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The Rainbow Sea Change: The Impact of Popular Culture on Homosexual Rights.

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THE RAINBOW SEA CHANGE: THE IMPACT OF POPULAR CULTURE ON HOMOSEXUAL RIGHTS

BRADFORD J. KELLEY*

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Even apart from judicial recognition, gay family groupings exist and are visible in American culture now as never before. Gay men and women are on television and in movies, portrayed as parts of families, in a way unthinkable in 1986. There are American Express ads targeting lesbian couples, Budweiser ads with men holding hands (and I don't mean high-fiving), gay couples embracing on *Who Wants to be a Millionaire*, and, unlike the early 1980s, when gay television and film characters were few and far between (and, more often than not, dying of AIDS) non-marginal gay characters in dozens of films, sitcoms, even *Survivor*. HBO specials with Sharon Stone, Oscar-winning performances by Tom Hanks, gay families in mainstream media products from *American Beauty* to *Friends*—none of these individually render Justice White's decoupling of sodomy from family untenable. But together they suggest a sea change

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in the way gay families function and are depicted in American cultural life.¹

During a May 2012 *Meet the Press* interview with host David Gregory, Vice President Joe Biden cited *Will & Grace* as an influence on American thought regarding Lesbian, Gay, Bisexual, and Transgendered rights (LGBT rights) saying, “I think ‘Will & Grace’ did more to educate the American public than almost anything anybody has ever done[.]”² This statement raises a very interesting, yet unexplored, question: What impact has popular culture, including film, television, music, and other popular mediums, had on the law?

The overall impact of popular culture³ on homosexual tolerance and acceptance is striking.⁴ In the past few years alone, remarkable jurisprudential changes reflect a shifting cultural view of homosexuality. In the early summer of 2012, President Obama endorsed same-sex marriage, becoming the first sitting president to do so.⁵ Gay marriage was included in the 2012 Democratic Party platform for the first time in the party’s history, illustrating growing acceptance of gay rights in mainstream politics.⁶ Additionally, President Obama and Congress repealed “Don’t Ask, Don’t Tell”⁷ (DADT) in 2011.⁸ Furthermore, the Defense of Marriage

1. Jay Michaelson, *On Listening to the Kulturkampf, or, How America Overruled Bowers v. Hardwick, Even Though Romer v. Evans Didn’t*, 49 DUKE L.J. 1559, 1600 (2000) (citations omitted).

2. Jessica Yellin, *Biden Says He Is ‘Absolutely Comfortable’ with Same-Sex Marriage*, CNN.COM, (May 6, 2012, 12:03 PM), <http://politicalticker.blogs.cnn.com/2012/05/06/biden-says-he-is-absolutely-comfortable-with-same-sex-marriage>.

3. For purposes of this Article, popular culture is defined as “any product—such as television shows, movies, and popular music—that is commercially made for the consumption of ordinary people.” Kimberlianne Podlas, *The Tales Television Tells: Understanding the Nomos Through Television*, 13 TEX. WESLEYAN L. REV. 31, 37 (2006) (citation omitted). This paper will primarily focus on films, television shows, music, and books.

4. See David M. Skover & Kellye Y. Testy, *LesBiGay Identity as Commodity*, 90 CAL. L. REV. 223, 243 (2002) (explaining that homosexual “cultural images are less pathetic, more admirable; less hateful, more lovable; less unlike, more equal; less perverse, more ‘normal’”).

5. Jackie Calmes & Peter Baker, *Obama Says Same Sex-Marriage Should be Legal*, N.Y. TIMES (May 9, 2012), <http://www.nytimes.com/2012/05/10/us/politics/obama-says-same-sex-marriage-should-be-legal.html>.

6. See Jeremy W. Peters & Michael D. Shear, *Democrats Draft Gay Marriage Platform*, N.Y. TIMES (July 30, 2012), <http://www.nytimes.com/2012/07/31/us/politics/democrats-draft-gay-marriage-platform.html> (showing the Democratic party including same-sex marriage as part of their platform, demonstrating an acceptance of gay rights).

7. 10 U.S.C. § 654 (2006), *repealed by Don’t Ask, Don’t Tell Repeal Act of 2010*, Pub. L. No. 111-321, 123 Stat. 3515 (2010). DADT was a federal law allowing the discharge of any U.S. armed service member who was openly lesbian, gay, or bisexual. “*Don’t Ask, Don’t Tell*” *Consigned to History*, CBS NEWS (Sept. 20, 2011, 10:41 AM), <http://www.cbsnews.com/news/dont-ask-dont-tell-consigned-to-history>. It became official U.S. policy in

Act (DOMA)⁹ was seriously undermined when the U.S. Supreme Court struck down major parts of the law in 2013.¹⁰ Moreover, the state of New York legalized homosexual marriage in 2011, thus becoming the most populous state in the country to allow same-sex marriage.¹¹

However, history has shown that homosexuality has not always received favorable attention under U.S. law. For example, in 1986 the U.S. Supreme Court upheld a Georgia law banning sodomy in *Bowers v. Hardwick*.¹² In this case, a five-justice majority determined prohibitions against homosexual sodomy “have ancient roots” and found conforming to “majority sentiments about the morality of homosexuality” was a sufficient rationale for the anti-sodomy law.¹³ Seventeen years later in 2003, *Lawrence v. Texas*¹⁴ finally overturned this decision, essentially decriminalizing homosexuality.¹⁵

The vast and rapid changes in the law regarding the treatment of homosexuals raise an important question: What was the reason for the cultural sea change in gay rights between 1986 and 2003? This Article explores changes in homosexual tolerance and acceptance in recent decades, largely due to popular culture.¹⁶ Indeed, popular culture has both driven much of the change while also reflecting societal change.¹⁷ Although popular culture may not be the sole vehicle of change, one cannot ignore the impact of popular culture on our society.

American military forces in December 1993. 10 U.S.C. § 654 (2006), *repealed by* Don’t Ask, Don’t Tell Repeal Act of 2010, Pub. L. No. 111-321, 123 Stat. 3515 (2010).

8. Elisabeth Bumiller, *Obama Ends ‘Don’t Ask, Don’t Tell’ Policy*, N.Y. TIMES (July 21, 2011), <http://www.nytimes.com/2011/07/23/us/23military.html>.

9. Defense of Marriage Act (DOMA) of 1996, Pub. L. No. 104-199, 110 Stat. 2419, *partially invalidated by* United States v. Windsor, 570 U.S. ___, 133 S.Ct. 2675 (2013).

10. United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675, 2695–96 (2013).

11. Nicholas Confessore & Michael Barbaro, *New York Allows Same-Sex Marriage, Becoming Largest State to Pass Law*, N.Y. TIMES (June 24, 2011), <http://www.nytimes.com/2011/06/25/nyregion/gay-marriage-approved-by-new-york-senate.html>.

12. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

13. *Id.* at 193, 196.

14. *Lawrence v. Texas*, 539 U.S. 558 (2003).

15. *Id.* (referring to the Court’s decision not to allow a state to make private sexual conduct a crime).

16. See Suzanna Danuta Walters, *The Few, the Proud, the Gays: Don’t Ask, Don’t Tell and the Trap of Tolerance*, 18 WM. & MARY J. WOMEN & L. 87, 88 (2011) (noting the increase in antidiscrimination laws, an increasing number of states that recognize same-sex marriage, and homosexual celebrities and even homosexual-themed cable shows demonstrate a “veritable sea-change in American politics and culture”).

17. See Bobbie L. Stratton, Comment, *A Prediction of the United States Supreme Court’s Analysis of the Defense of Marriage Act, After Lawrence v. Texas*, 46 S. TEX. L. REV. 361, 379 (2004) (“Pop culture in mainstream America is one way to measure the nation’s tolerance and acceptance of cultural trends.”).

This Article argues popular movies such as *Philadelphia*¹⁸ and *As Good as it Gets*¹⁹ have helped promote a positive image of homosexual men and women to a larger audience. In a similar vein, television shows such as *Will & Grace*²⁰ and *Ellen*²¹ have greatly impacted the broader American public.²² Perhaps more importantly, increased exposure of the gay community has led to acceptance and tolerance.

To evaluate the impact of pop culture on LGBT rights, Part I of this Article discusses the importance of popular culture and its impact on American society. Part II reviews the evolving manner in which homosexuals have been treated in popular films, television shows, and other popular culture mediums. Part III of this paper argues legislative and judicial changes have followed the same trajectory of the evolving perception of homosexuals. Finally, Part IV argues that the result of this cultural sea change will pave the way for nationwide acceptance of same-sex marriage.

I. THE POWER OF POPULAR CULTURE

Popular culture has long served as an important vehicle to promote ideas, opinions, and to challenge prevailing cultural beliefs. Popular culture contains stories that shape the average person's legal consciousness and define contemporary legal culture.²³ Films play a particularly important role in forming a nation's identity.²⁴ Historian Robert Alan Goldberg explains the power of movies and the impact they have on American society:

Film presents an opening to the past, for it reflects the attitudes, anxieties, and values of a people and their times. Its messages expose a society's dreams and myths while nurturing identities. But motion pictures are more than mirrors. Disguised as entertainment, film plays an opinion-shaping role. It engages events and debates ideas. It praises and condemns, instructs us on what is right and wrong, and helps us distinguish friend from foe. When their images are as large

18. *PHILADELPHIA* (TriStar Pictures 1993).

19. *AS GOOD AS IT GETS* (TriStar Pictures 1997).

20. *Will & Grace* (NBC television series 1998–2006).

21. *Ellen* (ABC television series 1994–1998).

22. See Stratton, *supra* note 17 (referring to popular culture becoming more accepting of alternative lifestyles based on these characters and shows).

23. See Podlas, *supra* note 3, at 38 (exploring popular legal culture, pop culture dealing with all things legal, as a subset of pop culture, and identifying its significance in shaping the average person's understanding of the law).

24. See generally Paul A. Lebel, *Misdirecting Myths: The Legal and Cultural Significance of Distorted History in Popular Media*, 37 WAKE FOREST L. REV. 1035, 1052–53 (2002) (analyzing the impact cinema can have in shaping the story of “who we are”).

as the silver screen, the power of filmmakers to reflect and mold perceptions cannot be underestimated.²⁵

Like movies, television shows play a powerful role in American life. Jeff Greenfield explains that television serves as “our marketplace, our political forum, our playground, and our school . . . our theater, our recreation, our link to reality, and our escape from it. It is the device through which our assumptions are reflected and a means of assaulting those assumptions.”²⁶ Studies show the average American adult viewed more than thirty-two hours of television each week in 2006.²⁷ Over 98 percent of American households own televisions and 49 percent say they watch it too often.²⁸ Studies confirm the average seventy-year-old has spent between seven and ten years watching television.²⁹

American history is replete with examples of films and television shows affecting political and social issues. Perhaps one of the most illustrative examples is the film *The Birth of a Nation*,³⁰ a silent movie that portrayed the post-Civil War American South.³¹ The film depicted African-American men (played by white actors in blackface) as unintelligent and sexually aggressive towards white women and portrayed the Ku Klux Klan as a heroic force.³² This film greatly impacted popular discourse and race relations after it was released in 1915,³³ and is credited for serving as an organizational recruiting tool in the rebirth of the Ku Klux Klan.³⁴ One scholar posits that millions who saw the film “forever viewed themselves and their country’s history through its colorations.”³⁵

25. ROBERT ALAN GOLDBERG, *ENEMIES WITHIN: THE CULTURE OF CONSPIRACY IN MODERN AMERICA* 32 (2001).

26. JEFF GREENFIELD, *TELEVISION: THE FIRST FIFTY YEARS* 11 (Lory Frankel ed., 1977).

27. Victoria S. Salzmann, *Honey, You’re No June Cleaver: The Power of “Dropping Pop” to Persuade*, 62 *ME. L. REV.* 241, 243 (2010).

28. *Id.*

29. *Id.*

30. *THE BIRTH OF A NATION* (Epoch Producing Corp. 1915).

31. *Id.*

32. *Id.*

33. See Margaret M. Russell, *Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film*, 15 *LEGAL STUD. F.* 243, 243 (1991) (explicating *The Birth of a Nation* “would work audiences into a frenzy . . . it will make you hate”) (internal quotation marks omitted).

34. Taunya Lovell Banks, *Exploring White Resistance to Racial Reconciliation in the United States*, 55 *RUTGERS L. REV.* 903, 927 (2003).

35. Everett Carter, *Cultural History Written with Lightning: The Significance of The Birth of a Nation*, in *HOLLYWOOD AS HISTORIAN: AMERICAN FILM IN A CULTURAL CONTEXT* 9 (Peter C. Rollins ed., 1983).

During World War II, the U.S. Army produced *The Negro Soldier*, a documentary designed for promoting racial tolerance.³⁶ Aimed at increasing morale of African-American soldiers and ameliorating racial turmoil within the military, the unprecedented documentary highlighted contributions of African-American soldiers.³⁷ The film contributed to President Harry Truman's issuance of Executive Order 9981 in 1948, which banned racial discrimination within the armed forces.³⁸ In more recent decades, some scholars claim *The Cosby Show*³⁹ was one of the most effective shows in television history because it changed racial perceptions by portraying well-educated, African-American characters in a positive way.⁴⁰

Like its impact on the political discourse of race in America, popular culture has unequivocally impacted treatment of homosexuality. The most significant obstacle homosexuals face is the dark and deep history of discrimination in America.⁴¹ Throughout American history gay men and lesbian women have been labeled as “‘faggots,’ . . . ‘monsters,’ ‘fairies,’ ‘bull dykes,’ ‘perverts,’ ‘freaks,’ and ‘queers.’”⁴² Similarly, homosexual relations have been called “‘abominations,’ ‘crimes against nature,’ and ‘sins not fit to be named among Christians.’”⁴³ These derogatory labels were consequently reflected in the American legal landscape.⁴⁴

Against the backdrop of disparaging historical perceptions about homosexuals, early LGBT activists and supporters recognized that popular culture, through its accessibility to large portions of society, had the

36. Ruth Elizabeth Burks, *Back to the Future: Forrest Gump and the Birth of a Nation*, 15 HARV. BLACKLETTER L.J. 83, 84 (1999).

37. *Id.*

38. *Id.*

39. *The Cosby Show* (NBC television series 1984–1992).

40. See Victoria S. Salzman, *Here's Hulu: How Popular Culture Helps Teach the New Generation of Lawyers*, 42 MCGEORGE L. REV. 297, 317 (2011) (“Nearly all of the television depictions [of African-Americans] prior to that point were based on stereotypical depictions.”).

41. See generally Elvia R. Arriola, *Faeries, Marimachas, Queens, and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33, (1995) (surveying historical gay stereotypes from colonial America to the present).

42. Kendall Thomas, *Beyond the Privacy Principle*, 92 COLUM. L. REV. 1431, 1462 (1992).

43. *Id.*

44. See *id.* (listing the legal punishments facing homosexuals, including “‘death by choking, burning and drowning; . . . executed, [castrated], jailed, pilloried, fined, court-martialed, prostituted, fired, framed, blackmailed, disinherited, [lobotomized, shock-treated, psychoanalyzed and] declared insane, driven to insanity, to suicide, murder, and self-hate, witch-hunted, entrapped, stereotyped, mocked, insulted, isolated . . . castigated . . . despised [and degraded]”).

most potential to change societal norms.⁴⁵ In the late 1960s, LGBT groups began organizing to fight discrimination by transforming gay and lesbian narratives from stories of depraved outsiders to stories of “normal” members of society.⁴⁶ As the LGBT movement grew, powerful organizations formed to allegedly ensure that homosexuals were fairly and accurately represented in films, television shows, and other mediums.⁴⁷ Most notably, in 1985, the Gay & Lesbian Alliance Against Defamation (GLAAD) was created to promote the image of homosexuals via popular cultural mediums.⁴⁸ GLAAD has focused on newspapers, magazines, motion pictures, television, and visibility campaigns to influence millions.⁴⁹ As the homosexual rights movement grew, other groups aimed at effectuating gay-friendly changes in the law were created.⁵⁰

Popular culture mediums became a decisive way to promote a new LGBT narrative. Professor Michael Bronski explained, “Hollywood turned to the gay sensibility to give straight audiences an alternative view of sexuality and gender. The impact of gay sensibility on American culture as seen through films is undeniable.”⁵¹ Indeed, “[s]ome producers openly acknowledge they have an agenda with their gay characters; that is, to make viewers, particularly young ones, more tolerant of the lifestyle.”⁵²

45. See Timothy E. Lin, Note, *Social Norms and Judicial Decisionmaking: Examining the Role of Narratives in Same-Sex Adoption Cases*, 99 COLUM. L. REV. 739, 783 (1999) (citing popular culture as an area in which LGBT activists can be the most effective, while also alerting that popular culture has the ability to perpetuate negative, incorrect stereotypes).

46. Charles J. Butler, Note, *The Defense of Marriage Act: Congress's Use of Narrative in the Debate over Same-Sex Marriage*, 73 N.Y.U. L. REV. 841, 856 (1998).

47. See generally Philip C. Aka, *Technology Use and the Gay Movement for Equality in America*, 35 CAP. U. L. REV. 665 (2007) (outlining use of technological mediums by gay advocacy groups to promote equal treatment).

48. See *id.* at 704 (stating that GLAAD emerged to combat discrimination, homophobia, and invisibility).

49. See generally *id.* at 704–05 (lauding GLAAD’s successes in its media campaigns).

50. See William N. Eskridge, Jr., *Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, Nomos, and Citizenship, 1961–1981*, 25 HOFSTRA L. REV. 817, 822–23 (1997) (including the Gay Liberation Front (GLF), the Gay Activists Alliance, the National Gay Task Force, and the Lambda Legal Defense and Education Fund, Inc. among other influential groups in the early days of activism).

51. MICHAEL BRONSKI, *CULTURE CLASH: THE MAKING OF GAY SENSIBILITY* 109 (1999).

52. Lisa de Moraes, *Media Watchdog Seeks Rating for Homosexuals*, LAS VEGAS REVIEW-JOURNAL, 17B (Mar. 5, 1999).

II. A REVIEW OF HOMOSEXUAL CHARACTERS IN POPULAR CULTURE

This Part reviews development of homosexual characters and themes in various popular culture mediums by exploring the depiction of homosexuals in movies, television shows, press coverage, and other mediums of popular culture, including music and literature. Overall, this discussion lays the groundwork for the argument that the messages conveyed in these highly influential popular culture mediums have exerted a demonstrable effect on the ways in which judges, legislators, and executive officials view homosexual legal issues and policy considerations, particularly with respect to the potential public policy effects of their decisions.

A. *Homosexuals in Movies*

To reach a broader audience, cinematic homosexual portrayal has experienced an incredible amount of diversity in the past decade.⁵³ Almost without exception, homosexual characters are depicted in positive ways including: the successful upscale attorney (e.g., Tom Hanks in *Philadelphia*⁵⁴); the smart and rational businessman and strong family man (e.g., Robin Williams in *The Birdcage*⁵⁵); the gay-man-straight-woman buddy films (e.g., Paul Rudd in *The Object of My Affection*⁵⁶; Rupert Everett in *My Best Friend's Wedding*⁵⁷); public servant and gay rights activist (e.g., Sean Penn in *Milk*).⁵⁸ Similarly, homosexual themes of struggle against institutionalized and/or cultural homophobia and the quest for equality are often depicted in popular films (e.g., *The Laramie Project*,⁵⁹ *Milk*⁶⁰).

However, homosexual characters did not always receive favorable treatment in films. Prior to 1962, the Motion Picture Production Code prohibited American films from depicting “sexual perversion,” which included homosexuality.⁶¹ Criticism from religious groups such as the Catholic Church’s Legion of Decency also strongly discouraged films por-

53. See Lin, *supra* note 45, at 785 (mentioning the different roles of homosexual characters in popular culture).

54. PHILADELPHIA, *supra* note 18.

55. THE BIRDCAGE (United Artists 1996).

56. THE OBJECT OF MY AFFECTION (Twentieth Century Fox 1998).

57. MY BEST FRIEND’S WEDDING (TriStar Pictures 1997).

58. MILK (Focus Features 2008).

59. THE LARAMIE PROJECT (HBO et al. 2002).

60. MILK, *supra* note 58.

61. See William N. Eskridge, Jr., *A Jurisprudence of “Coming Out”: Religion, Homosexuality, and Collisions of Liberty and Equality in American Public Law*, 106 YALE L.J. 2411, 2471 (1997) (internal quotation marks omitted) (indicating once the ban on sexual perversion was lifted homosexual depictions were allowed but only in derogatory manners).

traying homosexual characters or themes.⁶² As a result, during the 1960s, “virtually all American movies depicted [homosexual] characters as sick, predatory, or violent, and often all three.”⁶³ Furthermore, male homosexual characters usually died by suicide or by the hands of repulsed heterosexual characters; lesbian characters were usually seduced or converted to heterosexuality.⁶⁴

In 1969, the LGBT rights movement received national media coverage and attention when New York City police officers raided Stonewall, a predominantly homosexual bar in Greenwich Village.⁶⁵ The Stonewall incident proved to be a watershed movement in the LGBT rights movement as media coverage propelled the homosexual narrative “into mainstream American households in an unprecedented manner.”⁶⁶ Moreover, the Stonewall event caused homosexual groups such as Gay Activists Alliance to take a more forceful stance.⁶⁷

The aftermath of the Stonewall incident enabled development of more aggressive LGBT cinema, comparably unimpeded by state censorship. The first noteworthy “gay” American movie after Stonewall was *The Boys in the Band*.⁶⁸ Although the film featured all gay lead characters, some critics argue that it had a marginal positive impact because the film “reinforced the common stereotype of gay men as effeminate, sexually promiscuous degenerates.”⁶⁹

There was a notable growth of films, mainly European films, depicting homosexual individuals in the 1970s.⁷⁰ These films revealed a sense of gay awareness and more complicated characters than in the past.⁷¹ However, as a general rule, “[m]ost American movies continued to treat gay characters as “sissy boys and butch women.”⁷² As a result of these demeaning portrayals, homosexual advocacy groups began demanding

62. See Donald H. J. Hermann, *Legal Incorporation and Cinematic Reflections of Psychological Conceptions of Homosexuality*, 70 UMKC L. REV. 495, 499 (2002) (specifying the group’s influence on Hollywood as far back as the 1930s).

63. Eskridge, *supra* note 61.

64. *Id.* The author cited James Bond’s seduction of the self-proclaimed lesbian Pussy Galore in *Goldfinger* as an example of a lesbian who is “cured” of her homosexuality. See *id.*; *GOLDFINGER* (United Artists 1964).

65. Butler, *supra* note 46.

66. *Id.*

67. See Eskridge, *supra* note 50 (affirming the boom in homosexual rights activism with a more radical message, including the “Gay is Good” slogan, following the Stonewall incident).

68. *THE BOYS IN THE BAND* (Leo Films 1970); see Butler, *supra* note 46, at 857 (identifying the film as exemplifying the continued marginalization of homosexuals in cinema).

69. Butler, *supra* note 46, at 857.

70. Eskridge, *supra* note 50, at 2472.

71. *Id.*

72. *Id.*

fairer treatment.⁷³ In 1973, the Gay Activists Alliance and the National Gay Task Force developed “Some General Principles for Motion Picture and Television Treatment of Homosexuality.”⁷⁴ One of the principles stated: “Use the same rules you have for other minorities. If bigots don’t get away with it if they hate Catholics, they can’t get away with it if they hate gays. Put another way, the rights and dignity of homosexuals are not a controversial issue.”⁷⁵

Also in 1973, there were corresponding signs of growing homosexual acceptance such as removal of homosexuality in The American Psychiatric Association’s (APA) list of personality disorders.⁷⁶ The APA’s removal was an important change that was strongly influenced by the LGBT lobby, which believed that the redefinition would lead to growing acceptance of homosexuality by professional medical groups and would eventually lead to broader acceptance.⁷⁷

While homosexual characters were still featured throughout the 1970s and early 1980s, “their markedly homophobic and stereotypical depictions revealed the underlying social discomfort with homosexuality.”⁷⁸ By the 1980s, the gay community began demanding more realistic and sympathetic portrayals of homosexual life.⁷⁹ One example of the aggressive response by the LGBT community was their reaction to the 1980 film *Cruising*,⁸⁰ which depicted “gay men as perverted individuals, incapable of [maintaining] ‘normal’ relationships.”⁸¹ LGBT protest to this film sent a clear signal to filmmakers and others that negative depictions would be strongly challenged.⁸² Since the 1980s, there has been a general movement—fueled by both market and intellectual pressure—depicting LGBT characters more realistically and less stereotypically.⁸³

73. See VITO RUSSO, *THE CELLULOID CLOSET* 220 (rev. ed. 1987) (illuminating the series of meetings between gay activists and film and television industry representatives where the activists addressed negative homosexual depictions and the ability to present homosexual narratives more fairly).

74. *Id.*

75. *Id.* at 221.

76. Butler, *supra* note 46, at 856–57.

77. See Paul E. Rondeau, *Selling Homosexuality to America*, 14 REGENT U. L. REV. 443, 460–62 (2002) (recounting activists’ motivation and effect on changing the psychiatric community’s view of homosexuality).

78. Lin, *supra* note 45, at 784.

79. Butler, *supra* note 46, at 857.

80. See *CRUISING* (Lorimar Film Entertainment 1980).

81. Butler, *supra* note 46, at 857.

82. *Id.*

83. See Skover & Testy, *supra* note 4, at 232–33 (explicating market forces have favored homosexual inclusion and simultaneously undermined conservative groups such as the American Family Association).

In the 1990s, there was measurable effort in framing the homosexual narrative in a way that depicted gay and lesbian relationships as remarkably similar to heterosexual relationships, thus satisfying the mainstream conception of normality.⁸⁴ In 1992, GLAAD gave film awards to *Frankie and Johnny*⁸⁵ and *Fried Green Tomatoes*⁸⁶ for depicting homosexuals in positive ways.⁸⁷ In 1994, the film *Four Weddings and a Funeral*⁸⁸ featured a compelling gay couple in a committed relationship contrasted against an unhealthy heterosexual relationship.⁸⁹

Additionally, a number of films included overarching themes eliciting empathy and sympathy for gay individuals during the 1990s. An important example of this thematic strategy was the 1993 film *Philadelphia*.⁹⁰ In this film, Joe Miller (Denzel Washington) is an African-American attorney for plaintiff Andrew Becker (Tom Hanks), an HIV-infected attorney who is fired by his law firm when it discovers his illness.⁹¹ Becker hires Miller to represent him after no other lawyer will take the case, sues his law firm for employment discrimination, and wins.⁹²

Professor Cynthia Bond notes Hanks' character is easily relatable because he is portrayed as "straight-acting, straight-dressing, straight-talking" and is therefore more widely accepted by the typical viewer.⁹³ However, Professor Bond argues the film was ultimately restrained in its overall depiction of a homosexual character, stating, "[T]here is undoubtedly value . . . [in] putting a gay man at the center of a mainstream film at a time when such a thing was relatively unheard of, [but] we barely see Tom Hanks kiss his partner (played by Antonio Banderas), much less make love with him."⁹⁴

One of the important secondary themes in *Philadelphia* is that Washington's character is initially portrayed as being homophobic, which likely stems from stereotypes about homophobia in the African-American com-

84. Butler, *supra* note 46, at 858.

85. *FRANKIE AND JOHNNY* (Paramount Pictures 1991).

86. *FRIED GREEN TOMATOES* (Universal Pictures 1991).

87. Andrea Heiman, *Gay, Lesbian Alliance Honors Image Makers : Awards: TV's 'Roseanne,' 'L.A. Law' and 'Roc' and Film's 'Frankie and Johnny' and 'Fried Green Tomatoes' Are Recipients for Presenting Positive Portrayals of Homosexuals*, L.A. TIMES (Apr. 13, 1992), http://articles.latimes.com/1992-04-13/entertainment/ca-216_1_fried-green-tomatoes.

88. *FOUR WEDDINGS AND A FUNERAL* (PolyGram Filmed Entertainment 1994).

89. Skover & Testy, *supra* note 4, at 234 n.61.

90. *PHILADELPHIA*, *supra* note 18.

91. *Id.*

92. *Id.*

93. Cynthia D. Bond, *Laws of Race/Laws of Representation: The Construction of Race and Law in Contemporary American Film*, 11 TEX. REV. ENT. & SPORTS L. 219, 251 (2010).

94. *Id.*

munity.⁹⁵ By the end of the film, however, Washington's character unequivocally divorces himself from any homophobic beliefs in the pursuit of social justice.⁹⁶ As a result, the film suggests that differences in race and sexual orientation are insignificant and that the most important concerns should be justice and fairness.

Such archetypal empathy is also present in the 1997 film *As Good as it Gets*.⁹⁷ Like the gay characters in *Philadelphia*, Simon Bishop (Greg Kinnear) is relatable and depicted as an ordinary person.⁹⁸ In the film, Bishop is a gay artist who was disowned by his father due to his homosexuality.⁹⁹ At one point in the film, Bishop is assaulted and robbed, presumably because he is gay.¹⁰⁰ Although he is portrayed as a victim, he also represents a strong-willed character able to get back on his feet.¹⁰¹ Overall, the film improved upon earlier treatment of gay identity by portraying Bishop's homosexuality in a simple and plain manner.¹⁰²

The 1990s also included films diversifying overall depiction of homosexuals. In 1992, *Basic Instinct*¹⁰³ portrayed a lesbian as a murderous sociopathic, a role which sparked protests in the LGBT community.¹⁰⁴ *The Wedding Banquet*¹⁰⁵ was released in 1993 and featured a Taiwanese immigrant's homosexual relationship with a white man.¹⁰⁶ *The Birdcage*¹⁰⁷ was released in 1996 and exemplifies a blockbuster film that "explored the human elements of gay existence, including monogamous long-term relationships and gay families."¹⁰⁸ Specifically, the film featured a gay couple's long-term bond and the successful son they raised together.¹⁰⁹ The film premiered at number one at the box office during the film's opening weekend.¹¹⁰

95. *Id.*

96. PHILADELPHIA, *supra* note 18.

97. AS GOOD AS IT GETS, *supra* note 19.

98. Compare *id.* with PHILADELPHIA, *supra* note 18.

99. AS GOOD AS IT GETS, *supra* note 19.

100. *Id.*

101. *Id.*

102. Lin, *supra* note 45, at 785.

103. BASIC INSTINCT (Carolco Pictures 1992).

104. Heiman, *supra* note 87.

105. THE WEDDING BANQUET (Ang Lee Productions 1993).

106. Director Ang Lee has directed three films that depict homosexuals in very diverse ways: *The Wedding Banquet*, *Brokeback Mountain*, and *Taking Woodstock*. See Ang Lee, N.Y. TIMES, <http://www.nytimes.com/movies/person/166472/Ang-Lee/biography> (providing Lee's film credentials).

107. THE BIRDCAGE, *supra* note 55.

108. Lin, *supra* note 45, at 785.

109. THE BIRDCAGE, *supra* note 55; Butler, *supra* note 46, at 859.

110. Butler, *supra* note 46, at 859.

The Birdcage also contains an overtly political theme. Kevin Keeley (Gene Hackman) is a highly conservative U.S. Senator concerned with “family values” whose re-election campaign is seriously damaged when a political ally is found dead in a motel room with an under-aged, African-American prostitute.¹¹¹ Initially reluctant in allowing his daughter to wed, Keeley’s wife points out that a nice, wholesome wedding would be an ideal way to divert the media from his political troubles.¹¹² By the end of the film, Keeley is in drag and is seemingly more accepting of homosexuality and LGBT lifestyles.¹¹³ Furthermore, Keeley confesses to admiring Nathan Lane’s character in drag more than his own wife.¹¹⁴ At one point, Keeley exclaims, “They just don’t make women like her anymore.”¹¹⁵ In an interview about the film, Robin Williams noted that he hoped that the movie would be “important” to the gay rights movement.¹¹⁶ Williams explained that the film was about “[r]econciling a family, a country, right and left. People are more alike than everybody thinks, and families are families.”¹¹⁷

In the late 1990s there was a sharp increase in gay-man-straight-woman buddy films. This genre was exemplified by the films *My Best Friend’s Wedding*¹¹⁸ and *The Object of My Affection*¹¹⁹. The film *My Best Friend’s Wedding* was released in 1997 and features George (Rupert Everett) “as the suave, debonair, and eloquent gay friend who provides an emotional lifeline to” Julianne (Julia Roberts).¹²⁰ *The Object of My Affection*, released in 1998, features a gay grade school teacher (Paul Rudd) who agrees to father a child with his best friend (Jennifer Aniston).¹²¹ Describing the film, one film critic noted, “Gay life has never seemed more effortlessly mainstreamed . . . it shows something of a breakthrough in its portrayal of gay characters.”¹²²

111. *THE BIRDCAGE*, *supra* note 55.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Jonathan Alter, *Robin Williams Uncaged*, USA WEEKEND, March 1–3, 1996, at 5.

117. *Id.*

118. *MY BEST FRIEND’S WEDDING*, *supra* note 57.

119. *THE OBJECT OF MY AFFECTION*, *supra* note 56.

120. Skover & Testy, *supra* note 4, at 234 n.62; *MY BEST FRIEND’S WEDDING*, *supra* note 57.

121. *THE OBJECT OF MY AFFECTION*, *supra* note 56.

122. Jay Carr, ‘Affection’ Gives Gay Life a Reel Edge, BOSTON GLOBE, April 17, 1998, at F1, available at <http://www.highbeam.com/doc/1P2-8485840.html>; see also Lin, *supra* note 45, at 785 (“The *Object of My Affection* symbolized yet another milestone in the normalization of gay characters in movies: the inclusion of intimate same-sex relationships.”).

In the 2000s, films continued generating empathy and understanding for homosexual characters. In 2009, *A Single Man*¹²³ portrayed the life of a gay British university professor living in California during the 1960s.¹²⁴ In the film, George Falconer (Colin Firth) mourns the loss of his longtime partner, Jim (Matthew Goode), who died in a car accident.¹²⁵ The film features flashbacks to George and Jim's relationship of sixteen years and the depression that afflicts George after Jim's death.¹²⁶ In 2010, the film *Beginners*¹²⁷ portrayed an older, Hal Fields (Christopher Plummer), man who comes out of the closet later in life.¹²⁸ The film focuses on the older man exploring life as an openly gay man and strengthening his relationship with his son (Ewan McGregor).¹²⁹ He becomes active in the gay community, finds love, and becomes more honest with himself and with his son.¹³⁰

Comedic films are often used in generating laughter at the very idea there is anything wrong with homosexuality.¹³¹ One example of a comedic film helping deconstruct historical anti-gay sentiments through laughter was *Mean Girls*, released in 2004.¹³² In the film one of the main character's best friends at the high school is a homosexual.¹³³ The film effectively uses comedy in creating empathy for homosexual characters. For example, at the beginning of the film a group of young children explain, "God created the Remington bolt-action rifle so that man could fight the dinosaurs . . . and the homosexuals."¹³⁴ The children are depicted as uneducated and backwards, allowing the statement to effectively generate laughter based on the pure absurdity of the comment.¹³⁵ In addition, the homosexual male character in the film is affectionately told he is "too gay to function" during one scene.¹³⁶ *Mean Girls* is an important film because it allows the viewer to laugh at the cruel nature of

123. *A SINGLE MAN* (Fade to Black Productions 2009).

124. *Id.*

125. *Id.*

126. *Id.*

127. *BEGINNERS* (Olympus Pictures 2010).

128. *Id.*

129. *Id.*

130. *Id.*

131. *But see generally* Kathleen Battles & Wendy Hilton-Morrow, *Gay Characters in Conventional Spaces: Will and Grace and the Situation Comedy Genre*, 19 *CRITICAL STUD. MEDIA COMM.* 87 (2002), available at <http://www.csun.edu/~vcspc00g/301/will%26grace-csmc.pdf> (examining how situation comedy can reinforce heterosexism when viewed through familiar "televisual frames" by mainstream audiences).

132. *MEAN GIRLS* (Paramount Pictures 2004).

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

high school that affects everyone, regardless of sexual orientation, socio-economic status, ethnicity, or other factors.

Recently, films have served a vital role in deconstructing negative historical stereotypes about homosexuals. In *I Love You, Man*,¹³⁷ Andy Samberg plays a hardcore sports fan who happens to be gay but makes his straight brother (Paul Rudd) seem like the more feminine one.¹³⁸ Significantly, the 2005 release of the film *Brokeback Mountain*¹³⁹ “coincide[d] with a precise and rapidly developing phase in gay history, the movement towards acceptance and integration[.]”¹⁴⁰ The film takes place in 1963 and centers around the lives of Ennis Del Mar (Heath Ledger) and Jack Twist (Jake Gyllenhaal), cowboys in Wyoming.¹⁴¹ Ennis and Jack develop a sexual and emotional relationship.¹⁴² In many ways, the “gay cowboy movie” was able to effectively liberate latent sexual desires and channel the themes to a romantic tragedy.¹⁴³ Furthermore, the film was able to promote progressive values through a “traditional mode of storytelling, the love that dare not speak its name rendered intelligible through the universal language of the upscale weepy.”¹⁴⁴

When Jake Gyllenhaal and Heath Ledger were asked to comment on the impact of the film on LGBT rights, the actors stated, “[T]hey hoped that the film shows a gay relationship in a matter-of-fact, unsensational light and that it contributes to tolerance.”¹⁴⁵ Perhaps more importantly, the film demonstrated that “Hollywood is shedding light on the fact that not all gay men are fashion gurus, hair dressers, interior designers and superior in the arts, but that some might be—God forbid—cowboys herding sheep in Wyoming.”¹⁴⁶

There has also been a growth in the number of Hollywood actors “coming out” in real life, including: Nathan Lane, Alan Cumming, Cheyenne Jackson, David Hyde Pierce, Gavin Creel, Harvey Fierstein, Sean

137. *I LOVE YOU, MAN* (DreamWorks Pictures 2009).

138. *Id.*

139. *BROKEBACK MOUNTAIN* (Focus Features 2005).

140. Robin Wood, *On and Around* “Brokeback Mountain,” 60 *FILM Q.* 28, 28 (2007).

141. *BROKEBACK MOUNTAIN*, *supra* note 139.

142. *Id.*

143. Nathan Lee, *Queer as Folk*, *THE VILLAGE VOICE.COM* (July 10, 2007), <http://www.villagevoice.com/2007-07-10/film/queer-as-folk/> (internal quotation marks omitted).

144. *Id.*

145. Paul Clinton, ‘Gay Cowboy Movie’ Shatters Stereotypes, *CNN*, (Sept. 12, 2005 12:29 PM), <http://www.cnn.com/2005/SHOWBIZ/Movies/09/12/brokeback.toronto/index.html>.

146. Miles Christian Daniels, ‘Brokeback Mountain’ Shatters Gay Stereotypes, *BALTIMORE SUN* (Dec. 15, 2005), http://articles.baltimoresun.com/2005-12-15/news/0512150031_1_brokeback-mountain-stereotypes-god-forbid.

Hayes, and Neal Patrick Harris.¹⁴⁷ However, there is a glaring absence of “A List” Hollywood stars who have publically disclosed their homosexuality.¹⁴⁸

B. *Homosexuals in Television Shows*

Like movies, television shows play an important role in humanizing homosexuals. Perhaps television shows have an even stronger impact than films. Many viewers watch television shows over the course of a season, reinforcing the humanization of homosexuals on a recurring basis.¹⁴⁹

Analogous to homosexual portrayal in movies, homosexual characters in television were generally missing or portrayed negatively in the first decades of television.¹⁵⁰ Research suggests during the early 1990s there were few, if any, positive portrayals of homosexuals on television.¹⁵¹ In the book *America on Film*, the authors note, “The rise of queer TV has been important in bringing queer lives and queer issues to mainstream America, especially to people who would never go out to see a Hollywood film about queers (let alone an independent one).”¹⁵² Edward Schiappa, a professor of communications at the University of Minnesota, notes that seeing likable gay characters on shows like *Will & Grace* created similar reactions toward gays in real life.¹⁵³ In one study, a group of students viewed ten episodes of HBO’s *Six Feet Under*,¹⁵⁴ a show which dealt with one of its main characters coming out as a homo-

147. Patrick Healy, *How Celebrities Come Out Now*, N.Y. TIMES (June 9, 2012), http://www.nytimes.com/2012/06/10/sunday-review/how-celebrities-come-out-now.html?ref=ellen-degeneres&_r=0.

148. *See id.* (surveying various ways actors have revealed their sexual orientation and how these reveals have changed from carefully planned released statements to more casual comments).

149. In other words, a television show tends to draw in viewers for the entire season whereas a movie will usually only be seen one time. *See* Kimberlianne Podlas, *Funny or No Laughing Matter?: How Television Viewers Interpret Satires of Legal Themes*, 21 SETON HALL J. SPORTS & ENT. L. 289, 296–97 (2011) (addressing cultivation theory—“heavy, long-term exposure to television’s imagery creates in viewers, attitudes and perceptions of reality that are consistent with this imagery”—and its impacts on the viewing public).

150. Edward Schiappa et al., *Can One TV Show Make a Difference? Will & Grace and the Parasocial Contact Hypothesis*, 51 J. HOMOSEXUALITY, no. 4, 2006, at 15, 15, available at <http://www.comm.umn.edu/department/pch/wg.pdf>.

151. *Id.*

152. HARRY M. BENSHOFF & SEAN GRIFFIN, *AMERICA ON FILM: REPRESENTING RACE, CLASS, GENDER, AND SEXUALITY AT THE MOVIES* 341 (2nd ed. 2009).

153. Schiappa et al., *supra* note 150, at 15, 16.

154. *Six Feet Under* (Home Box Office 2001–2005).

sexual.¹⁵⁵ After viewing the episodes, the students' levels of anti-gay prejudice dropped eleven to fifteen percent.¹⁵⁶ Similarly, a 2011 GLAAD poll showed that seeing homosexual characters on television was a contributing factor to viewing homosexuals in a more favorable way.¹⁵⁷

Television shows generally depict homosexual characters in a favorable and diverse light: the unreserved, gay friend and successful lawyer portrayed by Eric McCormack in *Will & Grace*;¹⁵⁸ the witty and savvy accountant portrayed by Oscar Nunez in *The Office*;¹⁵⁹ the first openly gay child of a sitting President of the United States and the first openly gay Justice of the United States Supreme Court Justice in *Political Animals*.¹⁶⁰ Indeed, in 2010 primetime cable and network programs featured more than thirty regular homosexual characters at any given time.¹⁶¹ Recognizing the importance of these portrayals, GLAAD created the Network Responsibility Index, used to assess the quality and quantity of LGBT characters across various networks annually.¹⁶²

Comparable to movies, television shows featuring homosexual characters have appeared on a progressive time scale. The first reality show to portray the life of a homosexual on national television was MTV's *The Real World*¹⁶³ in 1992. Initially, the announcement of this show was viewed as a shock but was later accepted because the gay characters were

155. Edward Schiappa et al., *The Parasocial Contact Hypothesis*, 72 COMM. MONOGRAPHS 92, 101 (2005), available at <http://www.comm.umn.edu/department/pch/pch1.pdf>; see *Six Feet Under*, *supra* note 154 (featuring a main character, David Fisher, as a homosexual male).

156. Edward Schiappa, *Parasocial Contact Hypothesis FAQs*, DEP'T OF COMM. STUD., U. OF MINN., <http://www.comm.umn.edu/department/pch/FAQ.pdf> (clarifying and outlining various key results of two studies conducted by the author on the change in perception of homosexuals using television series as a medium).

157. *ABC Family Gets Top Score in GLAAD Survey of Gays on TV*, L.A. TIMES (Aug. 3, 2011, 3:00 AM), <http://latimesblogs.latimes.com/showtracker/2011/08/abc-family-gets-top-score-in-survey-of-gays-on-television-.html>.

158. *Will & Grace*, *supra* note 20.

159. *The Office* (NBC television series 2005–2013); See Mark Blankenship, *Why "The Office" Still Has One Of Television's Best Gay Characters*, NEWNOWNEXT (May 9, 2013), <http://www.newnownext.com/the-office-finale-oscar-gay/05/2013/> (stating that the gay character portrayed by Oscar Nunez on the office is one of the best portrayals of a gay character on television).

160. *Political Animals* (USA Network series 2012).

161. Robert H. Knight, *How the Concept of "Sexual Orientation" Threatens Religious Liberty*, 4 LIBERTY U. L. REV. 503, 515 (2010).

162. *GLAAD Network Responsibility Index 2011–2012*, GLAAD, <http://www.glaad.org/publications/nri2012> (last visited Dec. 14, 2013).

163. *The Real World* (MTV television series 1992–present).

viewed on a personal and intimate level.¹⁶⁴ In 1992, GLAAD gave television awards to *Roseanne*¹⁶⁵ for featuring a recurring gay character, *L.A. Law*¹⁶⁶ for depicting a lesbian's fight for child custody, and *Roc*¹⁶⁷ for featuring a gay marriage in an episode.¹⁶⁸

The two most important television shows directly contributing to the sea change in cultural attitudes were *Will & Grace* and *Ellen*. *Will & Grace* ran from 1998 to 2006, for a total of eight seasons, and featured Will (Eric McCormack), a gay male lawyer, and Grace (Debra Messing), a straight female interior designer, who shared an apartment.¹⁶⁹ The *Ellen* show ran from 1994 to 1998, totaling eight seasons, and featured Ellen Morgan (Ellen DeGeneres), a quirky bookstore owner.¹⁷⁰

In 1997, Ellen DeGeneres came out on *The Oprah Winfrey Show*.¹⁷¹ "Ellen[']s . . . public coming-out marked a watershed in the way the traditional mainstream media conceived of lesbians and gay men as simultaneously culturally meaningful and not intimidating (that is, 'just like everyone else')." ¹⁷² Ellen Morgan (the fictional character) came out later in the year during the *Ellen* show,¹⁷³ which compounded its impact. Indeed, forty six million people viewed the "coming out" episode.¹⁷⁴ Professor Judith Younger explains that the characters on *Will & Grace* and *Ellen* "did for same-sex acceptance, [what] Candice Bergen, as Murphy Brown, in the television show of the same name, had done for accept-

164. ADAM SHAPIRO ET AL., PORTRAYAL OF HOMOSEXUALS IN THE MEDIA 4 (2004), <http://www.bgsu.edu/departments/tcom/faculty/ha/tcom103fall2004/gp16/gp16.pdf>.

165. *Roseanne* (ABC television series 1988–1997).

166. *L.A. Law* (NBC television series 1986–1994).

167. *Roc* (FOX television series 1991–1994).

168. Heiman, *supra* note 87.

169. *Will & Grace*, *supra* note 20; Judith T. Younger, *Families Now: What We Don't Know Is Hurting Us*, 40 HOFSTRA L. REV. 719, 728 (2012).

170. *Ellen*, *supra* note 21; Younger, *supra* note 169, at 728–29.

171. *The Oprah Winfrey Show* (CBS television series 1986–2011); David J. Herzig, *DOMA and Diffusion Theory: Ending Animus Legislation Through a Rational Basis Approach*, 44 AKRON L. REV. 621, 665 (2011).

172. Kris Franklin, *The Rhetorics of Legal Authority Constructing Authoritativeness, the "Ellen Effect," and the Example of Sodomy Law*, 33 RUTGERS L.J. 49, 60 (2001). The author argues that this created the "Ellen Effect," which assumes that gay people are not simply part of the social fabric, but can be integrated into society and its institutions. Kris Franklin, *Homophobia and the "Mathew Shepard Effect" in Lawrence v. Texas*, 48 N.Y.L. SCH. L. REV. 657, 665–66 (2003–2004) [hereinafter *Homophobia*].

173. *Ellen: The Puppy Episode* (ABC television broadcast Apr. 30, 1997); see also Butler, *supra* note 46, at 858 (stating the character came out on the show and began pursuing new relationships as a lesbian); Skover & Testy, *supra* note 4, at 235 (stating the character Ellen came out on the show).

174. Herzig, *supra* note 171, at 666. The author also highlighted that *Ellen*'s "coming out" episode was the show's highest rated episode and received an Emmy for Best Comedy Writing and a Peabody Award.

ance of single motherhood when she became an unwed mother during the 1992 presidential campaign.”¹⁷⁵

Like movies, television shows are important in challenging alleged misconceptions about homosexuals and generating empathy. One such example occurred on an episode of *The West Wing*¹⁷⁶ titled “The Midterms.”¹⁷⁷ In this episode, an anti-homosexual conservative radio talk show host named Dr. Jenna meets with President Jed Bartlet (Martin Sheen) to discuss homosexuality.¹⁷⁸ The discussion reaches a climax when President Bartlet’s interrogation reveals that the radio host is not a medical doctor and therefore is not qualified to give medical or psychological advice.¹⁷⁹ One commentator explains the episode’s “persuasive message is that [the doctor] is the bad brand of citizen: a deceptive, ignorant, tight-ass, unqualified to give advice let alone make moral judgments. The good brand of citizen is the enlightened, literate, credible President who comes down on the side of homosexuals.”¹⁸⁰

Television shows have also portrayed homosexual characters as highly diverse. On *The Wire*,¹⁸¹ Detective Shakima “Kima” Greggs (Sonja Sohn) is an African-American lesbian police officer with a live-in lesbian partner.¹⁸² Kima is a tremendously tough officer, yet she is also a glamorous woman who regularly goes undercover to find out information about drug dealers.¹⁸³ During the first season, Kima gets shot and viewers see how difficult this is for her girlfriend, especially after she is unable to visit Kima in the hospital.¹⁸⁴ On *Ugly Betty*,¹⁸⁵ the 2010 season finale featured Betty’s (America Ferrera) male teen nephew and his decision to come out to his family. This was “the first time a network audience watched a gay child grow up and embrace his identity.”¹⁸⁶ Likewise,

175. Younger, *supra* note 169, at 729; see *Murphy Brown* (CBS television series 1998–1998) (confirming that the lead character Murphy Brown was an unwed mother in the series).

176. *The West Wing* (NBC television series 1996–2006).

177. *The West Wing: The Midterms* (NBC television broadcast Oct. 18, 2000) [hereinafter *Midterms*].

178. *Id.*; see Rondeau, *supra* note 77, at 474–75 (analyzing the episode and its effect).

179. *Midterms*, *supra* note 177; Rondeau, *supra* note 77, at 474.

180. Rondeau, *supra* note 77, at 475.

181. *The Wire* (HBO television series 2002–2008).

182. *Id.*

183. *Id.*

184. *The Wire: The Hunt* (HBO television broadcast Aug. 18, 2002).

185. *Ugly Betty* (ABC television series 2006–2010).

186. Maria Puente, *Hollywood Now Opening Arms to Gay Characters, Families*, USA TODAY (Aug. 24, 2012, 10:12 AM), http://usatoday30.usatoday.com/life/movies/news/2010-08-24-gayshollywood23_CV_N.htm; see *Ugly Betty: The Past Presents the Future* (ABC television broadcast Apr. 7, 2010).

Glee,¹⁸⁷ a show about a high school glee club, featured a story line about a teenager who comes out to his father, whose reaction is not as homophobic as his son feared.¹⁸⁸

During the 1990s and early 2000s, there were a number of popular comedies successfully integrating gay themes and characters even though none of the main characters were homosexual. For example, *Friends*¹⁸⁹ and *Roseanne*¹⁹⁰ showcased same-sex wedding ceremonies; importantly, both shows received record high ratings and few negative responses.¹⁹¹ The highly rated sitcom *Mad About You*¹⁹² included a lesbian couple that regularly appeared on the show.¹⁹³

Even animated series such as *The Simpsons*¹⁹⁴ and *South Park*¹⁹⁵ have featured gay characters in prominent roles. For instance, *South Park* regularly featured the character Big Gay Al.¹⁹⁶ In 1997, an episode of *The Simpsons* focused chiefly on LGBT issues.¹⁹⁷ In the episode, Homer Simpson struggles with homophobia but eventually learns how to accept homosexuality.¹⁹⁸

A number of television shows have focused almost solely on the show's gay cast members such as *Queer Eye for the Straight Guy*.¹⁹⁹ One commentator noted "the surprising overnight success of the television show *Queer Eye for the Straight Guy* demonstrates the ever-increasing level of mainstream acceptance of homosexuality."²⁰⁰ The 2000s also witnessed

187. *Glee* (FOX television series 2009–present).

188. Puente, *supra* note 186.

189. *Friends: The One with the Lesbian Wedding* (NBC television broadcast Jan. 18, 1996).

190. *Roseanne: December Bride* (ABC television broadcast Dec. 12, 1995).

191. Butler, *supra* note 46, at 859.

192. *Mad About You* (NBC television series 1992–1999).

193. *Id.*; Butler, *supra* note 46, at 858.

194. *The Simpsons* (FOX television series 1989–present).

195. *South Park* (Comedy Central television series 1997–present).

196. See, e.g., *South Park: Big Gay Al's Big Gay Boat Ride* (Comedy Central television broadcast Sept. 3, 1997) (exemplifying an episode revolving around homosexuality).

197. *The Simpsons: Homer's Phobia* (FOX television broadcast Feb. 16, 1997) [hereinafter *Homer's Phobia*]; see generally Kimberlianne Podlas, *Homerus Lex: Investigating American Legal Culture Through the Lens of the Simpsons*, 17 SETON HALL J. SPORTS & ENT. L. 93 (2007) (discussing *The Simpson's* impact on American popular and legal culture).

198. *Homer's Phobia*, *supra* note 197.

199. *Queer Eye for the Straight Guy* (Bravo Network television series 2003–2007).

200. Gavin W. Scotti, Jr., Note, *Queer Eye for the Military Guy: Will "Don't Ask, Don't Tell" Survive in the Wake of Lawrence v. Texas?*, 78 ST. JOHN'S L. REV. 897, 900 (2004).

growth of series involving almost exclusively homosexual casts, exemplified by cable television shows *Queer as Folk*²⁰¹ and *The L Word*.²⁰²

A number of successful television shows depicting homosexuals have targeted teenaged audiences, deliberately planting seeds of empathy and acceptance at an early age.²⁰³ Studies show that television has a greater impact on children than on adults, chiefly because children are “just beginning to process the world.”²⁰⁴ Therefore, “popular-culture references become part of the fabric of our understanding at a very young age.”²⁰⁵ The show *Dawson’s Creek*²⁰⁶ featured a gay character named Jack McPhee (Kerr Smith), whose sexual orientation was a recurring topic on the show.²⁰⁷ Another example of shows targeting young people is *Buffy the Vampire Slayer*,²⁰⁸ in which the teen-witch character Willow Rosenberg (Alyson Hannigan) officially announced that she was a lesbian.²⁰⁹

There has been a significant increase in shows aimed at a younger demographic with openly gay characters including *Pretty Little Liars*,²¹⁰ *Greek*,²¹¹ *90210*,²¹² and *Gossip Girl*.²¹³ Upon receiving GLAAD recognition for its depiction of gay characters in its television shows targeting teenagers and young adults, ABC Family President Michael Riley stated that the goal of his network is to provide shows that are “relatable” and “authentic.”²¹⁴

201. *Queer as Folk* (Showtime Networks television series 2000–2005) (depicting a tight-knit circle of gay and lesbian friends); see Skover & Testy, *supra* note 4, at 235 (noting Showtime spent over \$10 million to promote the show, the largest amount it had ever spent on a television series).

202. *The L Word* (Showtime Network television series 2004–2009). This was a show about the lives of lesbians, displaying them as though they were heterosexual glamour girls. See *id.*

203. Cf. Salzmann, *supra* note 27, at 244–45 (arguing popular-culture references provide an important source of information at a young age).

204. *Id.* at 244.

205. *Id.* at 245.

206. *Dawson’s Creek* (The WB Television Network television series 1998–2003).

207. See, e.g., *Dawson’s Creek: First Encounters of the Close Kind* (The WB Television Network television broadcast Dec. 15, 1999) (depicting Jack’s exploration of the local gay community).

208. *Buffy the Vampire Slayer* (The WB Television Network & United Paramount Network television series 1997–2003).

209. *Buffy the Vampire Slayer: New Moon Rising* (The WB Television Network television broadcast May 2, 2000).

210. *Pretty Little Liars* (ABC Family television series 2010–present).

211. *Greek* (ABC Family 2007–present).

212. *90210* (CW Television Network television series 2008–2013).

213. *Gossip Girl* (CW Television Network television series 2007–2012); see L.A. TIMES, *supra* note 157 (listing these shows as receiving top marks from GLAAD in 2011).

214. L.A. TIMES, *supra* note 157.

A growing number of comedy shows strive in making anti-gay sentiments laughable and seemingly absurd. Legal scholars have long recognized how effective humor can be in communicating ideas and facilitating communication.²¹⁵ Humor is a highly persuasive tool that resonates on a number of levels.²¹⁶ Most notably, humor has a profound ability to make messages more relatable and accessible.²¹⁷

Perhaps the most illustrative example of breaching the homosexuality subject with humor occurred on the show *Seinfeld*²¹⁸ during the episode titled "The Outing."²¹⁹ In this episode, a journalist falsely reports in an article that Jerry Seinfeld is gay.²²⁰ Jerry spends the rest of the episode convincing the female reporter and his friends that he had not been "outed" as a gay man.²²¹ Each time that Jerry denies that he is gay, he qualifies the denial with the now familiar phrase, "[n]ot that there's anything wrong with that."²²²

A more recent example of a show painting anti-gay sentiments as laughable is *The Office*.²²³ In one episode, Dwight Schrute (Rainn Wilson) goes on a covert operation to determine whether Oscar (Oscar Nunez) is actually sick after Oscar calls in sick to work.²²⁴ In actuality, Oscar decided to skip work to spend time with his boyfriend.²²⁵ When Dwight finally locates Oscar and his boyfriend, Dwight does not even notice their homosexual relationship.²²⁶ In 2006, *The Office* featured an episode titled "The Gay Witch Hunt" in which Michael Scott (Steve Carell) reveals to the entire office that Oscar is gay.²²⁷ Michael Scott spends the rest of the episode trying to prove to Oscar that he is accepting of his sexual orientation.²²⁸ When Oscar threatens to quit, Michael Scott kisses Oscar on the lips.²²⁹ The episode generates laughter by focusing on the politically incorrect overreaction of Michael Scott.

215. See generally J.T. Knight, Comment, *Humor and the Law*, 1993 WIS. L. REV. 897 (examining the use of humor in law review articles).

216. *Id.* at 908.

217. *Id.*

218. *Seinfeld* (NBC television series 1989–1998).

219. *Seinfeld: The Outing* (NBC television broadcast Feb. 11, 1993).

220. *Id.*

221. *Id.*

222. *Id.*

223. *The Office*, *supra* note 159.

224. *The Office: The Secret* (NBC television broadcast Jan. 19, 2006).

225. *Id.*

226. *Id.*

227. *The Office: Gay Witch Hunt* (NBC television broadcast Sept. 21, 2006).

228. *Id.*

229. *Id.*

Animated comedy shows have also used comedy as a tactic to paint anti-homosexual comments and actions as laughable and patently absurd.²³⁰ Many of the animated shows that use the comedy tactic have been interpreted as highly offensive; however, the shows are markedly effective in forcing viewers to confront their deep-seated beliefs that many hold as sacred.²³¹ For instance, *South Park* featured an episode in which Mr. Garrison, a South Park teacher, openly admits his homosexuality to Principal Victoria, Chef, and Mr. Mackey, and asks for his job back.²³² They reply: “I’m sorry, we don’t hire gay people,” and laugh derisively.²³³

Another example of this tactic was exemplified on *Family Guy*²³⁴ in an episode titled “Quagmire’s Dad.”²³⁵ In this episode, Quagmire attends a Navy event with his father, a man who is depicted as a stereotypically gay man.²³⁶ At the event, Quagmire receives numerous compliments about his war-hero father that imply that his father is gay.²³⁷ The father later denies that he is homosexual, but instead says he is a “woman trapped in a man’s body” and he then has a sex change operation.²³⁸ The episode was pinned as offensive by GLAAD,²³⁹ but *Family Guy* creator Seth MacFarlane defended the episode, arguing that it provided a “very sympathetic portrayal of a transsexual character.”²⁴⁰ In another episode titled “Family Gay,” Peter Griffin is injected with “the gay gene.”²⁴¹ Peter is then sent to “straight camp” where he is told by the camp counselor:

230. See Kimberlianne Podlas, *Respect My Authority! South Park’s Expression of Legal Ideology and Contribution to Legal Culture*, 11 VAND. J. ENT. & TECH. L. 491, 514–15 (2009) (explaining how animated comedy shows like *South Park* make it easier to use satire and convey important messages).

231. See Podlas, *supra* note 149, at 320 (“When *Family Guy* is offensive, which is often, it is offensive in a way that forces viewers to confront their own actions or reveals that some beliefs they hold sacred might not deserve to be. . . . thus, exposing and rejecting that position.”).

232. *South Park: 4th Grade* (Comedy Central television broadcast Nov. 8, 2000).

233. *Id.*

234. *Family Guy* (FOX television series 1999–present).

235. *Family Guy: Quagmire’s Dad* (FOX television broadcast May 9, 2010).

236. *Id.*

237. *Id.*

238. *Id.*

239. See GLAAD Shares Community Concerns About Last Night’s *Family Guy*, GLAAD, (May 10, 2010), <http://www.glaad.org/2010/05/10/glaad-shares-community-concerns-about-last-nights-family-guy> (expressing concern that the episode was highly offensive toward the LGBT community and that one scene “implies that transgender people are sex offenders”).

240. Amy Wallace, *Seth MacFarlane Sounds Off*, DETAILS, Aug. 2010, <http://www.details.com/celebrities-entertainment/movies-and-tv/201009/seth-macfarlane-family-guy-american-dad-controversy>.

241. *Family Guy: Family Gay* (FOX television broadcast Mar. 8, 2009).

“You’re all here because you’ve made a choice to renounce your evil sinful ways and redeem yourselves in the eyes of your lord and savior Jesus Christ who hates many people but none more than homosexuals.”²⁴²

Television talk shows have also played an important role by facilitating honest discussion about homosexual themes and identities. For instance, *The Oprah Winfrey Show* featured an episode on people coming out on the show.²⁴³ In 2003, *The Ellen DeGeneres Show*²⁴⁴ debuted and has remained highly successful—winning several Emmy Awards.²⁴⁵ Reality television shows have also featured a wide variety of homosexuals. *Dancing with the Stars*²⁴⁶ has featured transgender advocate Chaz Bono as one of its contestants.²⁴⁷ Furthermore, *American Idol*²⁴⁸ gay alums include Clay Aiken and Adam Lambert, while Ellen DeGeneres has also served as a host of the show.²⁴⁹ Another emerging theme in the homosexual television arena is that a growing number of actors are coming out in real life, including Jim Parsons, Neil Patrick Harris, Jesse Tyler Ferguson, and Cynthia Nixon.²⁵⁰

C. *Gay Treatment by the Press*

Examination of the press’s treatment of homosexuality also demonstrates change in the homosexual narrative. Historically, the media regularly withheld information about homosexual behavior.²⁵¹ It was not until the 1970s that newspapers and magazines began to cover homosexuality.²⁵² Some legal scholars attribute increased news coverage of homo-

242. *Id.*

243. *The Oprah Winfrey Show: Best of Oprah—‘Coming Out’ on the “Oprah” Show: 25 Years of Unforgettable Guests* (CBS television broadcast Jan. 1, 2011); see Patrick Kevin Day, ‘Dancing With the Stars,’ ‘Smash’ Given GLAAD Media Awards, L.A. TIMES (Mar. 26, 2012, 12:34 PM), <http://latimesblogs.latimes.com/showtracker/2012/03/glaad-media-awards-dancing-with-the-stars-smash-producers.html> (lauding *The Oprah Winfrey Show* for its GLAAD Outstanding Talk Show Award).

244. *Ellen: The Ellen DeGeneres Show* (Time Telepictures Television et al. television series 2003–present).

245. See Herzig, *supra* note 171, at 667 (“In its first season, the show was nominated for eleven Emmy Awards and won four, including Best Talk Show.”).

246. *Dancing with the Stars* (ABC television series 2005–present).

247. See Lauren Sher, *Chaz Bono: ‘Dancing With the Stars’ Judges Treat Overweight Men, Women Differently*, ABC NEWS (Oct. 26, 2011, 10:25 AM) (detailing Chaz’s reaction to participating in the show).

248. *American Idol* (FOX television series 2002–present).

249. *Id.*

250. Healy, *supra* note 147.

251. See Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511, 585–86 (1992) (describing this as an attempt to keep private matters private).

252. Lin, *supra* note 45, at 787.

sexuals and homosexual issues to the Stonewall riots of 1969.²⁵³ In 1974, Walter Cronkite devoted a segment of his CBS evening news program to a report on then existing municipal ordinances addressing gay rights.²⁵⁴ Since the 1970s, homosexuality has been an essential focus of the media, largely driven by a growing interest in HIV/AIDS, homosexuals in the military, gay marriage, and hate crimes.²⁵⁵

In recent years, news coverage of gay events has been even more significant. In December 2011, the new “kiss heard round the world” received heavy media coverage as the first same-sex kiss between a returning Navy enlistee and her partner occurring post-DADT.²⁵⁶ The media celebrated it as the “torpedoing” of DADT.²⁵⁷ In 2012, *Newsweek* featured President Obama on the front cover with a rainbow halo and labeled him “The First Gay President.”²⁵⁸

The change in the media’s coverage has largely been a result of the rise of powerful homosexual interests groups. “[GLAAD] is the dominant media relations and watchdog lobby of the homosexual movement.”²⁵⁹ The organization was founded in 1985 to protest the *New York Post*’s coverage of the AIDS epidemic.²⁶⁰ “[I]n 1992, *Entertainment Weekly* named GLAAD as one of Hollywood’s most powerful entities and the *Los Angeles Times* described the group as possibly the most successful organizations lobbying the media.”²⁶¹ The organization reaches millions of people by influencing print media, film, television, and creating visibility campaigns.²⁶² Furthermore, GLAAD supports positive portrayals of LGBT individuals and combats negative press accounts.²⁶³ For example, GLAAD takes credit for forcing the *New York Times* to change their

253. See Eskridge, *supra* note 50, at 903 (“Stonewall’s in-your-face activism shook the networks’ complacency, as gay people demanded both visibility and fair treatment.”).

254. *Id.* at 904.

255. Lin, *supra* note 45, at 787.

256. Francine Banner, “It’s Not All Flowers and Daisies”: Masculinity, Heteronormativity and the Obscuring of Lesbian Identity in the Repeal of “Don’t Ask, Don’t Tell,” 24 *YALE J.L. & FEMINISM* 61, 113 (2012).

257. *Id.*

258. See Andrew Sullivan, *The First Gay President*, *NEWSWEEK*, May 31, 2012 (cover article); Christine Haughney, *Magazines Catching Eyes, and Clicks*, *N.Y. TIMES*, May 21, 2012, <http://www.nytimes.com/2012/05/21/business/media/time-and-newsweek-magazine-covers-catch-eyes-and-clicks.html> (mentioning the Obama cover in a discussion of provocative covers bring readers to magazines).

259. Rondeau, *supra* note 77, at 469; see Aka, *supra* note 47, at 704–05 (discussing GLAAD’s numerous accolades).

260. Aka, *supra* note 47, at 704.

261. Rondeau, *supra* note 77, at 468–69 (internal quotation marks omitted).

262. *Id.* at 469.

263. *Id.*

editorial policy in 1987 to use the word “gay.”²⁶⁴ Moreover, GLAAD spearheaded efforts to include same-sex union announcements alongside traditional wedding announcements in 140 newspapers throughout the country.²⁶⁵

D. *Other Popular Culture Venues*

In recent decades popular music has been another important popular culture vehicle. Professor Alex Long explains, “Popular music, in its many forms, covers the spectrum of human emotions and situations” and “may also humanize an individual in the eyes of others.”²⁶⁶ Like films and television shows, homosexual musicians historically remained closeted. For instance, the flamboyant entertainer Liberace never acknowledged his homosexuality even though it was widely and publicly discussed for decades.²⁶⁷ Professor Joan Howarth notes Liberace made “homosexuality present in American culture in ways that it had not been before.”²⁶⁸ By the 1970s, popular music acts, such as the Village People, “brought some measure of acceptance and even trendiness to homosexuality.”²⁶⁹

A growing number of female musicians have promoted tolerance of homosexuality both through music and actions, such as Katy Perry’s hit song “I Kissed a Girl” and Madonna and Britney Spears’ staged kiss at the 2003 Grammy Awards.²⁷⁰ In 2011, Lady Gaga released her second album titled “Born this Way,” which included a song with the same title.²⁷¹ The song’s lyrics explicitly state that sexuality is inborn, rather than a lifestyle choice.²⁷² The song was immediately labeled the new gay anthem and was described as “nothing less than a contemporary LGBT

264. GLAAD History and Highlights, 1985-Present, GLAAD, <http://www.glaad.org/about/history> (last visited Dec. 14, 2013); Aka, *supra* note 47, at 705.

265. Aka, *supra* note 47, at 705.

266. Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531, 534 (2007).

267. See Joan W. Howarth, *Adventures in Heteronormativity: The Straight Line from Liberace to Lawrence*, 5 NEV. L.J. 260, 273 (2004) (“Beginning as early as 1954, a rash of gossip papers and magazines ran stories about Liberace’s homosexuality.”).

268. *Id.* at 276. Professor Howarth later notes that Liberace’s death from AIDS in 1987 was international news, even Ted Koppel discussed why Liberace did not reveal his homosexuality. *Id.* at 279.

269. Butler, *supra* note 46.

270. Cf. Banner, *supra* note 256, at 108 (arguing this song and kiss “imply that lesbianism is a lark” or “an act put on to impress men”).

271. LADY GAGA, *Born this Way*, on BORN THIS WAY (Interscope Records 2011).

272. *Id.*

call-to-arms.”²⁷³ Elton John claimed the song would be “the [LGBT] anthem that’s going to obliterate I Will Survive.”²⁷⁴

Literature, theater, and even advertising have also contributed to the rainbow sea change in homosexual perception and acceptance.²⁷⁵ Literature has fueled positive perceptions of homosexuals. Professor William Eskridge points out that 1980s gay literature fueled and reflected this shift by promoting narratives about monogamous homosexual relationships to combat the image of sexual deviance.²⁷⁶ In fact, homosexual literature has become so widespread that many exclusively LGBT bookstores have closed because mainstream stores started to incorporate LGBT sections.²⁷⁷ In 2007, J.K. Rowling, author of the *Harry Potter* books, revealed that the character Dumbledore, the heroic father figure and headmaster of the school, is gay.²⁷⁸ Theatre has also played a very important role in promoting a positive homosexual narrative. The play *The Laramie Project*, based on the 2008 murder of a young gay student in Wyoming, “has emerged as one of the most successful pieces of progressive theatre in decades, especially on college campuses where it generates discussion wherever it is performed.”²⁷⁹

III. CHANGES IN THE LAW

The changes in perception and the overall portrayal of homosexuals in films, television shows, and other popular culture mediums have been paralleled by profound changes in law. These changes have occurred on the legislative, executive, and judicial levels. Legislatures and courts do

273. Jon Savage, *Lady Gaga’s New Gay Anthem*, THE GUARDIAN (Feb. 13, 2011), <http://www.guardian.co.uk/music/2011/feb/14/lady-gaga-gay-anthem>.

274. *Id.* But see Yuvraj Joshi, *Respectable Queerness*, 43 COLUM. HUM. RTS. L. REV. 415, 436 n.89 (2012) (describing the gay backlash created by the release of the song).

275. There are now countless print and broadcast advertisements that include LGBT members. Susan J. Becker, *Many Are Chilled, but Few Are Frozen: How Transformative Learning in Popular Culture, Christianity, and Science Will Lead to the Eventual Demise of Legally Sanctioned Discrimination Against Sexual Minorities in the United States*, 14 AM. U. J. GENDER SOC. POL’Y & L. 177, 212 (2006).

276. WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 74 (1996).

277. Skover & Testy, *supra* note 4, at 236 n.73.

278. John Cloud, *Outing Dumbledore*, TIME (Oct. 25, 2007), <http://www.time.com/time/magazine/article/0,9171,1675622,00.html>.

279. Casey Charles, *Panic in the Project Critical Queer Studies and the Matthew Shepard Murder*, 18 LAW & LITERATURE 225, 238 (2006); see generally *Homophobia*, *supra* note 172, at 657 (discussing Matthew Shepard’s murder).

not operate in a static bubble.²⁸⁰ Legislators, executive officials, and judges watch the same movies and television shows.

In 1915, after the viewing of the film *The Birth of a Nation* at the White House, President Woodrow Wilson reportedly wiped tears from his eyes and said, "It is like writing history with lightning. And my only regret is that it is all so terribly true."²⁸¹ In 1986, President Ronald Reagan publicly confused actual historical events with scenes from a movie he had seen.²⁸² In 1992, Vice President Dan Quayle made front-page headlines when he infamously criticized the title character of the comedy series *Murphy Brown* for bearing a child out of wedlock and then later wrote a letter to the fictional newborn son.²⁸³ President Obama once said in an interview, "I'm a movie guy. I can rattle off a bunch of movies."²⁸⁴

Judges are not immune to popular culture either. During the contentious Supreme Court confirmation hearings of Judge Robert Bork in 1987, the video rental history of the candidate and his family became an issue.²⁸⁵ In addition, Justice Antonin Scalia has said that his favorite movie is *My Cousin Vinny*,²⁸⁶ a film, he said he "could watch . . . over and over and over again."²⁸⁷

This raises an important question: Does watching movies, television shows, and other forms of popular culture affect judicial decision-making? Studies show judges use information learned from popular culture mediums, coupled with personal beliefs, to make decisions.²⁸⁸ Professor

280. See, e.g., Mary L. Bonauto, *Goodridge in Context*, 40 HARV. C.R.-C.L. L. REV. 1, 28 (2005) ("The Supreme Judicial Court [of Massachusetts] did not hear arguments in the *Goodridge* case in a cultural vacuum. The power of the courts was on the mind of the Supreme Judicial Court at oral argument.").

281. Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era, Part 3: Black Disfranchisement from the KKK to the Grandfather Clause*, 82 COLUM. L. REV. 835, 883 n.203 (1982).

282. See Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 534 (identifying the 1954 film *The Bridges at Toko-Ri* as the film President Reagan mistook for an event which he thought actually occurred).

283. Ronald K. L. Collins & David M. Skover, Review Essay, *Pissing in the Snow: A Cultural Approach to the First Amendment*, 45 STAN. L. REV. 783, 787-88 (1993).

284. Lynn Sweet, *Barack Obama, "Godfather" McCain, "Viva Zapata"—Favorite Movies*, CHICAGO SUN-TIMES (Sept. 23, 2008, 7:00 PM), http://blogs.suntimes.com/sweet/2008/09/barack_obama_godfather_mccain.html (internal quotation marks omitted).

285. William McGeeveran, *Disclosure, Endorsement, and Identity in Social Marketing*, 2009 U. ILL. L. REV. 1105, 1139 (2009). The author explained this scandal led to passage of the Video Privacy Protection Act. *Id.*

286. MY COUSIN VINNY (Twentieth Century Fox 1992).

287. Paul Bedard & Nikki Schwab, *Antonin Scalia: Supreme Court Class Clown*, U.S. NEWS & WORLD REP. (Sept. 21, 2009), <http://www.usnews.com/news/blogs/washington-whispers/2009/09/21/antonin-scalia-supreme-court-class-clown> (internal quotation marks omitted).

288. Salzmann, *supra* note 27, at 255.

Salzmann explains, “Judges and legislators are influenced, just as other popular-culture viewers are, because they are simply people bringing their own personal perspective to the bar.”²⁸⁹ In 2007, Justice Antonin Scalia referred to the fictional super-agent Jack Bauer (Kiefer Sutherland) from the television show *24*²⁹⁰ when debating the legal merits of torture.²⁹¹ In 1990, Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit creatively incorporated over two hundred movie titles into an opinion.²⁹² Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit cited both *The Simpsons* and *All in the Family*²⁹³ as points of reference when she compared the conduct of an alleged harasser to Homer Simpson and Archie Bunker.²⁹⁴ Popular music has also been used by judges in persuading readers of the validity and correctness of their positions.²⁹⁵ For instance, a federal judge in Texas instructed that the facts, analysis, and conclusion of his opinion should be sung to the songs of LeAnn Rimes.²⁹⁶

Although it is exceedingly difficult to unequivocally prove that popular culture directly led to the changes in the law,²⁹⁷ it is undoubtedly true that popular culture is a markedly important vehicle for change. This Part first documents the exact changes laws regarding homosexuality on the judicial level, and then the legislative and executive level, specifically sparking the repeal of DADT and DOMA.

289. *Id.* at 256.

290. *24* (Twentieth Century Fox television series 2001–2010).

291. Steven Keslowitz, Note, *The Simpsons, 24, and the Law: How Homer Simpson and Jack Bauer Influence Congressional Lawmaking and Judicial Reasoning*, 29 *CARDOZO L. REV.* 2787, 2788 (2008).

292. See *The Syfy Rosetta Stone*, 1992 *BYU L. REV.* 457, 457 (1992) (reporting while Judge Kozinski will neither admit nor deny that there are over two hundred movie titles in the opinion he authored in *United States v. Syfy Enterprises*, editors at Brigham Young University Law Review counted two hundred and fifteen).

293. *All in the Family* (CBS television series 1971–1979).

294. See *DeAngelis v. El Paso Mun. Police Officers Ass’n*, 51 F.3d 591, 595 (5th Cir. 1995) (“[He] intended to be a curmudgeon, the police department’s Archie Bunker or Homer Simpson, who eyed with suspicion all authority figures, academy-trained officers, police dispatchers, newfangled procedures and gear—whatever had changed from the old days.”).

295. Long, *supra* note 266, at 574.

296. *Id.* at 565 (referring to Judge Jerry Buchmeyer’s opinion in *Rimes v. Curb Records Inc.*); see generally *Rimes v. Curb Records, Inc.*, 129 F. Supp. 2d 984 (N.D. Tex. 2001) (introducing each section of the opinion with the song it should be sung along with).

297. See David Ray Papke, *The Impact of Popular Culture on American Perceptions of the Courts*, 82 *IND. L.J.* 1225, 1227 (2007) (“[I]t is extremely difficult to gauge the impact of a particular pop cultural work or even a given type of work.”).

A. *Judicial Changes*

Homosexuals witnessed incredible setbacks in the 1980s despite the growing presence of homosexual characters in movies, television shows, and other areas of popular culture.²⁹⁸ Against the backdrop of the AIDS epidemic and accompanying homophobia,²⁹⁹ many LGBT members asserted their identities in courts, local legislatures, art galleries, and elsewhere to gain acceptance and relevance.³⁰⁰ It is no small coincidence that through the work of organizations such as the Moral Majority and the Christian Coalition, the 1980s saw a political awakening of fundamentalist Christians and other religious and social conservatives.³⁰¹ For these groups, the increasing visibility of homosexuals in society was a profoundly disturbing indication of the “liberalization of sexual norms and practices that had developed in the United States since the 1960s.”³⁰² Groups, such as Christian Coalition, Traditional Values Coalition, Family Research Council, and other conservative organizations exerted pressure on networks and sponsors to discourage the production and broadcast of homosexual programming.³⁰³

Against the backdrop of the 1980s conservative awakening, the Court decided *Bowers v. Hardwick*³⁰⁴ in 1986. In this case, Michael Hardwick was ticketed for public drinking but failed to appear for his hearing.³⁰⁵

298. See *supra* Part II.

299. See Anders Walker, *Shotguns, Weddings, and Lunch Counters: Why Cultural Frames Matter to Constitutional Law*, 38 FLA. ST. U. L. REV. 345, 375 (2011) (explaining the AIDS crisis in the mid-1980s marked a “shift in the cultural frame of gay rights” and “engendered a backlash in many states against homosexuality”).

300. Franklin, *supra* note 172, at 58–59.

301. Carlos A. Ball, *The Proper Role of Morality in State Policies on Sexual Orientation and Intimate Relationships*, 35 N.Y.U. REV. L. & SOC. CHANGE 81, 86–87 (2011); see Franklin, *supra* note 172, at 57 (“The so-called ‘culture wars’ that emerged in the 1980s were sparked by several different forces, but they exploded most often around the representation of sexuality in art and popular culture.”).

302. Ball, *supra* note 301.

303. Becker, *supra* note 275, at 213 n.226.

304. *Bowers v. Hardwick*, 478 U.S. 186 (1986).

305. See, e.g., Paula A. Branter, Note, *Removing Bricks from a Wall of Discrimination: State Constitutional Challenges to Sodomy Laws*, 19 HASTINGS CONST. L.Q. 495, 503–04 (1992) (summarizing the events that led up to Michael Hardwick’s arrest); Ronald Turner, *Traditionalism, Majoritarian Morality, and the Homosexual Sodomy Issue: The Journey from Bowers to Lawrence*, 53 U. KAN. L. REV. 1, 47 (2004) (retelling Michael Hardwick’s story began when he was ticketed for walking outside of the bar that he worked at with an open beer and subsequently failed to make his court date); Art Harris, *The Unintended Battle of Michael Hardwick; After His Georgia Sodomy Case, a Public Right-to-Privacy Crusade*, WASH. POST., Aug. 21, 1986, at C1 (recounting details of the events leading up to the arrest of Michael Hardwick for sodomy, including some dialogue between Hardwick and the arresting officer, Keith Torrick).

Georgia police obtained a warrant for his arrest and arrived at his home, finding Hardwick in bed with his male partner.³⁰⁶ Both men were arrested for violating Georgia's criminal sodomy statute.³⁰⁷ Although anti-sodomy laws were rarely enforced, the state of Georgia maintained that society had the right to express through criminal laws its moral disapproval of homosexuality,³⁰⁸ and the Court upheld the law.³⁰⁹

Chief Justice Burger explained the *Bowers* ruling was based on a "millennia of moral teaching" against homosexuality.³¹⁰ Professor Lynne Henderson argues that the State of Georgia won the case because it was able to cast an unfortunate stereotypical light on homosexuals prevalent in the 1980s.³¹¹ Henderson explains, "The stereotypes of homosexuals as dangerous, perverted, and child molesters, coupled with the fear of AIDS, were fully exploited by the State of Georgia and amici."³¹² Consequentially, scholars allege these unfortunate stereotypes proscribed empathy, fostering irrational prejudices based on sexual orientation.³¹³

Furthermore, members of the Court lacked empathy for the homosexual community at large. There are reports Justice Powell later claimed that he had not personally known any homosexuals at the time *Bowers* was decided, but that if he had known any homosexuals, he would have voted that the Georgia law was unconstitutional.³¹⁴ Interestingly, Justice Powell had a gay clerk during the time *Bowers* was argued, but the clerk did not tell Justice Powell about his homosexuality before oral argu-

306. See, e.g., Branter, *supra* note 305, at 505 (noting the officer went to Hardwick's home, despite the invalidity of the warrant because he had paid his fine, and arrested him for sodomy); Turner, *supra* note 305 (discussing the police—specifically Officer Torrick—walked into Harwick's home and opened his bedroom door); Harris, *supra* note 305 (describing dialogue between Officer Torrick and Hardwick upon Torrick's entrance into Hardwick's bedroom).

307. See, e.g., Branter, *supra* note 305, at 505; Turner, *supra* note 305; Harris, *supra* note 305.

308. Ball, *supra* note 301, at 88.

309. *Bowers*, 478 U.S. at 196; see Ball, *supra* note 301, at 88 (declaring Court agreement with Georgia's moral appeal and found no fundamental right to be protected by the Constitution).

310. *Id.* at 197 (Burger, J. concurring); see Lin, *supra* note 45, at 761–62 (explaining Chief Justice Burger's concurring opinion in *Bowers* was based on traditional views of sodomy).

311. See Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1640–43 (1987) (asserting that the entirety of Georgia's argument, from its briefs to its oral arguments, focused on appealing to a prejudice against homosexuals).

312. *Id.* at 1640.

313. *Id.* at 1641–42.

314. Lin, *supra* note 45, at 762 (elaborating Justice Powell was the swing vote in the final five-to-four decision and possibly initially voted to rule the law unconstitutional and it strike down, but changed his mind).

ments.³¹⁵ Justice Powell's statements illustrate the power of narratives provided by popular culture mediums "to shape the [recipient's] frame of reference, and the tangible effects that the broadening of perspective may engender."³¹⁶

The *Bowers* decision was widely seen as a significant setback for gay activists' litigation strategies and the decision also paved the way for anti-gay initiatives.³¹⁷ After *Bowers*, simply by reasoning that because sodomy could be criminalized, discrimination against homosexuals (as sodomizers) was constitutionally permissible; courts throughout the country were able to invalidate any gay rights matter.³¹⁸ For instance, in *High Tech Gays v. Defense Industry Security Clearance Office*,³¹⁹ the U.S. Court of Appeals for the Ninth Circuit held denial of a secret security clearance based on an applicant's homosexuality was permissible because of *Bowers*.³²⁰ One commentator argued that *Bowers* created a wave of gay bashing.³²¹

The conservative awakening that had begun in the 1980s continued into the 1990s as evidenced by statewide anti-gay initiatives, including state attempts to forbid the promotion of homosexuality in schools.³²² In a 1992 speech to a group of Christian radio and television station officials, President George H. W. Bush stressed the revival of conservative social and religious themes by stating, "We need a nation closer to *The Waltons* than *The Simpsons*."³²³ In 1992, Pat Buchanan gave a keynote address, known as the "culture war speech," at the Republican National Convention in which he stressed the existence of an ongoing culture war and

315. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 820 (2002).

316. Lin, *supra* note 45, at 762.

317. See generally Mary C. Dunlap, *Gay Men and Lesbians Down by Law in the 1990's USA: The Continuing Toll of Bowers v. Hardwick*, 24 GOLDEN GATE U. L. REV. 1 (1994) (evaluating the effects of the *Bowers* decision including attitudes toward litigation and anti-gay initiatives).

318. Michaelson, *supra* note 1, at 1568.

319. *High Tech Gays v. Def. Indus. Sec. Clearance Office*, 895 F.2d 563 (9th Cir. 1990).

320. *Id.* at 571.

321. See generally Dunlap, *supra* note 317, at 12–16 ("[T]here can be little real dispute that the attitude and posture of the Supreme Court majority in *Hardwick* condones and even encourages such [gay bashing] actions.").

322. Skover & Testy, *supra* note 4, at 226–27 (highlighting the "no promo homo" slogan and initiatives).

323. Andrew Rosenthal, *In a Speech, President Returns to Religious Themes*, N.Y. TIMES, Jan. 28, 1992, <http://www.nytimes.com/1992/01/28/us/in-a-speech-president-returns-to-religious-themes.html>; see Keslowitz, *supra* note 291, at 2808 (remarking on the comment and sentiment).

remarked three times that President Clinton was the pro-gay candidate in the presidential election.³²⁴

On the other hand, the 1990s signaled a new direction in the LGBT rights movement by using popular culture to the movement's advantage.³²⁵ The movement also became more aggressive in promoting its agenda to counter the influence of the conservative awakening in the 1980s that continued through the early 1990s.³²⁶ Part of this effort led the transitioning of LGBT rights movement "from a focus on the need for the State to leave individuals alone in sexuality matters to the need for the State to affirmatively recognize and protect the intimate and familial relationships of LGBT individuals."³²⁷ The LGBT movement understood the most effective way to counteract the power of the conservative leaders and organizations was framing gay rights arguments "on seemingly neutral values such as equality and liberty" rather than on morality.³²⁸ Approximately two years after *Bowers*, a conference of 175 leading gay activists representing organizations from across the country met in Virginia to establish a new agenda for the LGBT movement.³²⁹ Following the conference, Marshall Kirk, a Harvard-trained social scientist, and Hunter Madsen, homosexual activist, wrote a manifesto proposing a new public relations strategy in which the ultimate goal was to "force acceptance of homosexual culture into the mainstream, to silence opposition, and ultimately to convert American society."³³⁰

The first major judicial test gauging the success of the gay rights movement in the 1990s occurred in 1996 with *Romer v. Evans*.³³¹ The Supreme Court held that a Colorado ordinance discriminated against gay persons and violated the Equal Protection Clause of the U.S. Constitution.³³² Specifically, the Colorado ordinance prohibited enactments of protections for gays, lesbians, and bisexuals against discrimination based on sexual orientation.³³³ In its opinion, the Court made it clear that

324. Andrew M. Jacobs, *Romer Wasn't Built in a Day: The Subtle Transformation in Judicial Argument over Gay Rights*, 1996 WIS. L. REV. 893, 907–08 (1996).

325. See Butler, *supra* note 46, at 858 (highlighting television programs and movies focusing on gay marriage).

326. Butler, *supra* note 46, at 857; see also Ball, *supra* note 301 (detailing LGBT reaction to the conservative fundamentalist political movement in the 1980s).

327. Ball, *supra* note 301, at 85.

328. *Id.* at 87. The LGBT movement shifted their focus because conservatives were successful in making LGBT rights a morality issue, which made advocates of gay rights appear to be in opposition of morality and values. *Id.*

329. Rondeau, *supra* note 77, at 447.

330. *Id.*

331. *Romer v. Evans*, 517 U.S. 620 (1996).

332. *Id.* at 623.

333. *Id.*

homosexuals could not be legally disadvantaged through the withholding of anti-discrimination protection based on animus or moral disapproval.³³⁴ As such, “*Romer* . . . signaled a shift in the legal culture, recognizing the legitimacy of the gay and lesbian narrative after fifty years of evolution and further aggravating the rift in society caused by this narrative.”³³⁵

In his *Romer* dissent, Justice Scalia explained, “I think it no business of the courts (as opposed to the political branches) to take sides in this culture war.”³³⁶ In a subsequent, unrelated dissenting opinion, Justice Scalia explained the *Romer* decision shows the judicial branch is targeting “a major, undemocratic restructuring of our national institutions and mores”³³⁷ Accordingly, Justice Scalia subscribes to the belief that the Court is engaged in social engineering in regards to homosexual acceptance, which he believes is antithetical to the Constitution.³³⁸

In 1999, the Vermont Supreme Court held in *Baker v. State*³³⁹ that under the Vermont Constitution, same-sex couples were entitled to all of the rights and benefits of marriage.³⁴⁰ At the same time, the U.S. Supreme Court continued recognition of the enormous cultural sea change. Indeed, American culture’s definition of “family” has gradually changed in recent decades to the point at which the Court noted in 2000 that it is “difficult to speak of an average American family.”³⁴¹

Despite notable gains in the judicial arena, the LGBT movement experienced an important setback in 2000 with the Supreme Court’s decision in *Boy Scouts of America v. Dale*.³⁴² The Court held the First Amendment’s freedom of expressive association prohibited New Jersey from requiring the Boy Scouts to accept a homosexual scout leader by operation of its public accommodation statutes.³⁴³ The Court accepted the Boy Scouts’ assertion that homosexuality is inconsistent with the values the organization seeks to instill in its members.³⁴⁴ Most notably, the

334. *Id.* at 635–36.

335. Butler, *supra* note 46, at 862.

336. *Romer*, 517 U.S. at 652 (Scalia, J., dissenting).

337. Bd. of Cnty. Comm’rs, Wabaunsee Cnty., Kansas v. Umbehr, 518 U.S. 668, 710 (1996) (Scalia, J., dissenting). Scalia further stated, “The Court must be living in another world. Day by day, case by case, it is busy designing a Constitution for a country I do not recognize.” *Id.*

338. See Jacobs, *supra* note 324, at 958–59 (exploring Justice Scalia’s view of gays as sexual criminals).

339. *Baker v. State*, 744 A.2d 864 (Vt. 1999).

340. *Id.* at 864.

341. *Troxel v. Granville*, 530 U.S. 57, 63 (2000).

342. *Id.* at 57.

343. *Boy Scouts of America v. Dale*, 530 U.S. 640, 644 (2000).

344. *Id.* at 651.

majority acknowledged that the public perception of homosexuality in the United States has resulted in homosexuals gaining greater acceptance but still concluded that the First Amendment protected the rights of those in private organizations like the Boy Scouts.³⁴⁵

The dissent in *Dale* underscored the importance of changing perceptions of homosexuals in America.³⁴⁶ Justice Stevens explained in his dissenting opinion that “interaction with real people, rather than mere adherence to traditional ways of thinking about members of unfamiliar classes, have modified those opinions.”³⁴⁷ The *Dale* decision was openly mocked in a *South Park* episode after the Court’s decision.³⁴⁸ In the episode, Big Gay Al, an openly homosexual South Park resident and exceptional Boy Scout leader, is expelled from the Boy Scouts because he is gay.³⁴⁹ Big Gay Al is replaced by a man who is later discovered to be a child molester.³⁵⁰ The town of South Park then realizes the unfairness of the Boy Scouts’ anti-gay policy and the citizens convince Big Gay Al to take legal action.³⁵¹

Three years later, in a 2003 landmark decision, the Court decriminalized gay Americans in *Lawrence v. Texas*³⁵² and overruled the seventeen-year-old *Bowers* decision.³⁵³ The Court held a state could not prohibit same-sex consensual conduct in private places.³⁵⁴ Once again, the Court acknowledged changing cultural attitudes regarding homosexuality: “[T]raditions in the past half century are of most relevance here [and] show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.”³⁵⁵ The Court also soundly rejected *Bowers*’ reliance on Western Civilization and Judeo-Christian teachings by noting that such reliance “did not take account of other authorities pointing in

345. *Id.* at 660 (“Justice Stevens’ dissent makes much of its observation that the public perception of homosexuality in this country has changed. Indeed, it appears that homosexuality has gained greater societal acceptance. But this is scarcely an argument for denying First Amendment protection to those who refuse to accept these views.”) (citations omitted).

346. *Id.* at 699–700.

347. *Id.* at 699 (Stevens J., dissenting).

348. *South Park: Cripple Fight* (Comedy Central television broadcast June 27, 2001).

349. *Id.*

350. *Id.*

351. *Id.*

352. *Lawrence v. Texas*, 539 U.S. 558 (2003).

353. *Id.* at 578.

354. *Id.*

355. *Id.* at 571–72.

an opposite direction.”³⁵⁶ In a blistering dissent, Justice Scalia exclaimed the Court’s decision was a “product of a law-profession culture, that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct.”³⁵⁷

Lawrence created immediate ripple effects across the country. One year after *Lawrence*, the Massachusetts Supreme Court held that limiting marriage to opposite sex couples violated the Massachusetts Constitution.³⁵⁸ In 2004, Massachusetts became the first state to issue marriage licenses to same-sex couples.³⁵⁹ A number of municipalities, most notably San Francisco, California, also started issuing marriage licenses to same-sex couples.³⁶⁰ In the next few years, seven more states and the District of Columbia followed Massachusetts’s lead, and began allowing same-sex marriages.³⁶¹ In 2005, *The Simpsons* aired an episode involving gay marriage that featured a character, Patty, “coming out” and Homer performing gay marriage ceremonies.³⁶²

B. *Legislative and Executive Changes*

Legislators and executive officials are likewise affected by the cultural sea change occurring in the United States. In fact, they are likely more receptive than the judicial branch since they are subject to a political check (i.e. elections). Whether they are informed or not, legislators draft

356. *Id.* at 572. The Court also discussed the growing number of states that no longer enforce anti-sodomy laws. *Id.* at 573.

357. *Id.* at 602 (Scalia, J., dissenting).

358. See *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 949 (Mass. 2003) (holding Massachusetts violated same-sex couples’ constitutional right to equal protection under the law when the state refused to issue marriage licenses).

359. E.g., *Same-Sex Couples Ready to Make History in Massachusetts*, CNN (May 17, 2004, 4:41 AM), <http://www.cnn.com/2004/LAW/05/17/mass.gay.marriage>.

360. See *Aka, supra* note 47, at 700 (identifying the city of San Francisco as having issued approximately 4,000 marriage licenses to same-sex couples in 2004).

361. Joanna L. Grossman, *Defense of Marriage Act, Will You Please Go Now!*, 2012 CARDOZO L. REV. DE NOVO 155, 159 (2012). States following Massachusetts’s lead include: Connecticut, Iowa, Maryland, New Hampshire, New York, Vermont, and Washington. *Id.* at 160. To date, an additional nine states have legalized same-sex marriages: California, Delaware, Hawaii, Illinois, Maine, Minnesota, New Jersey, New Mexico and Rhode Island. Masuma Ahuja & Emily Chow, *Same-Sex Marriage Status in the U.S.*, WASH. POST, <http://www.washingtonpost.com/wp-srv/special/politics/same-sex-marriage> (last updated Oct. 22, 2013).

362. *The Simpsons: There’s Something About Marrying* (FOX television broadcast Feb. 20, 2005); see Sharon Waxman, *‘Simpsons’ Animates Gay Nuptials, and a Debate*, N.Y. TIMES (Feb. 21, 2005), <http://www.nytimes.com/2005/02/21/arts/television/21simpsons.html> (reporting on the episode and the resulting fuel for public debate).

and enact laws responding to demands of their constituents; therefore, voter perception of proposed and enacted legislation is an important consideration.³⁶³ As a result, the impact of popular culture on voters will likely be transposed into law.³⁶⁴

The 1970s saw a number of notable legislative changes regarding LGBT rights. The APA's removal of homosexuality as a classified mental disorder in 1973 profoundly impacted legal status of homosexual treatment in both immigration laws and security clearances.³⁶⁵ On the national level, the federal government ended its ban on homosexual employees in civil service in 1975.³⁶⁶ Resulting from pressure of gay rights groups, jurisdictions on the state and local level passed anti-discrimination laws protecting homosexuals.³⁶⁷

Many legislative and executive changes to laws affecting LGBT rights have followed controversial court decisions. Most notably, *Bowers* set the stage for the enactment of DADT and DOMA.³⁶⁸ In 1993, the DADT policy prohibiting homosexuals from openly serving in the military was enacted.³⁶⁹ Professor Kenji Yoshino explains the DADT policy was not necessarily a congressional creation, but rather an organic part of American society's "underlying culture, taking its strength from the depth of that culture[.]" thus, the policy can be viewed as a diagnosis of an "underlying convention that pervaded the culture."³⁷⁰ Equally important, the DADT policy typified the suppression of the LGBT narrative by preventing homosexual military members from openly acknowledging their identity and sharing their stories.³⁷¹ As a result popular culture, most notably representation of homosexuals on television and in movies, played an increasingly important role in filling the cultural void for military members during the DADT era.

363. Russell D. Covey, *Criminal Madness: Cultural Iconography and Insanity*, 61 STAN. L. REV. 1375, 1378–79 (2009).

364. See *id.* (accepting the influence of popular culture upon the penal code).

365. Hermann, *supra* note 62, at 537; see Andrew Olivo, *Secrets and Lies: The Intelligence Community's "Don't Ask, Don't Tell,"* 12 SCHOLAR 551, 570 (2010) (addressing mental stability questions regarding homosexuality and the invalidation of such fears with the APA change).

366. Butler, *supra* note 46, at 857.

367. *Id.* at 856.

368. Michaelson, *supra* note 1, at 1568–69.

369. 10 U.S.C. § 654 (2006), *repealed by* Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 123 Stat. 3515 (2010).

370. Yoshino, *supra* note 315, at 822.

371. See Laura I. Appleman, *Oscar Wilde's Long Tail: Framing Sexual Identity in the Law*, 70 MD. L. REV. 985, 1024–25 (2011) ("[T]he Act ensured that as long as a service member is able to camouflage his or her nonheterosexual narrative—obfuscating that forbidden, unarticulated persona—then the dominant narrative may proceed untrammelled.").

Judicial decisions have largely fueled legislative and executive changes. In 1996, less than a month after *Romer*, both houses of Congress passed DOMA by large majorities.³⁷² The law defined marriage as a union between one man and one woman for all federal purposes and relieved states from recognizing any such union, though recognized by another state.³⁷³ Similarly, the Massachusetts Supreme Court's decision in *Goodridge v. Department of Public Health*³⁷⁴ stimulated both those supporting and opposed to same-sex marriage.³⁷⁵ Shortly thereafter, during "his State of the Union address delivered on January 20, 2004, President George W. Bush vowed to 'protect' the institution of marriage from 'activist judges.'"³⁷⁶ Additionally, a movement began to create a constitutional amendment that would forbid states from permitting same-sex marriage.³⁷⁷ A number of states also enacted constitutional amendments preventing same-sex marriage.³⁷⁸

Despite these same-sex marriage setbacks, judicial decisions also spurred legislative changes in the opposite direction. The recognition of homosexual equality in *Romer* set a cautiously optimistic tone for state legislatures throughout the country.³⁷⁹ In response to the Vermont Supreme Court's decision in *Baker* recognizing same-sex benefits, the Vermont legislature successfully created a legal regime for same-sex unions.³⁸⁰ The Massachusetts legislature repeatedly quashed attempts to hold a public vote on a constitutional amendment prohibiting same-sex marriage following *Goodridge*.³⁸¹

By the late 1990s there was notable progress for LGBT rights on both the state and municipal level. By 1999, six states had extended domestic partner health benefits to their governmental employees.³⁸² Also around this time, a growing number of cities and counties began to provide similar benefits.³⁸³ There was also an increase in the number of states adopting anti-discrimination statutes which protect against discrimination on

372. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996).

373. *Id.*; see also Herzig, *supra* note 171, at 649–54 (detailing the history of DOMA).

374. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

375. Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 *UCLA L. REV.* 1235, 1275 (2010).

376. *Id.*

377. *Id.*

378. *Id.*

379. See Michaelson, *supra* note 1, at 1575 (describing reaction to and optimism felt by gay rights activists following the *Romer* decision).

380. Cummings & NeJaime, *supra* note 375, at 1264.

381. *Id.* at 1274.

382. Skover & Testy, *supra* note 4, at 230.

383. *Id.*

the basis of sexual orientation in both employment and public accommodations contexts.³⁸⁴

In 2010, DADT was repealed by Congress. The repeal was monumental in demonstrating how gay visibility has led to a “new ‘normalization,’ and a more generalized integration of lesbians and gays into American culture.”³⁸⁵ Many celebrated the repeal as a significant step toward complete civil rights and inclusion of homosexuals in American public life.³⁸⁶ In 2011, President Obama told the Justice Department not to enforce DOMA, although it is still on the books.³⁸⁷ In 2013, Section three of DOMA was invalidated by the U.S. Supreme Court and Section two was seriously undermined.³⁸⁸ In June 2012, Secretary of Defense Leon Panetta announced that the Pentagon would celebrate gay pride month and he personally thanked gay service members for their military contributions.³⁸⁹ This move meant that homosexuality was added to a list of racial and ethnic celebrations at the Department of Defense.³⁹⁰

One interesting intersection between LGBT rights and legislators is the popular culture lobby’s impact on Capitol Hill. Hollywood celebrities such as Susan Sarandon, have generously donated time and money com-

384. Elizabeth M. Glazer, *Sexual Reorientation*, 100 GEO. L.J. 997, 1013 (2012).

385. Walters, *supra* note 16.

386. *C.f.* Banner, *supra* note 256, at 63.

While the DADT repeal does represent an important step toward acceptance of gays and lesbians in U.S. public life, this Article argues that, at best, the repeal should be met with cautious optimism. Unqualified celebration without careful consideration of the foundations underlying the military’s anti-homosexual policies risks further entrenching harmful sexist and heterosexist stereotypes, legitimating an environment that is as or more hostile to non-conforming persons, particularly lesbian women, than that of the pre-repeal armed forces.

Id.

387. Letter from Eric H. Holder, Jr., Att’y Gen. to Hon. John A. Boehner, Speaker, U.S. House of Representatives (Feb. 23, 2011), *available at* <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>; *see also* Herzig, *supra* note 171, at 667–68 (describing the Obama administration’s guidance to the DOJ regarding DOMA).

388. *United States v. Windsor*, 570 U.S. ___, 133 S.Ct. 2675 (2013).

389. Matt Vasilogambros, *Pentagon to Celebrate Gay Pride Month for the First Time*, NAT’L J. (June 15, 2012), <http://www.nationaljournal.com/nationalsecurity/pentagon-to-celebrate-gay-pride-month-for-the-first-time-20120615>.

390. *See, e.g., The Department of Defense Celebrates African-American History Month*, U.S. DEP’T OF DEF., <http://www.defense.gov/specials/africanamerhistory> (last visited Dec. 14, 2013) (proclaiming the Department of Defense’s celebratory attitude toward its members of African-American heritage); Doug Sample, *DoD Helps Group Celebrate Asian-Pacific Heritage Month*, U.S. DEP’T OF DEF. (May 20, 2004), <http://www.defense.gov/News/NewsArticle.aspx?ID=26441> (emphasizing the Department of Defense’s partnership with the Federal Asian Pacific American Council to celebrate the culture of Asian-Pacific Americans).

bating gay prejudice.³⁹¹ In 2007, Melissa Etheridge, a musician and gay rights advocate, served as a host at a Democratic primary presidential debate and grilled New Mexico Governor Bill Richardson after he made controversial remarks about homosexuality.³⁹² In 2011, celebrities and athletes were instrumental in promoting the New York gay marriage legislation.³⁹³ After the legislation passed, Lady Gaga tweeted: “We did it kids. The revolution is ours to fight for love . . . []We did it!!!”³⁹⁴

The popular culture lobby was particularly instrumental in repealing DADT. Jon Stewart targeted those opposing repeal of DADT like Senator John McCain in segments sarcastically foreshadowing the “Gaypocalypse.”³⁹⁵ Lady Gaga “used social media to directly correspond with lawmakers, shared videos encouraging repeal, and she launched a phone-in campaign” urging constituents to contact their representatives.³⁹⁶ Lady Gaga identified specific Republican senators, hoping they would break from their party-line.³⁹⁷ Senate Majority Leader Harry Reid responded directly to Lady Gaga on Twitter and promised his unreserved support for repeal of DADT.³⁹⁸

IV. LOOKING TOWARD THE FUTURE: GAY MARRIAGE

Against the backdrop of incredible changes reflecting the perception and acceptance of homosexuality, driven largely by popular culture, it is highly likely these changes will lay a predicate for national acceptance of

391. See Rondeau, *supra* note 77, at 472 (highlighting efforts different people, including celebrities, and organizations took to boycott Dr. Laura Schlessinger’s radio show after she made controversial statements suggesting that homosexuality was a “biological” mistake).

392. See Walters, *supra* note 16, at 105–06 (recapping the debate exchange between Governor Richardson and Etheridge). Governor Richardson was asked whether he believed that homosexuality was a choice or a genetic predisposition. *Id.* Richardson responded that it was a choice. *Id.* Etheridge quickly asked several follow-up questions and it was clear that Richardson backtracked on his remarks. *Id.*

393. See Joshi, *supra* note 274, at 436 (demonstrating the amount of support for the New York pro-same-sex marriage legislation that came from celebrities and politicians alike).

394. *Id.*

395. See Walters, *supra* note 16, at 87 (illustrating Stewart’s parody of McCain’s position on same-sex marriage).

396. Christina Wilkie, *Celebrities Enlist Followers in Lobbying Congress on ‘Don’t Ask, Don’t Tell’ Vote*, THE HILL (Sept. 19, 2012, 8:30 PM), <http://thehill.com/homenews/senate/119651-celebrities-enlist-followers-in-lobbying-congress-on-dont-ask-dont-tell-vote>.

397. See *id.* (identifying specific legislators Lady Gaga targeted in her efforts to help overturn DADT).

398. *Id.*

gay marriage.³⁹⁹ Indeed, further recognition of same-sex marriage is the next logical step for the decades-long process of securing legal and cultural respect for LGBT people and families. Professor Susan Becker affirms continued transformation, inspired by heightened visibility via popular culture, will severely undermine social and legal discrimination against sexual minorities.⁴⁰⁰ Indeed DOMA went before the Supreme Court in the spring of 2013 and was found unconstitutional, in part.⁴⁰¹

The current and historic trajectory of popular culture is portrayal of gay relationships and gay families as normal and unremarkable. Because of their impact on public perception of sexual minorities and their financial success, movies and other forms of popular culture will almost certainly continue to produce gay themes and characters. Many future productions will surely incorporate gay marriage, thus increasing exposure and inevitable support for same-sex marriage across the country.

The movement toward gay marriage is—in a very significant way—driven by popular culture and reflected by an evolving cultural environment shaped by the changing attitudes of viewers. Not only does this culture encourage greater acceptance of homosexuality, but it also acts as a mirror of evolving social values as well. A May 2012 poll shows half of Americans now support same-sex marriage while forty-eight percent oppose it.⁴⁰² Support for gay marriage has become so politically potent that mayors of Boston, Chicago, and San Francisco vowed to find legal ways to prevent the fast-food chain Chick-fil-A from expanding into their cities after Chick-fil-A President Dan Cathy expressed disapproval of same-sex marriage.⁴⁰³

A. *Movies and Gay Marriage*

Films in the past decade have strongly supported tolerance and acceptance of gay marriage. Films like *Philadelphia* and *Brokeback Mountain* produced powerful and lasting messages regarding same-sex relationships

399. See Stratton, *supra* note 17, at 388–89 (concluding increased acceptance of homosexuality over the past twenty years “will influence the Court to find the marriage of same-sex couples socially acceptable”).

400. See Becker, *supra* note 275, at 213 (“Continued transformation inspired by heightened visibility will play a major role in the demise of social and legal discrimination against sexual minorities.”).

401. *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675, 2695 (2013).

402. Frank Newport, *Half of Americans Support Legal Gay Marriage, Politics*, GALLUP (May 8, 2012), <http://www.gallup.com/poll/154529/half-americans-support-legal-gay-marriage.aspx>. When the survey was first conducted in 1996, only twenty-seven percent supported gay marriage, with sixty-eight percent opposed. *Id.*

403. *Chick-fil-A Food Fight Leaves City Officials Eating Crow*, USA TODAY, Aug. 5, 2012, at 6A.

that enable more recent films to break new ground in promoting gay marriage.⁴⁰⁴ The primary objective of LGBT advocates and supporters is to effectively paint gay marriage as a concept that should be accepted as normal.⁴⁰⁵ In the 2010 film *The Kids Are Alright*,⁴⁰⁶ Nic (Annette Bening) and Jules (Julianne Moore) are a married lesbian couple raising two young children in California. Nic is the primary breadwinner and the stricter parent, while Jules is the more relaxed parent.⁴⁰⁷ The film has two clear messages: same-sex marriage is perfectly acceptable and children can be successfully raised by married parents who happen to be homosexual. Writer and director Lisa Cholodenko said the movie is designed to show that there is “no difference in how families run and how people conduct themselves in relationships. . . . We wanted to show this family like any other family, warts and all. They’re flawed characters, they screw up and make mistakes, but they’re all ultimately sympathetic characters and redeemable.”⁴⁰⁸

Many films that actively promoting gay marriage are comedies. Like television shows, such as *South Park* and *Family Guy*, movies featuring gay marriage sometimes use comedy to underscore the belief that anti-gay marriage sentiments are laughable and ridiculous. The film *I Now Pronounce You Chuck and Larry*⁴⁰⁹ is about two straight Brooklyn firefighters who pretend to be a gay couple in order to receive domestic partner benefits.⁴¹⁰ Although the film was largely panned by critics,⁴¹¹ a

404. See David Ray Papke, *Skepticism Bordering on Distrust: Family Law in the Hollywood Cinema*, 50 FAM. CT. REV. 13, 15 (2012) (indicating the gradual evolution of films in the last two decades, and in particular some films which had a notable impact on the cultural acceptance of homosexuality in film).

405. See, e.g., *About GLAAD*, GLAAD, <http://glaad.org/about> (last visited Dec. 14, 2013) (summarizing its stances in support of greater acceptance of homosexuals in society). GLAAD’s Mission Statement reads in its entirety:

GLAAD amplifies the voice of the LGBT community by empowering real people to share their stories, holding the media accountable for the words and images they present, and helping grassroots organizations communicate effectively. By ensuring that the stories of LGBT people are heard through the media, GLAAD promotes understanding, increases acceptance, and advances equality.

Id.

406. *THE KIDS ARE ALRIGHT* (Focus Features 2010).

407. *Id.*

408. Colin Covert, *This Movie Has Two Moms*, STAR TRIBUNE, July 11, 2010, at 3E (internal quotation marks omitted).

409. *I NOW PRONOUNCE YOU CHUCK AND LARRY* (Universal Pictures 2007).

410. *Id.*

411. See Desson Thomson, *Not That There’s Anything; ‘Chuck & Larry’: A Witless Romp Behind the Times*, WASHINGTON POST, July 20, 2007, at C05 (portraying the film negatively as a “comedy that offers gay-bashing . . . as entertainment” with a “Stone Age sensibility, [that would make] a Geico caveman groan”).

GLAAD representative argued, “The movie has . . . some of the expected stereotypes, but in its own disarming way, it’s a call for equality and respect.”⁴¹² Indeed, one film critic argued that the film was “[t]remendously savvy in its stupid way, [and was] . . . as eloquent as *Brokeback Mountain*, and even more radical.”⁴¹³ In 2012, *American Reunion*,⁴¹⁴ the latest installment of the *American Pie* movies, promoted the acceptance of gay marriage in a more small-scale way. In the film, Steve Stifler (Seann William Scott), the incorrigible former high school jock, is initially repulsed by the revelation that his two former lacrosse teammates are gay.⁴¹⁵ Stifler quickly expresses disapproval of their homosexual relationship.⁴¹⁶ However, Stifler later completely reverses course and discards his apparent homophobic ways.⁴¹⁷ By the end of the film, Stifler even accepts an invitation to be the gay couple’s wedding planner.⁴¹⁸ The message of the film’s subplot is clear: Even an immature high school jock can accept gay marriage. Independent filmmakers have also played an important role in illuminating gay marriage by producing documentaries designed to focus on the personal and legal struggles of real homosexual couples in their pursuit of marriage.⁴¹⁹

B. *Television Shows and Gay Marriage*

Television shows have had a similar effect in promoting gay marriage. In the past, the popular television shows *Friends* and *Roseanne* both showcased same-sex wedding ceremonies.⁴²⁰ Most importantly, both shows received record ratings and a minimal negative response.⁴²¹ There has been a substantial increase in the number of gay married couples portrayed on television in recent years, marking a clear trend.⁴²² NBC has even announced that it plans to increase the number of shows featuring

412. *Movie Preview: I Now Pronounce You Chuck & Larry*, ENT. WKLY., Apr. 27, 2007, <http://www.ew.com/ew/article/0,,20035169,00.html> (internal quotation marks omitted).

413. Lee, *supra* note 143.

414. *AMERICAN REUNION* (Universal Pictures 2012).

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. See Papke, *supra* note 404, at 15–16 (showcasing a few independent films whose focus was on the legal battles).

420. Butler, *supra* note 46, at 859.

421. *Id.*

422. See *How TV Brought Gay People into Our Homes*, NPR (May 12, 2012, 4:30 PM), <http://www.npr.org/2012/05/12/152578740/how-tv-brought-gay-people-into-our-homes> (asserting television shows change society’s views on homosexuality).

gay marriages.⁴²³ In 2011, *Grey's Anatomy*⁴²⁴ featured a gay marriage.⁴²⁵ The lead-up to the gay marriage ceremony tackled sensitive issues such as religion and family member opposition. One character even claimed that anyone who doesn't support gay marriage "hasn't caught up to God yet."⁴²⁶

A growing number of television shows have cast gay individuals and marriages as a type of new normal for a modern American society. "*Modern Family* revolves around three branches of the same family, including a gay male couple and their adopted toddler daughter."⁴²⁷ One commentator argues that the show is the Obama administration's "cultural touchstone on the issue [of gay marriage]."⁴²⁸ *Modern Family* co-creator Steve Levitan explains the show's underlying purpose: "We set out to do a family show with different kinds of families because it seemed to us that families are changing and (a gay family) was a logical type to explore."⁴²⁹ The show has been critically acclaimed and is one of the most popular shows on television.⁴³⁰ Ann Romney, wife of 2012 Republican presidential candidate Mitt Romney, stated that *Modern Family* is her favorite show.⁴³¹

Additionally, *The New Normal*⁴³² premiered in 2012 and portrays a gay couple with successful careers that starts a family with a surrogate mother.⁴³³ In one episode, the gay character, Brian, goes to a Catholic Church for confession.⁴³⁴ During the confession, Brian and the priest

423. *Id.*

424. *Grey's Anatomy* (ABC television series 2005–present).

425. *Grey's Anatomy: White Wedding* (ABC television broadcast May 5, 2011).

426. *Id.*

427. Gail Shister, *Will & Grace Was Gay, but Not Gay Marriage*, PHILA. MAG (May 15, 2012, 8:20 AM), http://blogs.phillymag.com/the_philly_post/2012/05/15/will-grace-gay-gay-marriage; see *Modern Family* (ABC television series 2009–present) (starring Jesse Tyler Ferguson as Mitchell Pritchett and Eric Stonestreet as Cameron Tucker in the roles of the homosexual couple).

428. Shister, *supra* note 427.

429. Puente, *supra* note 186.

430. See Jason Leung, *Modern Family Wins Two 2013 Primetime Emmys*, ABC (Sept. 23, 2013, 11:11 AM), <http://abc.go.com/shows/modern-family/latest-news/modern-family-2013-outstanding-directing-emmy-for-arrested> ("Modern Family won the Emmy for Outstanding Comedy Series for the fourth year in a row!"); Ryan Faughnder, *TV Ratings: 'Sing-Off' Falls in Second Night, 'Modern Family' Up*, L.A. Times (Dec. 12, 2013), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-tv-ratings-modern-family-sing-off-20131212,0,5042050.story#ixzz2oMn74vlf> (indicating *Modern Family's* recent up-tick in viewership).

431. Ted Johnson, *A Sea Change on Same-Sex Marriage?*, VARIETY (Sept. 6, 2012, 5:00 AM), available at <http://www.variety.com/article/VR1118058767>.

432. *The New Normal* (NBC television series 2012–2013).

433. *Id.*

434. *The New Normal: The Godparent Trap* (NBC television broadcast Oct. 23, 2012).

enter into a deep discussion about the Catholic Church's stance on homosexuality.⁴³⁵ The priest insists that the Catholic Church is not anti-gay.⁴³⁶ Brian then asks if the Catholic Church will change its stance on gays and possibly one day condone gay marriage.⁴³⁷ The priest replies, "Well it would. I've seen gay people battle discrimination and march for marriage equality. They demanded the right to fight for their country, but for their souls? Nope. They just give up and walk away. Jesus was a fighter, son. How about you?"⁴³⁸ Professor Edward Schiappa explains that television shows that feature same-sex marriages will have a positive effect: "If they continue to be sympathetic, [it] will only contribute to that larger sea change that we see—across society, really—in terms of the attitudes toward gay marriage."⁴³⁹

A number of comedies have also promoted gay marriage. Professor Kimberlianne Podlas explains *South Park's* "brilliant use of satire enables it to go straight to the heart of culture's most contentious issues—gay marriage, the right to die, restrictions of freedom in the name of homeland security, and so on—and address them in a sophisticated, nuanced way."⁴⁴⁰ In the *South Park* episode "Follow That Egg,"⁴⁴¹ the fictional town of South Park, Colorado, is embroiled in protests against gay marriage and gay adoption.⁴⁴² In order to prove gay marriage cannot work, Mr. Garrison assigns his students a project in which the children must care for an egg over the course of a week.⁴⁴³ Mr. Garrison divides the class into separate sets of parents: the traditional boy/girl pairs and homosexual pairs.⁴⁴⁴ Mr. Garrison's hypothesis is that the homosexual pairs will break their egg, thereby "proving" homosexuals intrinsically cannot care for children and therefore should not marry.⁴⁴⁵ However, the homosexual pairs adequately care for their eggs despite attempts by Mr. Garrison to sabotage their assignments.⁴⁴⁶

There are countless other examples of television shows advancing the same-sex marriage narrative with comedy, including on late-night televi-

435. *Id.*

436. *Id.*

437. *Id.*

438. *Id.*

439. NPR, *supra* note 422.

440. Podlas, *supra* note 230, at 541.

441. *South Park: Follow that Egg* (Comedy Central television broadcast Nov. 2, 2005).

442. *Id.*

443. *Id.*

444. *Id.*

445. *Id.*

446. *Id.*

sion. In November 2011, host Conan O'Brien officiated a same-sex wedding ceremony on his show.⁴⁴⁷

C. *The Hollywood Lobby*

The Hollywood lobby has been particularly active in the gay marriage arena. Following passage of Proposition 8 in California,⁴⁴⁸ a number of celebrities, including George Clooney, Brad Pitt, and Kevin Bacon, starred in a play promoting reversal of the controversial California gay marriage ban.⁴⁴⁹ The performance was then made available for a much wider audience via YouTube.⁴⁵⁰ The play served as a fundraiser for the American Foundation for Equal Rights, a nonprofit group that spearheaded the legal battle against Proposition 8.⁴⁵¹ The play was described as a “splashy event that was part activist theater, part Hollywood in-party.”⁴⁵² Proposition 8 also sparked the creation of NOH8, a gay rights campaign supported by Jane Lynch, Miley Cyrus, Lindsay Lohan, and the Kardashian sisters.⁴⁵³ Actor Ed Helms and NOH8 were also incredibly active in calling for a boycott of Chick-fil-A after its president publicly opposed same-sex marriage.⁴⁵⁴

The Hollywood lobby was also instrumental pressuring President Obama's policy shift on gay marriage. President Obama was clearly influenced by the ability to tap into celebrity star power and, perhaps more

447. *Conan O'Brien Officiates Gay Wedding of Scott Cronick and David Gorshein on Air*, HUFFINGTON POST (Nov. 4, 2011, 10:04 AM), http://www.huffingtonpost.com/2011/11/04/conan-obrien-gay-wedding_n_1075414.html (noting it “may have been first-ever on-air same-sex wedding”).

448. California Marriage Protection Act, 2008 Cal. Legis. Serv. Prop. 8 (West) (codified at CAL. CONST. art. 1, § 7.5, *invalidated by* Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 927 (N.D. Cal. 2010) *aff'd sub nom.* Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012) *vacated and remanded sub nom.* Hollingsworth v. Perry, 570 U.S. ___, 133 S. Ct. 2652 (2013)). “Proposition 8, a ballot initiative to amend the California Constitution by adding Section 7.5, which provided that ‘[o]nly marriage between a man and a woman is valid or recognized in California,’ passed with 52.1% of Californians’ votes in the November 2008 election.” Glazer, *supra* note 384, at 1031–32.

449. *George Clooney, Brad Pitt Lead All-Star Prop. 8 Play Reading*, L.A. TIMES (Mar. 4, 2012, 11:12 AM), <http://latimesblogs.latimes.com/culturemonster/2012/03/george-clooney-brad-pitt-enact-prop-8-stage-drama.html>. The play “8” is based on research and transcripts from *Perry v. Schwarzenegger*, the 2010 federal court battle that dealt with the legality of Proposition 8. *Id.*

450. See “8”: *A Play About the Fight for Marriage Equality*, YOUTUBE (Mar. 3, 2012), <http://www.youtube.com/watch?v=qlUG8F9uVgM> (providing a recording of the play).

451. L.A. TIMES, *supra* note 449.

452. *Id.*

453. *Actor Ed Helms Boycotting Chick-fil-A for Gay Marriage Stance*, ABC NEWS (Jul. 19, 2012, 8:49 AM), <http://abcnews.go.com/blogs/entertainment/2012/07/ed-helms-boycotting-chick-fil-a-for-gay-marriage-stance>.

454. *Id.*

importantly, Hollywood money.⁴⁵⁵ It is no coincidence President Obama announced his newfound position on gay marriage one day before a multimillion dollar fundraiser hosted by George Clooney.⁴⁵⁶ Rich Ferraro, a spokesman for GLAAD, explains that celebrities “are influencers of the larger culture . . . and when popular entertainers support an issue or a candidate, their exposure matters.”⁴⁵⁷

A number of musicians have also strongly supported the gay marriage campaign. In 2011, Miley Cyrus, an outspoken proponent of same-sex marriage, got a tattoo that she claims is designed to promote homosexual marriages.⁴⁵⁸ Bruce Springsteen’s support for the New Jersey gay marriage initiatives compelled Newark Mayor Cory Booker, a rising star in the Democratic Party, to echo his support for gay marriage on Twitter.⁴⁵⁹

D. *The Challenges Ahead and the Role of Popular Culture*

By the end of 2013, seventeen states and the District of Columbia legalized gay marriage, while another ten recognize same-sex unions and partnerships.⁴⁶⁰ Polls show that support for gay marriage has been on an upward trend for years.⁴⁶¹ However, there will continue to be significant legal hurdles. Indeed, “[t]wenty-nine states have amended their constitutions to prohibit same-sex marriages, nineteen of which used language to explicitly deny recognition to civil unions, domestic partnerships, or any other marriage-equivalent status as well.”⁴⁶² Significantly, days before President Obama expressed support for gay marriage, North Carolina

455. See Tim Stanley, *The Gay Marriage Endorsement Was All About Hollywood’s Money and Obama’s Ego*, THE TELEGRAPH, <http://blogs.telegraph.co.uk/news/timstanley/100157393/if-you-want-to-know-why-obama-endorsed-gay-marriage-follow-the-money> (last updated May 11, 2012) (arguing President Obama’s endorsement of same-sex marriage came at a time when losing Hollywood fundraising support).

456. *Id.*

457. Gloria Goodale, *Obama Shift on Gay Marriage Unleashes Hollywood’s Star Power*, CHRISTIAN SCI. MONITOR (May 10, 2012), <http://www.csmonitor.com/USA/Elections/President/2012/0510/Obama-shift-on-gay-marriage-unleashes-Hollywood-s-star-power-video>.

458. See Christie D’Zurilla, *Miley Cyrus Flashes New Tattoo Supporting Gay Rights*, L.A. TIMES (July 31, 2011, 2:23 PM), <http://latimesblogs.latimes.com/gossip/2011/07/miley-cyrus-tattoo-gay-marriage-equality-twitter-equal-sign.html>. The tattoo itself is an equal sign on her right ring-finger. *Id.*

459. See *Springsteen Featured in Gay Marriage Campaign*, USA TODAY (Oct. 1, 2012, 6:41 PM), <http://www.usatoday.com/story/onpolitics/2012/10/01/bruce-springsteen-marriage-equality-internet-ballot-initiatives/1606953>.

460. See Ahuja & Chow, *supra* note 361 (providing a map of the states and their current stance on same-sex marriage).

461. See Newport, *supra* note 402 (reporting Gallup has been tracking responses to the question of same-sex marriage acceptance for years).

462. See Grossman, *supra* note 361, at 159–60.

overwhelmingly approved a constitutional amendment limiting marriage to opposite-sex couples.⁴⁶³ Furthermore, no statewide same-sex marriage ballot initiative has ever been passed into law.⁴⁶⁴

In many ways, the persuasive power of popular culture is limited. Gender Studies Professor Suzanna Danuta Walters explains that there are many challenges ahead for LGBT rights:

There may be gay wedding announcements in national papers but same-sex marriage is still decidedly illegal and unpopular in the vast majority of states, not to mention the federal government. One state, California, even reversed itself on gay marriage, voting in an anti-gay marriage proposition that quickly challenged the marriages that were joyously celebrated only a few months earlier. Hate crimes continue to flourish; gay kids are still disproportionately likely to commit suicide and to be homeless, even as more gay youth come out and support services for them blossom; and the Employment Non-Discrimination Act still languishes in Congress. Even in the much-vaunted 'gay-friendly' world of Hollywood and celebrity culture, precious few stars are openly gay, movies and television still feature more tokens than real characters, and the world of advertising continues to pretend gays simply do not exist.⁴⁶⁵

As a result, there will be many challenges ahead. Nonetheless, popular culture will continue to be a very powerful medium to drive change.

V. CONCLUSION

Ultimately, the rainbow sea change in homosexual tolerance and acceptance occurring in recent decades has been largely driven by popular culture. Although there are certainly other factors contributing to remarkable changes in recent years, popular culture—particularly movies and television shows—has undoubtedly been a key component. The repeal of DADT, the *Lawrence* and *Romer* decisions, and the growing number of states recognizing same-sex marriage support this proposition.

The cultural sea change has paved the way for legalization of gay marriage across the country. Although same-sex marriage has not yet been achieved on a national level, popular culture has transformed the legal and cultural landscape for homosexual individual and couples over the past decade. Although the future remains uncertain, the arch of popular

463. See Campbell Robertson, *North Carolina Voters Pass Same-Sex Marriage Ban*, N.Y. TIMES (May 8, 2012) (revealing the amendment passed by an overwhelming 20 percentage points).

464. USA TODAY, *supra* note 459.

465. Walters, *supra* note 16, at 88–89 (citations omitted).

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culture and legal decisions indicates more inclusive times are ahead. The story of the LGBT movement and impact of popular culture is still being written, which means that an overall assessment cannot be fully completed at this time. Nonetheless, it will be important to evaluate the direction of the LGBT narrative by paying close attention to popular culture.