open about their identity tend to live happier lives when they receive support from other gay men and their biological families. Studies on gay fathers show no negative impact on the relationship between the father and child, and that they actually work hard to increase family stability. Bateman explains that gay men who wish to adopt face the challenge of being ineligible by certain adoption agencies as well as the possibility of legal complications when seeking women who can serve as their surrogate. Once same-sex couples weigh their options and actually become parents, the difficulty of securing their parental rights still remain, and in some states, are even deemed impossible.

As the state law for same-sex parents continue to vary, there is still an underlying issue that legal rights are not granted. Bateman argues that as a result, many same-sex partners will face custody battles that will negatively result in poor decisions and affect non-legal same-sex

parents. Although several obstacles and challenges continue to arise, same-sex couples persistently find ways to form their own familial structure. The author states, "and in spite of the legal issues, it is fair to assume that gay men and lesbians will continue to find creative ways to parent and continue to create their own versions of family" (p. 4). Various same-sex couples make the decision to have children for many of the same reasons heterosexual couples do. Some may believe that they want to create a closer bond with their partner and share the responsibility of raising a family. Others may want to feel a connection toward the next generation and take the role of nurturing another life, while some may even wish to change the lives of children who have been mistreated or even abandoned by their own biological parents. Nevertheless, parenting options have increased during the last several years but continue to remain challenging for several parts of the United States.

Non-Legal Same-Sex Parents

Within the Lesbian Gay Bisexual Transgender community (LGBT), same-sex parents who are not acknowledged by the law may experience a higher degree of stress than legal same-sex parents who are acknowledged (Bateman 2015). In states where same-sex parenting is not legal, many parents within same-sex couples are restricted to make certain decisions since the law does not provide full protection to both parents and only considers one parent (usually the one who has a biologic relation to the child/children) as a legal parent. Some of the decisions that are restricted from the non-legal parent are medical arrangements and the ability to provide health insurance. Anxiety may additionally be a stressor since the relationship between the legal and non-legal parent is dependent on how well it is maintained in order for the non-legal parent to be consistently involved with their child/ children. According to the article, in comparison to heterosexual couples, studies have shown that those same-sex parents who have been

marginalized, condemned, or rejected have expressed higher levels of stress (p. 6). As a result, same-sex parents who are not legally acknowledged by the law undergo more parental stress than parents who are legally recognized.

Sexual Minority Stress

One of the main stressors that various members within the LGBT community experience is sexual minority stress. According to Reeves, sexual minority stress often occurs when there are stressors related to one's preferred sexual orientation and it may even result in psychological distress (p. 4). Research shows that many same-sex couples have experienced sexual minority stress due to discriminatory laws resulting in limited parenting rights. The "coming out" process has also reflected on being a reason behind sexual minority stress since many same-sex couples believed that they were forced to be open about their sexual orientation in order to promote legitimacy. Reeves mentioned how the process of disclosing one's sexual orientation allows for the ability to obtain certain legal documents needed for family protection (p. 18). However, doing so may additionally increase a same-sex parent's sexual minority stress since many experience different levels of comfort while disclosing their sexual orientation. In some cases, depending on the area in the United States, a same-sex parent may also be at risk of losing custody of their own child if they are known to fall under the category of being a sexual minority. As quoted by Reeves on page 16,

Given the restrictions to full social citizenship through family rights and responsibilities, it is not surprising that sexual minority individuals and couples face specific stressors due to incomplete social and legal rights and responsibilities that define family structures and obligations. (Weber, p. 608).

These particular stressors, including sexual minority stress, affect the ways that many same-sex couples, particularly those who are parents, try to live their daily lives.

Family and Social Support

Ways in which sexual minority stress can be alleviated is through family and social support. Reeves indicates that increased family and social support reduces stress levels for same-sex couples (p. 22). Although these types of supports are important factors for the LGBT community, many believe that recourses are limited since they feel that the support received mainly comes from friends or partners instead of family members. Particularly focusing on non-legal parents, these individuals report that they receive little support during their role as parents, which does not necessarily reduce the stress levels experienced compared to same-sex partners that are legally considered parents (p. 24). Both social and family support are extremely great benefits for same-sex couples. However, many believe that receiving such support would still not change the negative views and outcomes of not having the ability to receive certain rights and privileges as parents. In Reeves' research, she concluded that "regardless of the degree of social support same-sex parents receive, same-sex parents without legal rights will most likely carry the burden of worry about their rights and privileges as a parent" (p. 52). One of the ways in which non-legal parents demonstrate that they deserved to receive equal parenting rights is by proving how much of a good parent they are. These non-legal parents feel the need to justify their parenting skills in order to gain acceptance as well as legal recognition (p. 6).

In an idealized familial structure, the conventional notion of a parenting family consists of two parents of each gender, who are romantic partners that live under the same roof. These parents are often biologically related to the child/children they raise and are legally recognized by law as a family. The law recognizes this model as a strategy that would benefit the

development and well-being of each child. However, this model is not necessarily applied to many same-sex couple families since familial structures are not always consistent in same-sex couple relationships. In some cases, there can be more than two parents that identify themselves as gay or lesbian. Amongst same-sex parents, sometimes there are only two men who are included in the family structure, and at other times, there are only two women. There may even be situations where same-sex parenting consists of both men and women who are not romantically involved with one another but are only present to benefit the child/children. Some same-sex families can also intentionally accommodate more than one household while others do not. Furthermore, often there is at least one biological parent, where the other does not have any biological relation to the child/children at all. Regardless of the same-sex couple's views and beliefs of their familial structure, there is usually a parent-child relationship that the law does not recognize or protect.

Research on Health and Child Well-being

Laws did not protect the parenting rights of same-sex couples on the belief that same-sex parenting negatively affected the health and well-being of a child. Research conducted by analyzing the children with same-sex parents does not prove or show any negative consequences affecting the well-being or health of the child (Gates 2015: 75). For example, the following variables have been studied, which revealed the same measures for a child with parents of the same-sex and for a child with heterosexual parents: “academic performance, cognitive development, social development, psychological health, early sexual activity, and substance abuse” (p. 75). As a result of these studies, The United States Supreme Court no longer accepts arguments that same-sex parenting affects the well-being and health of a child. However, these same-sex couples continued to yearn for legal recognition in order to gain the respect and

parenting rights that they deserved. Additionally, there was the notion that same-sex couples should gain the right to legally marry, since doing so would form family stability that would benefit not only the children but the couple as well.

Importance of Marriage and Same-Sex Parenting

There is substantial evidence indicating that marriage is a union between two individuals where stability is promoted between the relationship and family (Gates 2015: 75). In addition to stability, both social and financial benefits contribute not only to the familial structure, but also to the children that are being raised by married parents. A substantial amount of evidence has shown that same-sex couples have the desire to marry since many share the same beliefs and values of marriage as heterosexual couples. Before marriage or legal recognition became available widely in the United States for same-sex relationships, the Pew Research Center revealed that about 56% of unmarried gay men and 58% of unmarried lesbians indicated their desire for marriage and believed that marriage would not only benefit their familial structure, but additionally provide them with the legal recognition and protection as parents (2010). The Pew Research Center also focused on other reasons why the LGBT community considered marriage and their response was no different than from individuals within the heterosexual community. The desire for “love, companionship, making a lifelong commitment,” and the achievement for legal rights and benefits were the most considerable reasons why the fight for marriage was important (p. 75).

Social Movements and the LGBT Community

Supporters of the LGBT community influenced advocates to be a part of the social movement as various organizations went from being small associations of the LGBT community to one of the largest civil rights advocacy groups. These supporters advocate for the rights of

sexual minorities and celebrated gay pride through festivals, pride parades, and rallies. According to Kane, author of *The Influence of the Gay and Lesbian Movement on the Decriminalization of Sodomy* (2000), the main goal of a social movement is to influence cultural and public opinions in order to implement government change or policy (p. 11). In order to increase legitimacy, the LGBT community has relied on mainstream media to convey certain messages related to same-sex parenting, child custody, same-sex marriage, health benefits, and equal rights. The media also covered a number of events such as protests, lobbying, and litigation. Additionally, social movements have been known for changing rules and policy due to cultural conflict. Other LGBT civil rights supporters were formed in the early 1960s that all contributed advocates to the LGBT movement.

These LGBT organizations that were formed fought for both civil and women's rights, which sparked larger numbers of advocates supporting the lesbian and gay community (Kane 2000: 35). Three of the largest movements that began in the United States in the early 1970s were the Human Rights Campaign Fund, the National Gay and Lesbian Task Force, and the Lambda Legal Defense and Education Fund. Even today, these three organizations are still known to be the most active and largest civil rights organizations for the lesbian and gay community. Kane stated, "These organizations addressed a large variety of issues of interest of lesbian and gay including professional development, civil rights, religion, and emotional support" (p. 36). As a result of various organizations throughout different states, more resources became available where there was a greater likelihood of laws being changed.

Mobilization theory has shown that improving movement emergence and maintaining preexisting ties through other organizations and networks were fundamental aspects of social movements (p. 36). Sharing movement activity and communication with other groups may

influence the ability to impact government and public policy. Kane mentioned, “the stronger the ties within the homosexual community, the easier it is to mobilize the resources necessary for success, such as money and leaders” (p. 37). Multiple involvement and support systems initiates success and achievement for the LGBT community. As political opportunity, activists, and organizations collude, there is an increase in the likelihood of a social movement’s success. Certain same-sex parenting supporters may additionally influence the policy system and can take advantage of a system that is open to societal views and influences.

Legal Consciousness

According to Hull (2016: 551), legal consciousness describes the way individuals think, understand, and use the law. Legal consciousness is an important aspect of same-sex parenting studies because many same-sex parents express their views about the law and the need for legal recognition. Many same-sex couples make the decision to be a parent outside the law and express the experience of facing legal disadvantages as parents. Before same-sex marriage became available to all 50 states, as a social movement goal, various respondents within Hull’s research expressed their desire to receive full legal recognition in order to marry and be able to gain full protection and support in parenting. As Connolly (2002: 328) introduces the relationship between the law and same-sex parents, the author mentions that legal consciousness is typically seen as the ways in which people make sense of the law and certain legal institutions.

When focusing on the law, many may question: in what ways can the law be invoked? What type of self-conscious opinions do people make that allow them to make decisions of how they interact with the law, and how do people allow the law to define their roles as both individuals within their social lives. Legal consciousness becomes the center of attention in regards to same-sex couples and parenting as gay and lesbian families have to make the

conscious choice of whether to ignore, engage, or challenge the law as they are aware of the risks of the consequences. The author states, “gay and lesbian families are overwhelmingly conscious of the role of law in legitimating relationships between adults based on sexuality, and the relationships between parents and children” (Connolly: 2002: 328). When referring to legal consciousness, two questions that may arise are the following: under what circumstances can the law be invoked? Can the law be seen as a vehicle that promotes social change resulting in how people make sense of the law?

DeBoer v. Snyder

In a lawsuit filed in Michigan in 2012 by a lesbian couple, April DeBoer and Jayne Rowse, both individuals fought to marry in order to receive the right to jointly adopt their children. However, the state of Michigan restricted second parenting adoption, resulting in the inability for both parents to be considered legal and recognized by the state law. This case study demonstrates the fight for same-sex parenting and incorporates social movements that were able to change the state law’s policy that allowed same-sex couples to marry. Legal consciousness is also incorporated within this case study since the same-sex partners express their views on the underlying issue with regards to the law. Additionally, this case conveys an excellent example of how the law is not fixed since social change may eventually occur through legal recognition and social movements. It is important to look at the DeBoer v. Snyder case because it was a fundamental aspect regarding the issues of same-sex parenting. This particular case brought the first challenge to the Michigan laws and the state’s ban on adoption by same-sex couples. Since same-sex marriage was previously banned, the ability for same-sex couples to jointly adopt did not exist.

For DeBoer and Rowe, marriage was not their only objective. This couple felt that they were being punished by the law since they were denied the right to marry and had the inability to support their children emotionally and economically as jointly adoptive parents. The DeBoer v. Snyder case is a representation of many same-sex couples who fought for same-sex parenting rights. Although Michigan allowed for one person to legally adopt a child, one of the main issues that DeBoer and Rowe feared was not having protection by the law to ensure that the children would remain with the non-legal surviving parent if for whatever reason, anything would happen to either parent. Lastly, the case demonstrates how the support of allies within social movements became an influential factor of the court's decision of legalizing same-sex marriage allowing for same-sex couples to jointly adopt children.

Chapter 2

Literature Review

Many same-sex couples within the United States fight to earn specific parenting rights since they believe that they should receive the same benefits and privileges that heterosexual couples acquire. They want to be able to practice their own freedom and beliefs equally without being discriminated. Of course, within any given society, many individuals use the law in order to promote justice and social change. However, one may question, to what extent should individuals within the LGBT community be able to practice their own beliefs until the law intervenes. Particularly focusing on same-sex couples, should the law be able to regulate relationships and family structures notably when these individuals fight for parental rights? For example, if there are strict limitations, in what ways can the law still be a fundamental component where familial rights of same-sex couples are protected?

The goal of this chapter is to review the sociolegal literature on same-sex parenting. First, I explore the relationship between culture and law in order to express the values, opinions, ideas, and beliefs that many same-sex couples hold with regards to parenting rights and the legal system. Next, drawing upon the legal consciousness literature, I discuss the ways in which same-sex couples conceptualize, engage, or avoid the law as many are faced with legal constraints. Next, I demonstrate ways in which same-sex couples experience limitations and restrictions, with the absence of legal recognition negatively affecting their parenthood and familial structure. Last, I introduce the role of social movements and give examples of how same-sex couples use this method in order to promote legality, social change, and societal acceptance. Through these social movements, the LGBT community advocate for legal recognition in the hope of receiving societal awareness, legal protection, and any possibility of equal parental rights.

Importance of Culture within any given Society

Culture may be viewed as the way of life involving one's values, beliefs, experiences, and behavior by a large or shared group of people. In *Culture in Action: Symbols and Strategies* (1986), Ann Swindler argued that "culture influences action not by providing the ultimate values toward which action is oriented, but by shaping a repertoire or "tool kit" of habits, skills, and styles from which people construct "strategies of action"" (p. 273). Culture may generally include a systematic tradition that is passed along from one particular generation to the next, where traditional ideas and attached values influence the members of one group to another. Depending on one's actual culture or group, individuals may think and behave differently. However, members within the LGBT community share many of the same values and beliefs as heterosexuals. Culture becomes an important aspect of the LGBT community because these individuals represent a broad spectrum of the United States' population where similarities far outweigh differences as compared to heterosexuals. In her article, Swindler mentioned that during a settled cultural period, action is influenced by culture independently, where as in an unsettled cultural period, actions are governed through explicit ideologies (p. 273). The author states,

The symbolic experiences, mythic lore, and ritual practices of a group or society create moods and motivations, ways of organizing experience and evaluating reality, modes of regulating conduct, and ways of forming social bonds which combine resources for constructing strategies of action (p. 184-185).

She mentioned that culture may be viewed as a distinction amongst group members and that the term culture has been defined and used in many improper ways, particularly, to explain the use of behavior amongst many social groups. It is important to look at the LGBT community culture

because many individuals do not view LGBT as a normative culture causing several stigmas and discrimination, since there is a lack of knowledge when they are being compared to a heterosexual community. As a result, without formal acknowledgement, legal recognition and social change may not occur enabling equal rights for the LGBT community.

Integration of Law and Policy

The law can be viewed as a social institution that enforces a system of rules in order to govern the behavior of certain social groups in which many societies implement differently. According to McCann (2006: 21), many realists and behaviorists identify law as the concept that “official institutional actions cause direct, immediate, tangible effects on targeted behaviors”. The law in this degree is implemented and enforced by legal institutions and officials. McCann went on to explain that law is a significant concept since it shapes how people learn and live in a society and argued that certain legal constructs shape our own capacities in order to create both social and political possibilities. It is important to conceptualize law with regards to the LGBT community because it is significantly important to understand aspect of how individuals learn to live and behave within any given society. Like any other heterosexual group, members within the LGBT community have specific goals and interests that may include structural and familial relations with others. Often legal constraints result in limited rights. However, there are possibilities of the law interfering in order to settle disputes or enforce legal practices that create social change. If the law does not legally recognize the relation between same-sex couples with regards to parenting, then equal protection for same-sex parents are not necessarily granted. The author states, “law is also understood to be a resource that citizens utilize to structure relations with others, to advance goals in social life, to formulate rightful claims, and to negotiate disputes where interests, wants, or principles collide” (p. 21-22).

According to McCann (2014: 19) legal mobilization should also coincide with the question of: in what ways does the law matter or not matter:

Legal mobilization does not inherently disempower or empower citizens. How law matters depends on the complex, often changing dynamics of the context in which struggles occur. Legal relations, institutions, and norms tend to be double-edged, at once upholding the larger infrastructure of the status quo while providing limited opportunities for episodic challenges and transformations in that ruling order (p. 19)

The author stresses the importance of legal mobilization and mentions that it is a litigation effort in order to promote social change and influence policy behavior (p. 19). Legal mobilization should not simply be focused on on behavior, but more so of the power of law and how one constructs its meaning. Three reasons that serves the best purpose for legal mobilization are the following: 1. Legal mobilization facilitates the ideas and contributions of legal norms that advocate for social change 2. It contributes various elements to political process models indicating the achievements or failures of social movements 3. It conveys legal constraints and limited opportunities (p. 22). McCann argues that law is only mobilized when there is a want or desire that is "translated into an assertion of right or lawful claim" (p. 22).

In the book *The Common Place of Law* (1998), Ewick and Silbey introduced the concept of legal consciousness by presenting three ways in which people approach the law: "before the law," "with the law," or "against the law" (p. 25). With reference to legal consciousness, the authors focus on the importance of legality. According to them, legality is a form of social interaction that is embedded both in and out of daily activities (p. 17). Legality is additionally based around the social interactions of law and is shaped by behavioral enactments. Ewick and

Silbey argue that individual's legal consciousness is based on cultural practice, and describes the ways in which ordinary people understand, conceptualize, and are aware of the law. In the book, there are three common narratives gathered in the stories that are told about the way people perceive the law. One particular narrative focuses on the idea that the law is a game that is played on its own terms where different rules apply, different people and roles operate, and different resources or capabilities count. The second narrative is based on the idea that the law has a set of rules that one can manipulate to their own advantage. Lastly, the third narrative focuses on the idea that the law is absolute or fixed and cannot change regardless of whether it is agreed or disagreed upon.

These three categories are considered to be cultural schemas or frameworks that develop the importance of culture and legal consciousness. "Before the law" may be seen as people who are aware but avoid certain powers, since there may be a possibility or an outcome of losing control of a particular situation. The authors state, "before the law" legality is envisioned and enacted as if it were a separate sphere from ordinary social life" (p. 47). Individuals may also express their own frustration by understanding and perceiving their own powerlessness.

As the authors discuss the schema "with the law," they explain how people use the law in order to have potential to gain power in pursuit of one's self interest. Ewick and Silbey emphasize that this type of legal consciousness allows for one to elaborate on their own perspective of what seems to be the "truth" about the law. The authors state, "It is an arena of competitive tactical maneuvering where the pursuit of self-interest is expected and the skillful and resourceful can make strategic gains" (p. 48).

Lastly, "against the law" is a schema in which the law or legality is completely avoided. It is also a method where legal and disciplinary power is resisted. Ewick and Silbey acknowledge

that there is potential for power by those who are considered to be “powerless,” but in this case, anything dealing with legality is avoided. Many people have particular approaches to the law and convey this type of legal consciousness as a form of power that is resisted indirectly; however, others use it as a form of revenge. The authors state, “These instances of resistance are recounted with humor and passion so that the part of the resistance inheres to the telling of the story and passing on the message that legality can be opposed, if just a little” (p. 49).

Although the authors do not specifically discuss same-sex couples, one may argue that these three forms of legal consciousness mentioned can presently relate and be viewed within the beliefs and practices of same-sex couples before same-sex marriage became legal. Ewick and Silbey's use of the three schemas are essential to my research because many same-sex parents have certain approaches to the law as well. As my research questions why same-sex couples rely on the law although there are limitations, we may consider how individuals perceive the law as a form of reliance to protect their rights as they already face difficult challenges with regards to parenting. Since the authors mention the importance of legality being shaped by behavioral enactments, one may question that the discrimination, prejudice, and negative stereotypes that many same-sex parents face are embedded in their patterns of behavior. Many same-sex couples additionally seek to rely on the law in order to protect themselves against myths and stereotypes that deny them the parenting rights needed.

Legal Consciousness and Views about the Law

There are certain legal constraints when pertaining to the rights of same-sex couples with regards to parenting. According to Amanda Baumie and D'lane Compton's *The State of the Law for Same-Sex Parents* (2015), formal laws and regulations will eventually affect the behaviors and decisions within a society; however, “the law does not “matter” in the same way across all

aspects of our lives” (p. 19). The authors mention that although there are certain legal constraints, same-sex couples will still find their way to have children. Baumie and Compton argue that formal law is present when it comes to marriage, adoption, surrogacy, and fostering. However, many same-sex couples are apprehensive to the role of the law when it comes to their own individual families. In some cases, state laws prohibit lesbian and gay individuals from adopting children both individually and jointly. Many are even unable to adopt the children of their own partners. Before same-sex marriage became legal, rights given to heterosexual couples were not granted to same-sex couples since many states believed that same-sex parenting was unconstitutional.

Many same-sex couples rely on the law in order to make certain decisions about familial structure and parenting. These couples view the importance of legality as they either reject, accept, or adjust to the law causing an opportunity to understand and examine ways in which individuals think about the law in their everyday lives. Legal consciousness has impacted the views of many members within the same-sex community. For example, in Baumie and Compton (2015: 24), the authors state, “living in a state with negative LGBT family laws can generate obstacles to becoming a legal parent, and can also affect whether LGBT individuals in those states will approach formal or informal law as something antagonistic or helpful for their families” (p. 24). Given the different variations for same-sex couples in a legal climate, Baumie and Compton argue that negative views on the law may shape the ways parents within the same-sex community experience their parenthood. The authors additionally believe that affirmative legal rights can influence family outcomes. They argue, “In states where the legislature or the courts have provided positive familial rights for same-sex partners, the way LGBT individuals understand their legal obstacles and the means of overcoming those barriers likely differ from

those in other states” (p. 23). In other words, certain states where legal recognition is not present, many same-sex couples may encounter the familial issues regarding the same negatively as opposed to those who live in states where legal recognition is acknowledged.

Relevance of Legal Consciousness in Same-Sex Studies

One may question: In what way does legal consciousness relate to the issues of same-sex couples who fight for parenting rights? Although it is problematic that not much research has been conducted in relation to the concept of same-sex parenting, research has shown that legal consciousness does, however, affect the way law develops over time. In *Legal Consciousness in Lesbian and Gay Lives* (2010), Rosie Harding frames her study around the literature of legal consciousness. For Harding, legal consciousness "allows for differing aims across studies, to explore and explain the way particular groups, communities, or even individuals think about, talk about, engage, and do not engage with the law" (p. 26). The goal of legal consciousness studies is to identify the ways in which ordinary people think, use, and approach the laws in their everyday lives. Harding argues that there has been very little literature about legal consciousness that addresses the issue of same-sex couples struggling to fight for lesbian and gay equal rights. Furthermore, she notes that only a handful of studies have been conducted that deal with the issues of same-sex relationships and parenting (p. 27). Since there is very little research done with regard to legal consciousness and same-sex couples, the author explains that, as a result, more scholars would further the interests of same-sex couples. Harding mentions in her article that "the insides of the legal consciousness approach can be readily applied to the exploration of social movement activism in the courts" (p. 23). The author emphasizes that engagement between same-sex couples and the law may lead to an impact on the way the law develops or changes over time. One way the development of law and social change may occur is through

continuous active social movements by judicial and government lawmakers. According to Harding, social movements may be viewed as a type of group action, where certain organizations or individuals focus on social or political issues in order to carry out social change (p. 23).

The term legal consciousness is not necessarily consistent, nor is it fixed. It is primarily the study and focus of the way “ordinary people” think about and relate to the law in their everyday lives. In Kathleen E. Hull’s *The Cultural Power of Law and the Cultural Enhancement of Legality* (2003), she defines legal consciousness as “all the ideas about the nature, function, and operation of law held by anyone in society at a given time” (p. 630). The author additionally expresses the importance of legality and legal recognition for same sex couples. Hull argues that the efforts used to enact marriage culturally should be viewed as the attempts to enact legality in the absence of official law. The study conveyed in the article uses a legal consciousness framework to explore the ways in which same-sex couples think about commitment and marriage. In the author’s findings, many interviewees expressed their support for legal recognition of same-sex marriage. Returning to my research question, if people recognize the limitations of law, especially within the same-sex community, why do they believe that it should still be a fundamental component that should protect their rights? Well, according to Hull, many believe that legal recognition would bring acknowledgment to committed same-sex couples, while others believed that it would additionally raise social acceptance of both lesbian and gay couples by the law. Hull states that many same-sex couples were hopeful in a way that legal change would assist in “normalizing the presence of same-sex couples in a way that efforts to educate and persuade through argument and information never would” (p. 639).

Before same-sex marriage became legalized by the Supreme Court, in an attempt to gain legal recognition, many same-sex couples were publicly celebrating their intimate commitments

to each other and using wedding-like rituals with the approval of religious groups, but mainly without formal recognition. This form of ritual had increased over the past few decades. Hull argues, “these developments are complicating the question of who counts as family for both legal and cultural purposes” (p. 633). The same-sex couples that engaged in marriage ceremonies believed that their relationships were legitimate since they practiced their own marriage beliefs, engaged in public pledging and devotion, and additionally formed their own family ties. Many desired to have same-sex relationships legally recognized in order for social change to occur. Having legal recognition of same-sex relationships eventually led to legal and economic benefits of legal marriage such as parental rights, health care, and tax benefits. Hull raises the question of whether the intertwining of law and cultural enactments influenced the way same-sex couples perceived themselves. Even before same-sex marriage became legal, many same-sex couples perceived themselves as having equality even with the absence of official law and completely disregarded that their rights were not fully protected. However, others still believed that they needed official law to give them the comfort and protection to live their daily lives in order to gain the rights that other cultural groups received.

Hull argues that through the examples given during the interviews, studies of legal consciousness and same-sex couples should be looked into deeper since many of the same-sex couples rely on the law in order to relay a message to society that same-sex couples deserve legal recognition (p. 656). The author argues that through the actual process of performing legality outside the official law, the cultural power of law is both reflected and reproduced. Within Hull’s findings, she mentions how legal recognition for same-sex relationships are generally supported by same-sex couples through marriage or a similar legal mechanism. Linda Sanchez, one of Hull’s interviewees, states,

I strongly feel that they [same-sex marriages] should be legalized. We should be allowed the same rights that straight people have, because we have a right to have a family and the right to live like everybody else does. What's wrong with that? We're people too! We're not animals. We're human beings! I think it should be legal (p. 627).

Sanchez found it problematic that the difficulty of achieving legal recognition made it complicated for those who were fighting for equal rights within the same-sex community. The author examines the ways in which same-sex couples previously used certain rituals and ceremonies in order to form an enactment of legality without the presence of federal legislation. She states, "some of these efforts to enact marriage culturally should also be read as attempts to enact legality in the absence of official law" (p. 629). When pertaining to the perspective of same-sex couples, both the legal and cultural aspects intertwine. During these interviews that Hull conducts, she draws an analysis that members within a committed same-sex relationship express public rituals that, to them, are considered to be "lawlike functions." Hull argues, "the words and actions of people in committed same-sex couples reveal both the cultural power of official law and the cultural enactment of legality where official law is absent" (p. 632).

Hull argues that related to same sex parenting, without legal protection granting rights under legal marriage, various obstacles are faced specifically by non-biological parents and parents who wish to adopt or become foster parents (636). For example, many express their issues of trying to obtain health insurance for their children under their partner's policy who is not legally recognized as a parent. The parenthood of same-sex couples is negatively affected as limitations and restrictions constantly arise in the absence of legal recognition and formal law. It is critical to demonstrate reasons as to why legal recognition is needed since protection by law

can be seen as a safeguard that may form familial stability with regards to partnership agreements, guardianship, and financial trusts and wills. Hull mentions that “legal recognition would bring more than just a grudging acknowledgment of the reality of committed same-sex couples, seeing legal recognition as the key to greater social acceptance for gay and lesbian couples through their normalization by the law” (p. 638).

The Rise of Social Movements and the LGBT Community

Although studies of LGBT social movements have been limited, active social movements consisted of a wide range of strategies that included interest groups, campaigns, strikes, protests, marches, and media coverage. The issues of same-sex parenting became a conflict that many members of the LGBT community yearned to change. As of June 2004, the District of Columbia, as well as four other states, allowed same-sex parenting where second-parent adoption was permitted with the help of the Human Rights Campaign. This campaign is known as the largest LGBT Civil Rights support and advocacy group. Within the Vermont Adoption Act 2003, the statute of Vermont declared, “If a family unit consists of a parent and the parent’s partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent” (p. 23).

Baumie and Compton (2015: 26) mentions that at first, it was unclear as to whether “partner” included those of the same-sex. However, it was then clarified that the Supreme Court of Vermont authorized second-parent adoptions by members within the LGBT community. In the author’s findings, laws that originally permitted second-parent adoption did not have a significant effect on the children within the household. However, laws that did not permit second-parent adoption impacted children in a negative way. At this point, before being legalized in certain states, same-sex couples within a second-parent relationship continued to yearn for

legal recognition. Baumie and Compton stated, “a desire for formal legal recognition of the family via second-parent adoption could motivate a reliance on formal law” (p. 26). Many members of the LGBT community believed that protection under laws should have been enforced for family formation for LGBT individuals. Adopting such laws would provide the ability to improve a path to parenthood where LGBT parents would establish legal rights over children as well as parental identity (p. 27).

The exploration of social movements focuses on large or informal groups of individuals within specific social or political issues. Many members of the LGBT community formed their own organizations and support groups in order to shift public opinion and policies that are in favor of LGBT rights. According to Mezey (2010: 1181), most of these organizations seek to rely on litigation “to further their goals asking whether the courts will help or hinder their efforts to achieve the social and political reforms they envision”. Activists of the LGBT community pursue litigation because they believe that it creates social change. Many of the issues that gay rights organizations fought for were legality of same-sex marriage, discrimination, second-parent adopting rights, and decriminalization of the act of sodomy, which was a law that defined certain sexual acts (primarily performed by the LGBT community) as a crime. Mezey argues that LGBT movements advocate for legal strategies that would result in positive societal views on gender, family relationships, sexuality, and full acceptance within society. Equal opportunities and obligations would additionally be granted in addition to the absence of discrimination (p. 1181).

Continuing with the importance of social movements, Leachman (2014: 3), argues that the LGBT movement originally started off as with a small organization “that celebrated gay pride and promoted the empowerment of sexual minorities”. By 1980, lesbians and gay men had merged together and advocated through several larger civil rights organizations where each had a

goal to promote meaningful change. Without these organizations and members within the LGBT community advocating for certain rights, acts such as the Defense of Marriage Act would still be in place. This particular act did not allow the federal government to recognize same-sex marriage. Many of these advocates for the same-sex social movement wanted to shift the perception of public opinion in order to gain acceptance.

By promoting social change without the presence of formal law, the LGBT community greatly benefited by participating in gay rights organizations as they fought for social acceptance. These community members believed that finding ways to personally feel socially accepted, allowed them to be able to gain certain respect such as freedom of speech, poverty rights, legal marriage in certain states, and the access to parental rights. According to McCann (2006: 21), law is significant since it is a resource that “citizens utilize to structure relations with others, to advance goals in social life, to formulate rightful claims, and to negotiate disputes where interests, wants, or principles collide” (p. 21-22). Through the action of social movements and obtaining legality, law has the ability to be mobilized when social change and acceptance is promoted due to a desire or want.

Chapter 3

DeBoer v. Snyder Case Study

The *DeBoer v. Snyder* case is fundamental to my research because it demonstrates a same-sex couple who fought for parental rights by challenging Michigan's ban on same-sex marriage. To April DeBoer and Jayne Rowse (the same-sex couple), receiving legal acknowledgment and equal parental rights by law was the main goal to which they aspired. The couple believed that they were already married by heart and just needed that extra step of legal marriage in order to receive full parenting benefits and jointly adopt their children. My research question focuses on why same-sex couples rely on the law as a fundamental component to protect their parenting rights even when limitations are recognized. DeBoer and Rowse conveyed that the reason behind it was to obtain legal recognition and promote social change, as I had predicted.

April DeBoer and Jayne Rowse are a same-sex couple who wanted to jointly adopt their three children. Both women are nurses, where one has an adopted son and the other has two adopted daughters. Before 2015, Michigan's laws restricted second parent adoption and did not allow for same-sex couples to marry. According to the *DeBoer v. Snyder* case, argued in 2012, the state of Michigan defined marriage as "inherently a unique relationship between a man and a woman" (p. 397). In lieu of a legal wedding, the same-sex couple had a commitment ceremony since they were not able to legally marry under Michigan's law. The biological father of Rowse's son was not involved in her son's life, which allowed Rowse to adopt him shortly after his birth. Together, the couple cared for the baby, where soon after, Rowse individually adopted him. Rowse's second child was only 25 weeks old when he was born prematurely and given up for

adoption after his biological mother had completely given up on him. For many years, the son went through intense therapy where he needed a great amount of medical attention. Rowse and DeBoer gave the son as much care as they could give him. DeBoer's only adopted daughter was born in 2010 at her biological mother's home and was unable to receive neonatal care. The daughter was given up for adoption in 2011, where DeBoer became her adoptive mother. During this time, both parents lived together in a single-family household and they wanted to adopt each other's children and become legal parents.

On January 23, 2012, a lawsuit was filed in the Federal District Court that challenged Michigan's second parent adoption and marriage law. The couple's initial complaint argued that the state's marriage and adoption law violated the Equal Protection Clause of the 14th Amendment. Later, the court invited the couple to the challenge where they were then denied a marriage license. The second complaint filed by DeBoer and Rowse argued that the promise of due process and equal protection under the 14th Amendment was violated by Michigan's strict marriage laws. After this, a nine-day trial was finally issued. Much support was given by national advocacy groups and witnesses were called to the stand including college professors, psychologists, and scholars. These experts specialized in family law and criminal defense. Each witness for the defense testified that failure to amend the marriage law would deny same-sex couples the ability to create stability and family structure for their children (p. 397).

According to Fore (2015: 176), the factors and circumstances that these children lived under had a great impact on the court. DeBoer and Rowse's complaint lay on the issue that "disparate treatment of the children of unmarried parents and of unmarried parents seeking a step-parent adoption, based upon the marital status of the parents, violates the Equal Protection Clause of the United States Constitution" (p. 178). The judge who was assigned to the case was

Judge Bernard Friedman and it was interesting to see that the plaintiff's lawyers were originally worried about having a trial with a conservative judge. Soon after, many came to realize that the judge was familiar with LGBT families and certain legal constraints that they face. In 1995, Judge Friedman hired a law clerk, who is now known as Judge Judy Levy. At that time, she had become pregnant hoping to start a family with her female partner. According to Fore, Judge Friedman's "life experiences opened up an opportunity to be receptive to the plaintiffs' legal arguments" (p. 177).

As each witness took the stand and voiced their opinions, Professor Vivek Sankaran, who was an expert on the child welfare system in Michigan, expressed that "establishing a guardianship is something that's difficult, expensive, time consuming and really threatens the sense of stability and permanency for children in those home" (172). Each expert gave reasoning on familial structure and mentioned that stability for both the parents and the children would not occur without the law's support. According to this court case, these experts who testified were a voice for all LGBT community members facing similar experiences as the plaintiffs (p. 397).

After the nine-day trial, Judge Friedman declared that he would rule on the case within two weeks. Soon, the district court made the decision to side with DeBoer and Rowse and declared all of Michigan state's marriage laws, which did not recognize same-sex couples, as unconstitutional. On page 397, Judge Friedman wrote with regard to morality,

Many Michigan residents have religious convictions whose principles ... inform their own viewpoints about marriage. Nonetheless, these views cannot strip other citizens of the guarantees of equal protection under the law. The same Constitution that protects the free exercise of one's faith in deciding whether to solemnize certain marriages rather than others, is the same Constitution that

prevents the state from either mandating adherence to an established religion ... or enforcing private moral or religious beliefs without an accompanying secular purpose.

Social Activism During the DeBoer v. Snyder Case

During the DeBoer v. Snyder case, LGBT advocates showed their support and voiced their beliefs on LGBT rights. A lawyer from the marriage equality movement publicly voiced his opinion on the litigation and stated,

We knew it was not going to be enough to just have one case (Hawaii or Vermont, California or Iowa) or one state (Vermont or California) or one methodology (litigation, rather than, say, legislation), and so forth and so on. What we needed and called for and built was an affirmative and sustained campaign that reflected what I described repeatedly as the four multi's: multi-year, multi-state, multi-partner, and multi-methodology.

Many believed that the goal of litigation primarily focused too much on the actual effects of litigation instead of focusing on political engagement. Many activists of the LGBT community wanted to pursue litigation only because they believed that it would create social change in ways in which the movement would actually be affected by legal reform efforts.

LGBT civil rights organizations continuously fought for equality, gathered pride parades, and established professional and media LGBT themed organizations. The social movement's goal was to rally behind DeBoer and Rowe during their trial and productively stir attention in order to gradually create opportunities for progress. Some of the organizations that were included at the time were the Human Rights Campaign, the National Gay and Lesbian Task Force, the Movement Advancement Project, and several other leading advocacy organizations. Media

coverage has sent messages not only to the LGBT community, but also to the non-LGBT audiences. These messages shifted their focus on the various issues and experiences the LGBT community faced with regards to same-sex parenting and marriage rights. Same-sex couples did not want to feel as if their marriage would be less worthy than the marriages of other heterosexual couples. The Movement Advancement project primarily wanted people to know that marriage is “focused on love, commitment, and responsibility... Marriage is about the commitment we make to the one we love, and the promise a couple makes to take care of each other” (p. 202).

During the time of the trial, news had spread quickly all over Detroit about the case. Several supporters, including protesters and activists, merged together peacefully outside the courthouse and held professionally-made signs, in order to be seen by the media and entering attorneys. According to Horowitz (2014: 5), the protesters marched in the freezing cold weather for about an hour expressing their concerns for the right to marry and jointly adopt. The columnist states, "they blended peacefully with pro-equality supporters, in a moving circle with clusters from each side, alternating with each other". Rumors had spread days before the trial that there would be a crowd of over 100 ministers and pastors who were against these same-sex couples. The Detroit police took extra precaution as they stood ready for any conflict to arise. However, it turned out that these ministers and pastors did not show up as expected (p. 5). Only the crowd of peaceful protesters and supporters were present. As DeBoer expressed her thoughts before entering the federal courthouse, she states

"We are excited. Our attorneys have done a great job building the case. And we're just excited waiting to hear the verdict and what the judge has to say," DeBoer said. "We love the supporters, that's fantastic. We're glad they're out here and

we're sorry that it's so cold. It's devotion, you know. We all stand by each other.

They're not standing behind us; they're standing with us (p. 5).

On March 21, 2014 Judge Friedman ruled that Michigan's ban on same-sex marriage was indeed unconstitutional as it violated the plaintiff's rights to gain access of equal protection of the law. The United States Supreme Court overturned Michigan's ban on same-sex marriage allowing many same-sex couples to jointly adopt and be granted the same equal rights that were provided to heterosexual couples. With regards to legal consciousness, DeBoer and Rowe were conscious with the role of the law legitimating the relationship between parents and children. The couple had been adamant in their desire to see a change in certain legal procedures. The inability to marry only excluded them from gaining equal parental rights that heterosexual couples acquired.

One can argue that DeBoer and Rowse uses the "with the law" schema mentioned by Ewick and Silbey as they rely on the law to protect them through equal rights. The "with the law" schema includes a law and society interactive model when relating to legal consciousness. In this case, DeBoer and Rowse uses the law as a form of empowerment to define their own committed relationship. Researchers do collect signs of legal consciousness where with regards to DeBoer and Rowse, law has been experienced and interpreted as they both engaged in legal meanings. Lastly, the individuals who have joined the social movement shows participation with the production of legal meaning and composition of legality.

Chapter 4

Concluding Analysis

Many members of the LGBT community in the United States fought for same-sex parenting rights and formed organizations and advocacy groups to create a social movement in order to shift public opinion and policies. Many same-sex couples relied on the law in order to implement social change and legal recognition. Legal recognition is an important aspect to same-sex couples because many want to be acknowledged and recognized by the law in order to receive the same protection and rights that heterosexual couples acquire. Legal recognition additionally allows for individuals to identify the ways in which ordinary people think, use, and approach the law in their everyday lives. Organizations, advocacy groups, and the support for the LGBT community that came into place, expressed their views and wanted social change to occur as they collectively voiced their public opinions in several ways through the media, gay pride parades, lobbying, protesting, and supporting other organizational groups that shared the same views and values of their beliefs.

Without the LGBT social movement and members within the LGBT community advocating, protection under the law would not have been given to same-sex couples who continuously fought for marriage and parenting rights. In the *DeBoer v. Snyder* case study, April DeBoer and Jayne Rowse became a form of representation and the voice for the individuals within the same-sex community, which wanted to be recognized, protected, and seen by the law in the same way as any other heterosexual couple. LGBT supporters and advocates fought and created social change as they continuously raised their voices about issues and argued publicly over the challenges of same-sex marriage and same-sex parenting.

With regard to legal consciousness, both partners were not in favor of Michigan's state law since originally, they were not able to be legally recognized as same-sex parents. Because of Michigan's strict laws on marriage, the main difficulties that the same sex couple faced were the inability to receive or gain access to public benefits, legal rights, or protection by the law with regards to health insurance, experiencing social stigma, and difficulty in forming their familial structure with no recognition by state law. *DeBoer v. Snyder* became the first federal appellate circuit that allowed same-sex marriage to become constitutional. As a result, all bands opposing same sex marriage were held unconstitutional by the district courts. The acceptance of marriage became a segue for *DeBoer*, *Rowe*, and of course many of the same sex couples who fought for parental rights as these couples were granted the ability to jointly adopt their children. Two questions that were presented during the courts consideration were the following: 1). According to the 14th Amendment, is it required by a state license a marriage between two people who are considered of the same sex? 2). Is it required that the 14th Amendment recognized a lawfully licensed marriage by two people who are of the same sex where their marriage was performed out of state?

On June 26, 2015, The United States Supreme Court held a final decision stating that the 14th Amendment does indeed require all states to grant same-sex marriages as well as recognize these marriages in other states. The courts failure to recognize a familial structure of same-sex parents and refusal to allow same-sex couples to marry only prohibits both parents to be subject to the same parental obligations of their child relationship. For *DeBoer* and *Rowse*, being granted the right to marry during their trial provided them with equal protection by law and legal recognition additionally leading to being granted the same benefits and responsibilities as heterosexual married couples. By promoting social change without the presence of formal law,

the LGBT community has greatly benefited in being advocates in social movements as they fought for social acceptance.

Further Research and Limitation:

For the LGBT community, cultural activity takes place amongst members and allies by advocating for rights through the media, art, street marches, and social groups. Identity politics are additionally cultivated where individuals fight for the collective interest of the LGBT group in which other groups are able to relate and identify with. Such advocacy and awareness has advanced the lifestyles of these members since currently, many same-sex couples are granted rights that were fought for specifically parenting. Within the United States, same-sex marriage has been declared legal for all 50 states since the Supreme Court ruled state-level bans in same-sex marriage unconstitutional.

For a long period of time, the LGBT community has always been almost invisible within film, television, and popular culture. After supporters and advocates spoke publicly about the issues the LGBT community members are facing, popular culture has been brought steadily into movies, documentaries, and even reality shows. LGBT advocates, legal recognition, and social activists continuously spread awareness through the absence of formal law and have changed the ways in which society has now accepted and granted certain rights of the LGBT community. Public opinion has certainly been an influential factor which raised more awareness of the issues that this community has faced. Educators and activists who have also been strong supporters of same-sex marriage and parenting, has generated the depiction of lesbian and gay men in mass media.

Popular culture has recently been a beneficial aspect when relating to not only same-sex couples, but to the entire LGBT community. Extreme progression made by activists within the

social movement have been phenomenal from the widespread of same-sex marriages and parental rights across the entire United States, to the LGBT community being advocated and televised in ways that would have been unimaginable only a couple of years ago. Many modern television shows within popular culture include characters that represent the LGBT community such as same-sex parents, transgender fathers, same-sex marriages, and lesbian and gay same-sex committed parenting couples. Popular culture has recently been sending messages to viewers that individuals should not be afraid to express the way they prefer to be identified as. Such massive advocacy that has led to social change indicates that formal law does not necessarily have to be present in order to create legal recognition which may then eventually lead to social acceptance. Presently, there still continues to be a wide range of LGBT advocates, organizations, and community support groups that provide programs and services to those who would like to know more about the culture. Events and community outreach are additionally being hosted in support group centers where human rights campaigns continue to advocate for educating the public about issues that the community may still face.

Various college campuses even have LGBT ally sites where students and faculty are encouraged to visit in order to broaden the community and continue to spread awareness. These communities generally celebrate pride, provide information about the community's history, and consider themselves to be the group's collective strength. LGBT support groups represent people of diverse backgrounds, political persuasions, and faith. Some programs even offer a wellness and recovery resource center where members are able to receive physical and mental health assistance where support for the body and mind is provided by peer-professional and ally providers. The LGBT ally sites additionally promote movements to civil rights in various places all over the world. Many members within this particular culture have been fighting for their

rights and at least wanted to obtain legal recognition. When pertaining to legal consciousness, many of them believe that they were not treated fairly and should have, by law, gained equality as their rights. People tend to interpret an event through lenses that they are already attached to which can be a legitimate influence of society, and in this case, reflected through social movements. Fortunately, as a result of social change, certain laws that effect a dominant group's interest does not necessarily mean it is permanent.

Showing interest in eventually obtaining legal recognition as well as being involved and advocating for such influential social movements additionally imply that the law is not fixed and there can, eventually be some form of social change. By the LGBT community publicly fighting for certain rights and continuingly practicing their own beliefs, they have allowed massive changes within their culture and society that has led to social acceptance. The approach of legal consciousness as Kathleen Hull defines as "all the ideas about the nature, function, and operation of law held by anyone in society at a given time," (p. 635) can too be applied towards the exploration of social movements that promote economic, legal, and social change since individuals have the ability to share and reflect their ideas about the law through legal consciousness.

There is lack of scholarly literature with reference to same-sex parenting. More research on different same-sex partnerships should be studied since there is not much longitudinal data that show the outcomes of family dynamics for same-sex parents. Many of the qualitative and quantitative studies that are conducted only rely on small samples of same-sex couples that depict the relationship of both the same-sex parents and children after certain equal rights are granted. Addressing questions about children who have valid knowledge about their parent's sexual and relationship histories may also give a broader understanding of the challenges these

children may or may not face. There should additionally be more study on scientific evidence of parenting effectiveness that is related to same-sex parenting and sexual orientation. It is critical to see how lesbian and gay parents are as likely as heterosexuals to provide the same supportive and healthy environments for their children. More studies and knowledge about such subject can indicate the emotional and developmental relationship these children may face when growing up with parents who are of the same sex. Additional research can lead one to question the pathways many same-sex couples take to parenthood which may include surrogacy, bearing a biological child of one partner from a previous relationship, and identifying different challenges same-sex couples face through parenting that may vary by age, gender, age, and socioeconomic status. My research informs and advances the scholarly literature as it examines the legal consciousness of same-sex parents with respect to same-sex marriage. Many members within the LGBT community have revealed strong consensus in their attempt to enact same-sex marriage in order to receive equal protection under the law to have access to the same benefits as heterosexual parents do. DeBoer and Rowse have yearned for legality in their everyday lives and stood with the law for legal marriage. Their approach demonstrates that the law can provide power to produce specific protection and benefits to gain social and cultural equality.

Works Cited

- Bateman, Geoffrey W. "Parenting." *GLBTQ Social Sciences*, Jan. 2015, pp. 1–5.
- Baumle, Amanda K., and Compton D' Lane R. "The State of the Law for LGBT Parents." *Legalizing LGBT Families: How the Law Shapes Parenthood*. NYU, 2015. 19–34. Web.
- Connolly, Catherine. "The Voice of the Petitioner: The Experiences of Gay and Lesbian Parents in Successful Second-Parent Adoption Proceedings." *Law & Society Review* 36.2 (2002): 325-46. ProQuest. 31 July 2017.
- Craig-henderson, Kellina M. "To Understand Culture, You Must First Accept What It Is Not." *Psyccritiques*, 59.28 (2014).
- DeBoer v. Snyder, 772 F.3d 388 (6th Cir. 2014),
https://scholar-google-com.ezproxy.gc.cuny.edu/scholar_case?case=5148154961879531966&q=related:voF-Z6nrcUcJ:scholar.google.com/&hl=en&as_sdt=6,33
- Ewick, Patricia, and Susan S. Silbey. *The common place of law: Stories from everydaylife*. University of Chicago Press, 1998.
- Fore, Wyatt. "Deboer V. Snyder: A Case Study in Litigation and Social Reform." *Michigan Journal of Gender & Law*, vol. 22, no. 1, 2015, pp. 169–206.
- Gates, Gary J. "Marriage and Family: LGBT Individuals and Same-Sex Couples." *The Future of Children*, vol. 25, no. 2, 2015, *Social Science Premium Collection*,
<http://ezproxy.gc.cuny.edu/login?url=http://search.proquest.com.ezproxy.gc.cuny.edu/docview/1725444961?accountid=7287>.
- Harding, Rosie (2012). *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives*. Ch

2, New York, Routledge.

Horowitz, Susan and Jan Stevenson. "Michigan Marriage Equality Trial Begins

Second Week." *Between the Lines (10807551)*, no. 2210, 06 Mar. 2014, pp. 4–13.

Hull, Kathleen. Legal Consciousness in Marginalized Groups: The Case of LGBT People,

Journal of the American Bar Foundation, vol. 41, no. 3, 2016.

Hull, Kathleen. "The Cultural Power of Law and the Cultural Enactment of Legality:

The Case of Same-Sex Marriage." *Law & Social Inquiry*, vol. 28, no. 3, 2003, pp. 629–657.

Kane, Melinda D. Social Movement Policy Success: The Influence of the Gay and Lesbian

Movement on the Decriminalization of Sodomy, 1969–1996, *ProQuest Dissertations & Theses Global*, Vanderbilt University, 2000, Ann Arbor.

<http://ezproxy.gc.cuny.edu/login?url=http://search.proquest.com.ezproxy.gc.cuny.edu/docview/304633330?accountid=7287>.

Leachman, Gwendolyn M. "Legalizing LGBT Politics: Litigation and the Construction of Social Movement Agendas", *ProQuest Dissertations & Theses Global*, University of California, Berkeley, 2014, Ann Arbor,

<http://ezproxy.gc.cuny.edu/login?url=http://search.proquest.com.ezproxy.gc.cuny.edu/docview/1667091629?accountid=7287>.

McCann, Michael. 2006. "Law and Social Movements: Contemporary Perspectives."

Annual Review of Law and Social Science, vol. 2, pp. 17–38.

Mishra, Devjani. "The Road to Concord: Resolving the Conflict of Law Over Adoption by Gays and Lesbians." *Columbia Journal of Law and Social Problems*, vol. 30, 1996, pp. 91–

136.

Mezey, S. *Perspectives on Politics*, vol. 8, no. 4, 2010, pp. 1181–1182. Retrieved from
<http://www.jstor.org.ezproxy.gc.cuny.edu/stable/40984304>

Pew Research Center, *Survey of LGBT Americans*; Pew Research Center, *The Decline of Marriage and Rise of New Families* (Washington, DC: Pew Research Center, 2010),
<http://www.pewsocialtrends.org/les/2010/11/pew-social-trends-2010-families.pdf>

Reeves, Teresa LeAnn. “The Impact of Legal Status on Sexual Minority and Parental Stress for Parents in Same-Sex Relationships.”, *ProQuest*, Order No. 3485898, The University of Memphis, 2011 Ann Arbor 16 Feb. 2017.

Swidler, Ann (1986). “Culture in Action: Symbols and Strategies.” *American Sociological Review*, vol. 51, no. 2, pp. 273–86.