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History and Activism in Regards to the FDA Ban Against Homosexual Males from Donating Blood

Mary Fritz



Abstract:

This thesis deals directly with the FDA ban on sexually active homosexual men from donating blood. This work examines how organizations have made arguments against the ban and actions taken in both the legislative realm and college activism. This study also relies on scientific evidence to support the argument of those in opposition against the ban.

THE FLORIDA STATE UNIVERSITY

COLLEGE OF SOCIAL SCIENCE AND PUBLIC POLICY

HISTORY AND ACTIVISM IN REGARDS TO THE FDA BAN AGAINST HOMOSEXUAL
MALES FROM DONATING BLOOD

BY

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The members of the Defense Committee approve the thesis of Mary Rebekah Fritz defended on April 22nd, 2014.

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Introduction

Blake Lynch, a nursing student from Central Florida, was absolutely shocked when he was turned down from donating blood. The reasoning behind his refusal? He is a homosexual male. Blake states: "I was embarrassed. It's a very personal question on this questionnaire they give you: 'From 1977 to the present, have you had sexual contact with another male, even once?'"¹ Before starting this research, I had absolutely no idea that there was a ban on homosexual males from donating blood. After talking to Lynch about how he felt discriminated in such an institutional manner, I looked for other cases of males who faced similar problems as Lynch had. When Mayor Evan Low from Campbell, California, was asked by the American Red Cross to host a city blood drive in August, he had a hard time deciding on what he felt was the ethical thing to do. While he wanted to help, he also knew that as an openly gay man he would be banned from donating blood.² In June of 2012, Uri Horesh, a well-liked Northwestern Arabic professor, was denied from donating blood at a blood drive at Indiana University. At the time, Horesh was teaching Arabic at Indiana University. After blood drive employees told him that he could never donate blood, Horesh showed the previously unknown policy to his fellow employees, leading an employee there to call the police and Horesh was arrested and accused of disorderly conduct, resisting law enforcement and spitting on a worker. He spent twenty-four hours in jail and paid a \$100 fine and a total of \$5,000 in legal fees accumulated as a result of the incident. Because Indiana University suspended him from teaching because of the confrontation, Horesh's disagreement at the blood drive made local headlines and gained media attention. He said that no one at Indiana University showed him any support whatsoever, which prompted him

¹ Katie Santich, "Banned4Life founders protest FDA ban on gay men donating blood." *Orlando Sentinel*, August 31, 2013.

² Linda Childers, "Californians Speak Out on Repealing Gay Blood Ban." *California Health Report*, November 21, 2013.

to donate \$1,000 of his final salary to the LGBT center at the university in hopes that it would better educate the school once he left.³

This anger and this passion are common bases for much of the social and political change that has occurred within the United States. It is the same passion that led to the creation of the United States, and can ultimately be seen as a form of counterculture or social movement. It is the difference between the established and the marginal and the actions associated with this difference, just as the passion that Lynch uses to start his own movement to reverse the ban.⁴ However, these cultural movements are not solely of a cultural nature for they have become imbedded within political actions. Deep divisions are always seen within the political realm, playing their own importance within political actions and policies coming out from the administrations presently in office. These disagreements are pressing in regards to divisions between rich and poor, race animosity, and the arguments between the pros and cons of war, all of which are seen to influence presidential and congressional actions.⁵ Instead of seeing the stratification of culture and political actions as individual entities, it is evident through legislation and a movement's actions that there is a strong interaction between the two. My research reveals the organizations were established because of the Food and Drug Administration (FDA) ban on homosexual men from donating blood used the established gay rights movement as a foundation to establish their own calls for change, and focuses on how college activism and the call for a policy change plays an important part within this overall movement. Though this part of the greater movement is a small population, the impact is through scientific research and based off

³ Rosalie Chan, "When Gay Men Can't Donate ," *North by Northwestern* , November 10, 2013.

⁴ J. Milton Yinger, *Countercultures: The Promise and the Peril of a World Turned Upside Down*. (New York: The Free Press, 1982), 3.

⁵ David English, *Divided They Stand*. (Englewood Cliffs, New Jersey: Beaverbrook and Pan American, 1969), 1-3

the argument of discrimination.

The FDA Ban and Blood Donations

Though the need for marriage equality can be seen as one of the most prevalent calls for political action, smaller movements have formed to fight other forms of sexual orientation inequalities. Through the evolution of the gay rights movement, the path has been paved for those who are calling to organize to allow sexually active homosexual males to donate blood. The FDA and blood centers tightly regulate how centers can show their appreciation for blood donations.⁶

The American Red Cross estimates blood donations to be at 44,000 people each day. The Food and Drug Administration has established extensive criteria that will exclude, or defer, one from donating blood in the United States: one cannot donate immediately after visiting a country with high rates of diseases, and if one is a gay male or a man who has had sex with a man, he is banned for life.⁷ When an individual goes to donate blood, they are asked to fill out the following questionnaire.

⁶ Jeff Stier, "Blood Sale," *Huffpost Healthy Living*, June 13, 2007.

⁷ Michelle Castillo, "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors," *CBS News*, March 21, 2013.

Full-Length Donor History Questionnaire

	Yes	No
Are you		
1. Feeling healthy and well today?	<input type="checkbox"/>	<input type="checkbox"/>
2. Currently taking an antibiotic?	<input type="checkbox"/>	<input type="checkbox"/>
3. Currently taking any other medication for an infection?	<input type="checkbox"/>	<input type="checkbox"/>
Please read the Medication Deferral List.		
4. Are you now taking or have you ever taken any medications on the Medication Deferral List?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you read the educational materials?	<input type="checkbox"/>	<input type="checkbox"/>
In the past 48 hours		
6. Have you taken aspirin or anything that has aspirin in it?	<input type="checkbox"/>	<input type="checkbox"/>
In the past 6 weeks		
7. Female donors: Have you been pregnant or are you pregnant now? (Males: check "I am male.")	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> I am male		
In the past 8 weeks have you		
8. Donated blood, platelets or plasma?	<input type="checkbox"/>	<input type="checkbox"/>
9. Had any vaccinations or other shots?	<input type="checkbox"/>	<input type="checkbox"/>
10. Had contact with someone who had a smallpox vaccination?	<input type="checkbox"/>	<input type="checkbox"/>
In the past 16 weeks		
11. Have you donated a double unit of red cells using an apheresis machine?	<input type="checkbox"/>	<input type="checkbox"/>
In the past 12 months have you		
12. Had a blood transfusion?	<input type="checkbox"/>	<input type="checkbox"/>
13. Had a transplant such as organ, tissue, or bone marrow?	<input type="checkbox"/>	<input type="checkbox"/>
14. Had a graft such as bone or skin?	<input type="checkbox"/>	<input type="checkbox"/>
15. Come into contact with someone else's blood?	<input type="checkbox"/>	<input type="checkbox"/>
16. Had an accidental needle-stick?	<input type="checkbox"/>	<input type="checkbox"/>
17. Had sexual contact with anyone who has HIV/AIDS or has had a positive test for the HIV/AIDS virus?	<input type="checkbox"/>	<input type="checkbox"/>
18. Had sexual contact with a prostitute or anyone else who takes money or drugs or other payment for sex?	<input type="checkbox"/>	<input type="checkbox"/>
19. Had sexual contact with anyone who has ever used needles to take drugs or steroids, or anything not prescribed by their doctor?	<input type="checkbox"/>	<input type="checkbox"/>
20. Had sexual contact with anyone who has hemophilia or has used clotting factor concentrates?	<input type="checkbox"/>	<input type="checkbox"/>
21. Female donors: Had sexual contact with a male who has ever had sexual contact with another male? (Males: check "I am male.")	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> I am male		
22. Had sexual contact with a person who has hepatitis?	<input type="checkbox"/>	<input type="checkbox"/>
23. Lived with a person who has hepatitis?	<input type="checkbox"/>	<input type="checkbox"/>
24. Had a tattoo?	<input type="checkbox"/>	<input type="checkbox"/>
25. Had ear or body piercing?	<input type="checkbox"/>	<input type="checkbox"/>

Full-Length Donor History Questionnaire

	Yes	No
26. Had or been treated for syphilis or gonorrhea?	<input type="checkbox"/>	<input type="checkbox"/>
27. Been in juvenile detention, lockup, jail, or prison for more than 72 hours?	<input type="checkbox"/>	<input type="checkbox"/>
In the past three years have you		
28. Been outside the United States or Canada?	<input type="checkbox"/>	<input type="checkbox"/>
From 1980 through 1996,		
29. Did you spend time that adds up to three (3) months or more in the United Kingdom? (Review list of countries in the UK)	<input type="checkbox"/>	<input type="checkbox"/>
30. Were you a member of the U.S. military, a civilian military employee, or a dependent of a member of the U.S. military?	<input type="checkbox"/>	<input type="checkbox"/>
From 1980 to the present, did you		
31. Spend time that adds up to five (5) years or more in Europe? (Review list of countries in Europe.)	<input type="checkbox"/>	<input type="checkbox"/>
32. Receive a blood transfusion in the United Kingdom? (Review list of countries in the UK.)	<input type="checkbox"/>	<input type="checkbox"/>
From 1977 to the present, have you		
33. Received money, drugs, or other payment for sex?	<input type="checkbox"/>	<input type="checkbox"/>
34. Male donors: had sexual contact with another male, even once? (Females: check "I am female.")	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> I am female		
Have you EVER		
35. Had a positive test for the HIV/AIDS virus?	<input type="checkbox"/>	<input type="checkbox"/>
36. Used needles to take drugs, steroids, or anything not prescribed by your doctor?	<input type="checkbox"/>	<input type="checkbox"/>
37. Used clotting factor concentrates?	<input type="checkbox"/>	<input type="checkbox"/>
38. Had hepatitis?	<input type="checkbox"/>	<input type="checkbox"/>
39. Had malaria?	<input type="checkbox"/>	<input type="checkbox"/>
40. Had Chagas' disease?	<input type="checkbox"/>	<input type="checkbox"/>
41. Had babesiosis?	<input type="checkbox"/>	<input type="checkbox"/>
42. Received a dura mater (or brain covering) graft?	<input type="checkbox"/>	<input type="checkbox"/>
43. Had any type of cancer, including leukemia?	<input type="checkbox"/>	<input type="checkbox"/>
44. Had any problems with your heart or lungs?	<input type="checkbox"/>	<input type="checkbox"/>
45. Had a bleeding condition or a blood disease?	<input type="checkbox"/>	<input type="checkbox"/>
46. Had sexual contact with anyone who was born in or lived in Africa?	<input type="checkbox"/>	<input type="checkbox"/>
47. Been in Africa?	<input type="checkbox"/>	<input type="checkbox"/>
48. Have any of your relatives had Creutzfeldt-Jakob disease?	<input type="checkbox"/>	<input type="checkbox"/>

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In recent news, critics have been looking closely at the Food and Drug Administration's (FDA) policy that bans homosexual men from donating blood. It should be noted that every two seconds

⁸ AABB Donor History Task Force, *Full-Length Donor History Questionnaire*, October 2006. <http://www.fda.gov/downloads/BiologicsBloodVaccines/BloodBloodProducts/ApprovedProducts/LicensedProductsBLAs/BloodDonorScreening/UCM164190.pdf>.

someone is in need of blood. About one in seven hospital patients will receive a blood product, and less than 10% of the population within the United States donates blood annually. If 1% more of all Americans were to donate blood, blood shortages would disappear within the foreseeable future.⁹ In 2010, the American Red Cross issued a joint statement with the nation's two other main blood-product associations urging the FDA to change the policy based on data. In June, the American Medical Association went a step further by asserting that the ban is discriminatory and not based on factual scientific evidence.¹⁰

According to the Red Cross, additional blood donation requirements are that one must be at least a healthy 17 years old, weighing a minimum of 110 pounds. The most needed blood types are O+, O-, AB- and B-. If an individual has given blood in the last eight weeks, he/she cannot give blood again, even if they have one of the critical blood types. One of the most important things the American Red Cross urges is for persons to not give blood to receive an AIDS test, because this hinders the donation process and they are not allowed to donate blood. These individuals are at risk of harming a vulnerable patient who needs blood transfusions if they were to donate blood. With new, advanced tests, the risk of transmitting HIV through a blood transfusion is 1 in 1.5 million. However, before blood is drawn, they must ensure that a donor does not display the high risk behaviors associated with certain infectious diseases. According to the Food and Drug Administration, one is at risk if: one is a male who has had sex with another male since 1977, use of a needle to take any illegal drugs or steroids, usage of clotting factor concentrates for a bleeding disorder such as hemophilia, test positive for AIDS (HIV) or AIDS antibody or antigens, AIDS symptoms, sexual activity with any person described above in the

⁹ America's Blood Center, *Blood is Remarkable, and Vital to All of Us*.

<http://www.americasblood.org/about-blood/facts-figures.aspx> (accessed May 18, 2013).

¹⁰ Ibid.

last twelve months, been given money or drugs for sex since 1977, born in or lived in Cameroon, Central African Republic, Chad, Congo, Equatorial Guinea, Gabon, Niger, or Nigeria since 1977.¹¹

The American Red Cross also prohibits person with allergies, asthma, blood pressure, cancer, cold, flu, sore throat, diabetes, hepatitis/unexplained Jaundice, hepatitis exposure, pregnancy, Kaposi's sarcoma, multiple sclerosis, Lupus, Chagas Disease, Babesiosis, Lyme Disease, Leishmaniasis, Sickle Cell, Syphilis/Gonorrhea, and some travel outside of the United States¹² from donating blood. Thus, it is not only homosexual men who can be seen as the only group banned from donating blood. Despite these additional bans, they are not comparable to the ban on homosexual males because these other individuals do not face discrimination on a day-to-day basis regarding the same issue.¹³

Blood supplies in the U.S. vary depending on both region and time of year. For example, because of the impacts on blood donation frequency of holiday travel schedules, inclement weather and illness, blood is left in especially short supply during the winter months. To highlight this seasonal variation, January of 2008 began the American Red Cross' National Blood Donor Month. Stricter donor qualifications and an older donor population, combining with seasonal fluctuations, make low blood supplies a frequent concern in large cities. Often there is less than a one-day supply at blood banks.¹⁴ It is estimated that 4.5 million Americans will need a blood transfusion per year. Blood drives are a primary vehicle for increasing supplies of blood.

¹¹ Princeton University, *Blood Donation Eligibility Guidelines*.
<http://web.princeton.edu/sites/September11/eligib.htm>.

¹² Princeton University. This travel includes areas with a risk of malaria and during 1980 - 1996 spent a total time that adds up to six months or more in the United Kingdom.

¹³ Princeton University, *Blood Donation Eligibility Guidelines*

¹⁴ Jason Grissom, "Science, Discrimination, and the Blood Supply: San Jose State University's Blood Drive Ban." *The Electronic Hallway* (The Electronic Hallway), 2008.

Because convenience is the deciding factor for many people in choosing whether or not to give blood, working with sponsor organizations, such as companies, churches and universities can increase donations. In fact, the American Red Cross reports that 80% of blood donations they receive are made at blood drives rather than at their fixed donor centers.¹⁵

The current risk of infection with HIV in the United States via transfusion is extremely low, even in places where HIV prevalence rates are high. According to the FDA, the probability of being infected by undetected HIV in a transfusion is less than one in two million. In comparison, the National Weather Service estimates that the chances of being struck by lightning in a given year are about one in 700,000 makes the risk of contracting HIV/AIDS less viable. The American Association of Blood Banks (AABB) estimates that 10.8 million volunteers donate blood each year, which is less than ten percent of the eligible donors. The great need for blood, coupled with the small pool of donors, has resulted in blood shortages that jeopardize the execution of medical procedures.¹⁶

The need for blood comes and goes, and the organization in support for the reversal of the FDA ban oftentimes state that the need for blood is a pressing. Despite this over-generalized view, it is evident that when unexpected disasters occur that blood will be in a higher demand. One prime example is September 11th terrorist attacks. Tens of thousands of Americans lined up to give blood following these attacks. However, this increase of the average daily donor did not create a sizable increase of blood within storage as much as it created insurmountable chaos within the nation's blood banks. The mass appeal for blood to be donated after a crisis is an

¹⁵ Dwayne J. Bensing , "Science or Stigma: Potential Challenges to the FDA's Ban on Gay Blood." *Journal of Constitutional Law* (University of Pennsylvania), December 2011: 486-510.

¹⁶ Ibid.

emotional response to such a tragedy, only soothing the wound of Americans and the need for service to fellow citizen. As a public health response, the practice is useless, and produces an increase of health risks. These organizations over-collected blood to the extent that they had to reject thousands of gallons of possible usable blood. The increase of donor turnout caused money to be wasted, inadequate blood to be collected, and the other components of blood donation were neglected to deal with the increased turnout. One of the most devastating characteristics about this event was the resulting distrust in the blood collection system that failed to secure donations in the future.

This is not always the case with disasters. For example, local disasters tend to be handled in a different way. One blood center can ship the overflow in their supplies to other centers with the need for an increased supply. It is when the entire nation mobilizes to donate blood that causes the concerns, which calls into question on how to increase the current blood supply. In terms of the September 11th attack, the nation collected about 572,000 more units of blood than the normal following the months after the attack. The amount of the blood that had spoiled before use are estimated to range from 100,000 pints to more than 300,000 pints. The plasma might have been of use, but the red blood cells were at a loss. Because hospitals pay blood banks for about \$180 per unit of red cells, the discarded blood represent a value between \$18 million to \$54 million. Spoiled blood following the event was not the only thing that caused an issue. The FDA waived a lot of the training for the blood technicians to allow for the accumulation of the increased donation. This waiver has never been used since, as a result of all of the blood that was useless.¹⁷

¹⁷ Douglas Starr, "Bad Blood: The 9/11 Blood-Donation Disaster." *The New Republic Online*, July 29, 2002.

According to the FDA, the ban against homosexual males from donating blood is due to the history of male-to-male sex being associated with an increased risk for exposure to and transmission of certain infectious diseases, more specially HIV: the virus that causes AIDS. Men who have had sex with other men (MSM) represent approximately two percent of the population in the U.S., yet are the population most severely affected by HIV.¹⁸ According to the FDA, HIV frequency in the men who have sex with men community since 1977 is sixty times higher than the general population in the U.S., 800 times higher than first time blood donors and 8000 times higher than repeat blood donors. When accounting for the fact that seventy-five percent of HIV infected men know that they have the infection and would be excluded from donating for that reason, a man who has had sex with a man is still 200 times more likely than first time blood donors to have HIV and 2,000 times more likely than repeat blood donors. In addition, hepatitis B is five to six times more prevalent and hepatitis C is twice as common in men who have sex with men than in the regular population¹⁹

The *HIV/AIDS Surveillance Report* is published annually by the Division of HIV/AIDS Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, Atlanta, Georgia. This report states that from 2001 to 2005, the total number of new cases of HIV/AIDS decreased. However, HIV/AIDS prevalence has increased during this time period. At the end of 2005, an estimated 475,220 persons within the states studied had been given a diagnosis, making them validly living with

¹⁸ U.S. Department of Health and Human Services. *Vacines, Blood, & Biologics*. May 21, 2013. <http://www.fds.gov/biologicalbloodvaccines/bloodbloodproducts/questionsaboutblood/ucm108186.htm> (accessed June 1, 2013).

¹⁹ Castillo, "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors,"

HIV/AIDS. The estimated number of HIV/AIDS cases confidential name-based HIV infection reporting decreased each year from 2001 through 2004 and then increased in 2005. In 2005, the estimated rate of HIV/AIDS cases was 19.8 per 100,000 populations. The largest number of HIV/AIDS cases occurred among persons aged 35–39 years and accounted for 16% of all HIV/AIDS cases diagnosed in 2005. From 2001 through 2005, the estimated number of HIV/AIDS cases increased among whites, Asians/Pacific Islanders, and American Indians/Alaska Natives and decreased among African Americans and Hispanics. African Americans accounted for 49% of all HIV/AIDS cases diagnosed in 2005. In 2005, rates of HIV/AIDS cases were 71.3 per 100,000 in the African American population, 27.8 per 100,000 in the Hispanic population, 10.4 per 100,000 in the American Indian/Alaska Native population, 8.8 per 100,000 in the Caucasian population, and 7.4 per 100,000 in the Asian/ Pacific Islander population.²⁰

However, in coincidence with the FDA's argument on their use for the blood ban, from 2001 through 2005 the estimated number of HIV/AIDS cases increased among men who have sex with men (MSM). The number of HIV/AIDS cases decreased among injection drug users (IDUs), MSM who were also IDUs, adults and adolescents who have high-risk heterosexual contact, and amongst children. MSM accounts for 49%, and persons exposed through high-risk heterosexual contact was at 32%, accounting for 81% of all HIV/AIDS cases diagnosed in 2005.²¹

An interesting part to the ban is the exclusion of women who have had sexual relations with a male who has had previous sexual relations with another man. If a woman falls into this

²⁰ Department of Health and Human Services, "HIV/AIDS Surveillance Report ." Centers for Disease Control and Prevention , Atlanta , 2005.

²¹ Ibid.

category, she is deferred for twelve months. However, if one does not fall into this category, the question of a number or kinds of sexual partners for women does not hinder their chances of donating blood. The main reason women are rejected from donating blood is because of their hemoglobin counts.²² Robert Tollefson, a representative for one of the organizations later mentioned stated in a presentation: "A woman can go in and go through the screening process. If she says she never had sex with a gay man, they never ask her how many sex partners she's had. She can have multiple sex partners in the course of a year and still be eligible to donate, whereas a gay man who has never had sex in the last five years is immediately disqualified."²³ In forty states, one can give blood immediately after getting a tattoo and can give blood twelve months after sleeping with a prostitute.²⁴

On June 22, 2013, Health Canada changed its MSM blood donor deferral period from a lifetime deferral to five years.²⁵ They did so, knowing that blood donations go through various tests upon being initially received. All screening tests are performed for evidence of donor infection with hepatitis B and C viruses, human immunodeficiency viruses HIV-1 and HIV-2, human T-lymphotropic viruses HTLV-I and HTLV-II, West Nile virus (WNV), and syphilis. Because of the strict scrutiny that the blood undergoes the AABB, Red Cross and ABC presented to the FDA their belief that the current lifetime deferral for men who have had sex with other men is medically, as well as scientifically unwarranted in today's society.²⁶ Despite these safeguards through the advancement of science and technology within blood donations, Dr.

²² Castillo, "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors,"

²³ Anita Brikman, "HHS Takes Another Look at Gay Blood Donation Ban." *WUSA9-CBS*, June 7, 2013.

²⁴ Mike Darling, "Banned For Life." *Men's Health*, 2013.

²⁵ American Association of Blood Banks. *Blood FAQ*.

<http://www.aabb.org/resources/bct/Pages/bloodfaq.aspx#a12> (accessed June 1, 2013).

²⁶ *Ibid.*

Richard Benjamin, chief medical officer for the American Red Cross, admitted the process still is not foolproof. In the last decade, the American Red Cross estimated at least half a dozen people were infected by HIV through donor blood.²⁷

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law works to advance law and public policy through independent research and a variety of education programs. The Williams Institute did an in-depth study on the FDA policy, and cited that more than six percent of men, out of 7.2 million, say that they have had at least one male sexual partner since age of eighteen. Their data also show that four percent of men, out of 4.5 million men, have had a male sex partner in the past five years and three and a half percent, out of 3.9 million men, reported having a male sex partner in the last year. Statistics from the American Red Cross suggest that thirty-nine percent of HIV-negative adults are eligible to donate blood in a given year. If the current MSM ban was to be completely lifted, the Williams Institute estimates that an additional 130,150 men would likely donate 219,200 additional pints of blood each year. If the ban was made to be a twelve month ban instead of a lifelong one, the estimated numbers could be 53,269 additional men able to donate accounting for 89,716 pints each year. If the ban was made for five years, 42,286 additional men could make 71,218 blood donations.²⁸

The policy also provides false security to high-risk heterosexual donors because it ignores dangerous heterosexual behaviors. These include practices such as multiple partners and unprotected sex. The specific responsibility for developing policies such as this one is to ensure

²⁷ Castillo, "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors,"

²⁸ Naomi G. Goldberg, and Gary J. Gates, "Effects of Lifting Blood Donation Bans on Men Who Have Sex with Men." *The Williams Institute* (UCLA School of Law), June 2010.

the quality and safety of the blood supply. Beginning in 1985, blood banks initiated universal testing of blood donations. The FDA's first test, an enzyme-linked nosorbent assay test (ELISA test) was approved in 1985 and detected human antibodies found produced within the blood in response to exposure to HIV. Because the ELISA test had a high rate of false positives, the FDA approved the first confirmatory test, the Western Blot, in 1987. In combination, the ELISA and the Western Blot tests are considered to be 100% effective for detecting HIV antibodies. However, there is a latency period of up to several months in which a person infected with HIV has not yet developed the antibodies detected by these tests. Since 2002, however, the routine use of nucleic acid testing (NAT) for the HIV virus itself, rather than its antibodies, has further reduced the risk of transfusion transmission of HIV to about one unit per two million donations. Typically, the test will detect the presence of HIV within nine to eleven days of infection, providing a window period significantly shorter than the more common antibody test.²⁹

Within the legal sense, Dwayne J. Bensing, writes in his article in the *Journal of Constitutional Law* that the MSM ban fails a heightened level of rational basis review in court, which does an injustice to the overall legal system in the United States. Bensing states that the notion inherent in the MSM policy is that all gay men are risky donors, preserving the stigma of gay men in an official government-agency policy. This sends the message to gay men that they are predictably involved in much more risky sexual activities. This message also brings about challenges to produce better education to gay men about activities to decrease the likelihood of obtaining a sexually transmitted disease. By singling out this one group, the policy is facially prejudiced and it is not rationally related to its stated goal of protecting the donor pools. This is because the policy does not apply to other high-risk groups. Bensing states that any ban that

²⁹ Bensing, *Science of Stigma*, p. ?

discriminates against an ostracized group without worthy defense violates the Equal Protection Clause of the Fifth Amendment and should be deemed unconstitutional. The FDA policy invents a distinction between MSM and heterosexual donors that is scientifically untenable; a gay man does not contract AIDS by being gay, but by engaging in risky behavior, the same as heterosexuals.³⁰

³⁰ Ibid.

Legislative Action

Legislative action to remove the FDA ban has not been successful to date, despite the calls for change. The interaction within the political process by social organizations may be related to power, which in turn is revealed in participation and non-participation, upon issues, and non-issues, which arise or are prevented from arising in decision-making arenas.³¹ In 2006, the Red Cross, the international blood association AABB and America's Blood Centers asked the FDA to overturn the policy, but the agency announced that it would keep the ban until there is data that show lifting it would not pose a significant and preventable risk to blood recipients. In March of 2010, 18 senators including current Secretary of State John Kerry, Sen. Bernie Sanders of Vermont and 16 other Democrats wrote to FDA Commissioner, Margaret Hamburg, asking her to allow MSM men to donate blood. Also signing the letter were Kirsten Gillibrand of New York, Dick Durbin and Roland Burris of Illinois, Daniel Akaka of Hawaii, Sheldon Whitehouse of Rhode Island, Sherrod Brown of Ohio, Frank Lautenberg of New Jersey, Bob Casey of Pennsylvania, Russ Feingold of Wisconsin, Mark Udall and Michael Bennet of Colorado, Al Franken of Minnesota, Maria Cantwell of Washington, Carl Levin of Michigan, Tom Harkin of Iowa, and Mark Begich of Alaska. The FDA stated the decision to maintain the rule was based on current science and data and does not give weight to a donor's sexual orientation.³² The letter claimed that the science behind blood donations and screening had dramatically changed since the ban was established in 1983, and therefore the ban should be reconsidered. The senators also argued that hospitals and emergency rooms were in urgent need for more frequent blood donations. Senator Kerry compared the effort to lift the blood donation ban to legislation he

³¹ John Gaventa, *Power and Powerless: Quiescence and Rebellion in the Appalachian Valley*. (University of Illinois Press, 1980.), 25.

³² Castillo, "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors,"

backed in 2008 to end the law banning people with HIV from traveling and immigrating to the United States. That ban was lifted in 2009.³³ The U.S. Department of Health & Human Services for Blood Safety and Availability Advisory Committee voted in 2010 not to recommend a change to the FDA's MSM policy.³⁴

Even more recently, Senator Elizabeth Warren, a Democrat from Massachusetts and a known advocate for LGBT rights, asked the federal government to speed its review of the current ban on gay men donating blood when she co-wrote a letter to the Department of Health and Human Services. This letter was signed by more than eighty colleagues. Warren began this letter after one of her constituents from Roslindale complained that his blood had been rejected for donation after the Boston Marathon bombings.³⁵

³³ "Senators: Lift Ban on Gays Donating Blood." *CBS News*, March 4, 2010.

³⁴ Darling, "Banned for Life."

³⁵ Noah Bierman., "Warren Demands Feds Lift Ban on Blood Donations from Gay Men ," *Political Intelligence* , August 2, 2013.

College Activism

Billy Manes did a short radio segment in his “Orlando Weekly” show talking about the FDA ban. He claimed that the ban itself is a form of institutional discrimination, and supports the assumption that AIDS is just a gay disease. Manes also presented an interesting argument. He said: “we’re not all ready to get married, after all, some of us just want to save lives.”³⁶ With the recent Supreme Court decisions on Defense of Marriage Act, there has been overwhelming talk of marriage equality within the United States but little attention has been given to the question of the FDA ban and whether this is in fact a form of inequality.³⁷

Banned4Life was founded on March 1st 2013, as an organization to help raise awareness on the need to change this ban. When Blake Lynch, founder of the Banned4Life project, went to donate blood last spring, hoping to help a friend with sickle-cell anemia, he was turned away, because he was a homosexual male. Lynch and his partner launched this campaign devoted to overturning the federal Food and Drug Administration's decades-old policy. Through their nonprofit, they have gathered over 25,000 signatures from supporters across the country, hosted a series of educational blood drives, spoken at churches and events from Los Angeles to Miami, and sent a representative to testify before Congress. One of the most important events Banned4Life has been apart of from the beginning of its activism was making a presentation at

³⁶ Billy Manes, "Billy Manes Blood Donation Still Banned for Gay Men," *Orlando Weekly*. 2013.

³⁷ David A. Snow and Sarah A Soule. *A Primer on Social Movements*. (New York: W.W. Norton & Company Inc., 2010). The effort is to create a new social organism whose health depends upon its capacity to keep the technology heart beating regularly.³⁷ Direct challenges are straightforward, undisguised, and overt appeals and demands. Therefore, the targeted authorities are aware of both the claims and their carriers, whereas indirect challenges include movements that seek to change larger systems by changing individuals; movements that are covert or ambiguous. Covert can be defined as actions and the carrier and ambiguous in terms of the actions and the claims. Indirect challenges also include movement that seeks to divest themselves of the relevant authority by escaping it

the National Student Nurses Convention in Charlotte, North Carolina. Banned4Life called for the nationwide association to support an FDA revision, citing their argument about discrimination and the need for an increase in blood donations. The students in attendance passed it overwhelmingly.³⁸

Another way for social movements to gain legitimacy is to take political opportunities handed to them. Banned4Life did this with its presentation at the National Student Nurses Convention and in their presentation to the Health and Human Services (HHS) Blood and Tissue Donation Safety meeting. Robert Tollefson, an openly homosexual male and a local healthcare worker, spoke on behalf of Banned4Life contending that there needs to be a more fair screening process, especially when there are willing and eligible blood donors who are being denied.³⁹

Banned4Life is not the only organization and movement that formed in opposition to the FDA Ban. Common values help to band together aspects of the overall movements to work towards a common goal. In terms of values, these can be understood as the states and objects toward which behavior is differently directed. Values are conceptions of the desirable that serve as major guidelines for behavior. Asking what a group is most willing to spend scarce resources to obtain can identify them. A counterculture movement is both seen as a behavioral and symbolic movement. It grows out of the combination of deviance from and critics of the social order.⁴⁰ The Committee of Student Life at Sarah Lawrence College in Bronxville, New York, in conjunction with students at San Jose State University in San Jose, California, started a "We the People" petition to get President Barack Obama's support and to encourage the FDA to change

³⁸ Becky Bereiter, "Charlotte Nursing Student Calls for FDA Revision of Blood Donation Policy," *Time Warner Cable News*, April 7, 2013.

³⁹ Brikman, "HHS Takes another Look at Gay Blood Donation Ban.

⁴⁰ Yinger. *Countercultures: The Promise and the Peril of a World Turned Upside Down*, 23.

its policy on men who have sex with men. Both college campuses ban blood drives because it conflicts with their respective schools' policies on non-discrimination, so the students decided to take their wishes to hold blood drives all the way to the top.⁴¹

An interesting connection between these groups is the increase of activism among college youth.⁴² In 2008 San José State University (SJSU) president Don Kassing banned blood drives on the school's campus stating "The FDA's lifetime blood donor deferral affecting gay men violates our nondiscrimination policy."⁴³ In a letter to the campus community, Kassing explained that the ban was a result of the U.S. Food and Drug Administration's lifetime blood donor deferral policy for homosexual men. This was following an investigation prompted by concerns about the fairness of the policy brought to the campus Office for Equal Opportunity by a University employee, Kassing and his administrative staff determined that holding campus blood drives that denied participation to men who engage in sexual activity with other men violated the public University's non-discrimination policy. This policy explicitly prohibits

⁴¹ Castillo. "Students' Petition Calls on FDA to Change Ban on Gay Blood Donors."

⁴² Yinger *Countercultures: The Promise and the Peril of a World Turned Upside Down*, 51-56.

The form and intensity of specific countercultures can be explained in part by particular circumstances- in the contemporary world by disillusionment following World War II and in the United States, more specifically coinciding with the Vietnam War. Also, by the impact of television and the mass media generally, by affluence, urbanization, and the increase in education, by the availability of illegal drugs in societies that consume enormous varieties and amounts of legal drugs or by other factors in different settings. When a percentage of youth increases, it is usually hard to absorb them within the already established institutional structure, more specifically into occupations, because of the imbalance in the people-job equation. The impact of the comparative size of age groups is highly interactive with other factors is clearly show in the distinctions drawn among age, generation, and period effects. Persons twenty to twenty four years of age, for example, are influenced by position and the associated role of that age group in a society but are consciously replaced in the group as they move amongst the so-called life cycle. They are also influenced by generations to which they belong as they grow older and by period effects that condition the lives of all age groups- increasing affluence, perhaps, or the experience of anomie. When all three of these influences are destabilizing to a group, a powerful countercultural movement is likely to appear

⁴³ Darling, "Banned For Life."

discrimination on the basis of sexual orientation. In justifying the decision, the letter to the campus community noted that the FDA's policy was enacted in 1983 when the risks of AIDS transmission via blood transfusion were first recognized but argued that the policy had never been relaxed even as blood testing technology reduced current risks to levels so low that experts could no longer measure them directly. While acknowledging that a university the size of SJSU created a potentially important supply of blood donations, Kassing felt a blood drive suspension was warranted.⁴⁴

Support for the blood drive suspension, however, was not universally favorable amongst the community. Some students and blood collecting organizations thought Kassing's move would preclude many students from donating blood on their own time. An alternative to what the University did, some argued that the University should facilitate blood donations rather than create a hindrance of these likely donors. Rather than exerting a positive influence on national policy, representatives from the nearby Stanford Blood Center suggested that SJSU's tactics could have a devastating impact on the blood supply.⁴⁵

SJSU's suspension ignited a chain of reactions to the FDA's policy. Many of these reactions were from the local community. In February, the Board of Supervisors for Santa Clara County, where San José is located, formally opposed and condemned FDA's lifetime ban on blood donations from gay men, saying the policy was inconsistent with its stance of "opposing discrimination in any form." But the Board did not suspend blood drives throughout the county because of concerns about inadequate blood volume and the "detrimental effect on the county's ability to provide medical care for county residents." The county would not "create any artificial

⁴⁴Grissom, "Science, Discrimination, and the Blood Supply: San Jose State University's Blood Drive Ban."

⁴⁵ Ibid.

barriers for potential donors,” said Supervisor Liz Kniss, Chair of the Board’s Health and Hospital.⁴⁶ In another example, the Council of Churches of Santa Clara County voted unanimously on February 29, 2008, that “medical policy should be driven by science, not superstition.” The Council noted that its stance was similar to that of the American Red Cross—that the FDA policy is outdated—and applauded Don Kassing and San José State University for their “bold stance on this issue” However, not everyone in Santa Clara County was supportive. Soon after President Kassing’s decision, Stanford Blood Center officials said that while they agreed that a lifetime ban on donations from men who have sex with men was overly restrictive, Kassing’s decision was “a terribly misguided tactic that could have a devastating impact on the blood supply, and therefore, patients in our community.”⁴⁷

The students at both San Jose State University and Sarah Lawrence College immediately formed a marketing task force to spread the word about the petition. They created a Facebook page and a graphic campaign as well as contacting similar organizations at colleges across the country to gain support from their peers. One of the most important questions that these students asked is similar to the one Banned4Life and other organizations asked: At a time when the blood supply is dangerously low, why are you allowing outdated policies based on bad science and discriminatory stereotypes to keep healthy Americans from donating blood?⁴⁸ The legal and moral taboos on homosexuality have changed, and yet still have previous ideas from previous decades. Even where that has not occurred, for some persons it has become countercultural- that

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Genevieve Hein, *Genevieve Hein's Blog*. Bronxville-Easterchester Patch. May 30, 2013. <http://bronxville.patch.com/group/genevieve-heins-blog> (accessed January 1, 2014).

is, defended normatively against the dominant values- rather than being experienced by homosexuals themselves and being regarded by others as aberrant.⁴⁹

Members of George Washington University's Lambda Law, the LGBT law school student group, hosted several blood drives due to the FDA ban within their location of downtown Washington D.C. . The Red Cross holds about twenty-five blood drives a day in the D.C. area. Because of D.C.'s transitory population, lower rates of donation in African-American and Hispanic communities, and its urban environment, the organization often struggles to secure enough blood. Michael Porcello, a former law student and member of Lambda Law, organized the blood drive, after he had talked with someone at the Red Cross who told him that other groups had held informative blood drives to raise awareness about certain issues, such as the need for more Hispanics to donate. In reaction, Porcello decided to hold a similar blood drive to call attention to the ban, and enlist donors' support to repeal and replace it. This blood drive became an annual event, attracting about thirty to forty donors a year. An average of twenty-four units of blood were donated by the end of the most recent drive and the group collected eighty-five signatures for its petition. This drive has been seen as being so successful in the Washington D.C. area, that American University used Lambda Law's materials to hold their own blood drive for the same cause.⁵⁰

"Fight To Give Life" is an effort led by Dickinson College students to show support for blood banks while petitioning the Food and Drug Administration to revise its ban on blood donations from gay and bisexual men. Students from Dickinson , Lebanon Valley and York colleges presented the Central Pennsylvania Blood Bank with a letter and a light blue ribbon to show support for the blood banks which favor a policy change. "Fight To Give Life" was

⁴⁹ Yinger, *Countercultures: The Promise and the Peril of a World Turned Upside Down*, 259

⁵⁰ John Riley. "Battling the Blood Ban." *Metro Weekly* , November 17, 2011.

founded by Spectrum, Dickinson 's student organization for lesbian, gay, bisexual and transgender students and allies.⁵¹ Similar to Dickinson's movement, New York's Stony Brook University's in Blood Donor Equality movement presented "The Blood Donor Policy Panel" in the Charles B. Wang Center Theatre. The event highlighted both social and scientific perspectives regarding the entirety of the ban. One of the activities of this panel was a letter-writing campaign in support of the Blood Equality movement. The group produced a goal of attaining over 100,000 signed letters to be delivered to the United States Secretary of Health and Human Services Kathleen Sebelius.⁵²

Banned4Life, and other organizations, focused on a "National Gay Blood Drive" where blood drives would happen throughout the entire country wherein donors could donate on behalf of those who are affected by the ban. The AABB, America's Blood Centers, and the American Red Cross issued a statement regarding the "National Gay Blood Drive" scheduled for July 12, 2013 through the various organizations, such as Banned4Life. Organizations designed the event to increase attention about the lifetime blood donation deferral for men who have had sex with other men. This statement indicated:

While we appreciate the organizers' interest in raising awareness of this issue, we are concerned that the event has the potential to disrupt blood center operations. Staff resources, which are already at capacity at many blood donation centers, will be needed to accommodate a larger- than-usual turnout of presenting donors who know they will be deferred under current eligibility guidelines. Blood donation eligibility in the United States is determined by the Food and Drug Administration (FDA). AABB, America's Blood Centers and the Red Cross believe the current lifetime deferral for men who have had sex with other men (MSM) should be

⁵¹ Dickinson College, *News and Events*, April 5, 2006.

⁵² Jasmine Blennau and Giselle Barkley "Blood Equality Panel Proves that Rights are Still Not Equal," *The Statesman* , November 7, 2013.

modified and donor deferral criteria should be made comparable with criteria for other behaviors that pose an increased risk for transmission of transfusion-transmitted infections. The U.S. suggested modification calls for a one-year MSM deferral. On June 22, 2013, Health Canada changed its MSM blood donor deferral period from a lifetime deferral to five years. However, with any ban, active MSMs will remain ineligible to donate blood. We strongly support the use of rational, scientifically-based deferral periods that are applied fairly and consistently among blood donors who engage in similar risk activities. We support ongoing efforts by the Department of Health and Human Services and National Institutes of Health to fund research to evaluate deferral policies and prevent potential risks to the blood supply. Maintaining a safe and available blood supply continues to be our highest priority.⁵³

This response is interesting in regards to how these three organizations are for the reversal of the ban, yet they were hesitant to support the activity that corresponded with this activism. This coincides with the September 11th response to the increase in blood donations.

In regards to activism within the state of Florida, Blake Lynch and Banned4Life can be seen as the leading movement at colleges and Universities. Florida State University has no official statement, policy, or activism happening in response to the FDA ban, and blood drives can be seen continuing on campus weekly. On the campuses of the University of Central Florida, Seminole State College, and Rollins College there have been blood drives and information sessions on the ban. These blood drives were sponsored by the LGBT organizations and Banned4Life volunteers, and not supported by the universities.⁵⁴ For example, the Rollins blood drive and the college's Spectrum club sponsored awareness. The purpose of Spectrum is to foster an active and diverse culture at Rollins College, aiming to value its members, to promote

⁵³ America's Blood Center. "Joint Statement Regarding "National Gay Blood Drive" June 26, 2013." AABB, America's Blood Center, and the American Red Cross, 2013.

⁵⁴ Santich, "Banned4Life founders protest FDA ban on gay men donating blood."

an educational environment, to foster a safe and welcoming community, and to be a social organization that provides support for the LGBTIQQA community.⁵⁵

⁵⁵ Rollins College, *Get Involved Rollins*, <https://getinvolved.rollins.edu/organiazation/spectrum> .

Conclusion

The counterculture created by the opposition of the Vietnam War and the sexual revolution in the United States allowed for gay-rights activism inside the political realm that still holds weight within today's issues. Because this ban is still prevalent and legislation and actions by organizations fighting for sexual orientation equality are ongoing, the course of the movement is still to be determined. However, the history is explanatory in showing the connections of actors as movements within the political sense. Additionally, there are numerous examples of how these movements have shaped American politics, not limited to the examples throughout this paper. The ones studied are relevant in the time period in which the research took place, in addition to the accessibility of location and research. Despite these limitations resulting in the ongoing changes within this movement, the study gives evidence of the action and opportunities of the gay-rights movement inside the political policies throughout the United States. By looking at the movements regarding the FDA policy, the day-to-day changes happened throughout the entire research process, and continue to have various developments emerging.

The overall research revealed that organizations and social movements work within their means to achieve a common goal. And though there are many different ways or different ideas, the common end result often stems from the establishment of a movement. With that being said, it was also reflected that these actions are in the realm of a college atmosphere as well as the greater community. However, though this movement stems from a very active college life within the Vietnam anti-war demonstrations, there is an indifference within colleges, specifically within the Florida State University community. An informal survey I took of different students throughout campus showed that though the ban was in place and might be known, there have been little efforts to change this. This is important to consider in regards to any personal bias in

the matter, as well as the inability to research all possible elements and organizations where people on a college campuses who take up activism to see a certain societal change made.

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