

**Marriage approval among gays in
Vermont State, USA issued on April 26, 2000**

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CHAPTER I

INTRODUCTION

A. Background of Choosing the Problem

United States of America has various ethnics with their differences and various cultures. Many people immigrated to America since long time ago and they brought their own believes and culture. Many happenings occur in America which involve its people. There is a momentum here that may not be stopped; just as black dominated the '60s, women the '70s, and abortion the '80s, gays and lesbians and their fight for equal rights seem likely to dominate the '90s (The Gay '90s : Sex, Power and Influence, NBC TV, Jan 26, 1993). One of the happenings that occurs in United State of America which will be analyzed in this thesis is the phenomenon or the happenings related to gay or homosexuality in Vermont state in USA and the problems related to it.

Homosexuality can be characterized as behavior involving sexual relations with a member of the same sex. The potential for homosexual behavior appears to be a basic part of human sexuality, since many people experience

homosexual interest, curiosity, or activity of some points in their lives. Many homosexuals prefer to be called gays or, in the case of women, lesbians because of the exclusively sexual connotation of homosexual. (Grolier's Encyclopedia of knowledge, 1991, p.283). Such definition, however, does not indicate the variety of possible motivations for homosexual behavior, some pursue it of an intense erotic attraction to members of their own sex, such prisoners, or may be , that may seek homosexual outlets only because of prolonged deprivation of contact with other sex. Still others, with defective moral controls, may engage in it for money or adventures as present time reason. Some men are involved in homosexual practice for money or adventures as present time reason, some are involved in homosexual relations because they feel and think of a need to please, or out of boredom, curiosity or rebellion. Explanatory encounters among preadolescents and adolescents of the same sex are common in our society but they are normally abandoned when inter-sexual outlets become available.

Homosexuality has been common in most cultures throughout history. In ancient Greece, homosexuality had been widely condemned, by both Jewish and Christian. History views homosexuality as sinful. This tradition was put in written law, so that homosexual activity was considered a crime and the penalty was sent to death. With the birth of psychiatry, homosexuality came to be viewed more as sickness than a sin. (Grolier's Academic Encyclopedia, 1991, p.217). Some psychologists think that homosexual relation is not a matter of mental illness but it is as a behavioral deviation as stated in *Pengantar Psikologi*:

.....Sampai belakangan ini, homoseksualitas dianggap sebagai

suatu “penyakit mental” atau suatu perilaku abnormal. Walaupun banyak orang masih memnaggap homoseksualitas sebagai suatu yang tidak wajar, kebanyakan psikolog dan psikiater menaggapnya lebih sebagai suatu kelainan daripada perilaku abnormal dari ekspresi seksual, dan bukannya, dari awalnya sebagai indikasi atau penyebab penyakit kejiwaan.....(Atkinson, 1999, p.37).

Homosexuality happens almost in all over the world including in the United States of America. America is a big nation with various people and cultures. In America, there, exist gay and lesbians community. Nearly a million gays and lesbians identified themselves as members of same-sex couples in the 2000 census, which for the first time gives an authoritative record of homosexuals in America. But the total gay population is much larger, since the census didn't provide an opportunity for single homosexuals to identify their sexual orientation.

Today, the Census Bureau has reported that there are 479,107 same-sex couples sharing a household. This number will rise when data from all 50 states is released. The missing states are New Jersey, Texas, Pennsylvania, Tennessee, Virginia, Wisconsin, Mississippi and Arkansas. According to the latest census statistics released Wednesday, August 8, 2001, California and Vermont lead the nation with the highest percentage of gay couples, while San Francisco in the state of California has nearly twice as many same-sex partners as any other states. There are 92,138 same-sex couples in California, including 8,902 in San Francisco. In Vermont, 1,933 same-sex couples responded to the census. Gay and

lesbian couples make up nearly one percent of total households reported in both states (www.nglrf.org/issuescensus2000.htm).

In Vermont, one of the states in America, there exist gay communities where they seek for the same right as heterosexual people. The right is the right to get marriage approval among gays. Before they get marriage approval, the gays face a problem when they want to step to the next phase to be bond in the Civil Union, similar in meaning to marriage, as known as gay marriage. Although many people do not think of homosexual relationship as resulting in a family, it has been estimated by Schulenburg in *Marriage And Family* that about one of five gays and one of three lesbians enter a homosexual marriage (Lauer, 1997, p.50). The marriage may or may not be established by formal ceremony. Here the use of the term 'marriage' is to describe their relationship. They both matched rings and verbally agreed to be sexually faithful, to emotionally support each other, and to have equal responsibility in such matters as finance. Unlike the common marriage which is between couples from different sexes, marriage between the same sexes is prohibited. So far most people in America still hold the traditional marriage, that is the marriage between a man and a woman. And the meaning of marriage is sacred.

When a couple in love to each other will go to a serious phase by being united and bounded in marriage no one can stop them. This information can be seen in the following statement :

Each individual's journey through life is unique. Some will make this journey alone, others in loving relationships-maybe in marriage or

other forms of commitment. We need to ponder our own choices and try to understand the choices of others. Love has many shapes and color and is not finite. It can not be measured or defined in terms of sexual orientation. (From the statement of Affirmation and Reconciliation by the Quaker meeting in Aotearoa).(www.religiustolerance.com/index/hom-marr/92).

The Gay community in Vermont tries to fight for their equal right as the heterosexual. What homosexuals are asking for is the right to marry, not anybody or everybody they love but *somebody* they love, which is not all the same thing. And they fight to gain the approval of their civil union (similar as marriage) and their effort finally succeeded on the victory day of gay people on April 26, 2000 as in Montpelier, Vermont –Gov Howard Dean signed a first-in-the-nation law on Wednesday which granted gay couples nearly all of the benefits of marriage. The law will allow gay couples to form civil unions beginning July 1st, 2000.

Some critics say that gay marriage is “against natural law” as traditional marriage is a sacred marriage between one man and one woman. “ It really represents a slap in the face of traditional marriage between a man and a woman,” (www.religiustolerance.com/hom-marg.htm), said Jay Sekulow, Chief counsel for the right-wing American Center for Law and Justice. The reason why the researcher chooses Vermont state because Vermont, which has a population of 600,000, has long been liberal-minded. And the marriage among gays finally, get the official approval from government. In this thesis, the writer talks about the background of the marriage approval among gays in Vermont state , USA, based

on American studies.

American Studies is a study of the American cultures, its works of art and its socio-culture. American studies is the effort to view any given subject of investigation from new perspective, or to view it from an inter-disciplinary stand point adequate (Mickelson, 1969, p.28). Hopefully the student of any given discipline will attempt to look his subject from new perspective. The researcher uses some different points of view, intended to make the research clearer, and this is called inter-disciplinary approach. One way of explaining American studies is to say that it is a product of as well as a study of this history of growth and change, image and reality, inner national dynamic and external radiation and influence (Bradbury & Temperley, 1994 , p.17). The term can mean many things. The American studies analysis can be many kinds. It draws on a wide variety of disciplines and methods. It can be a study arising from within culture, a form of national self-understanding. It can be an approach from outside, guided by exterior viewpoint or indeed ideologies. It can also be an overall term describing the world of the many people who separately attempted to characterize the politics, constitution, sociology, culture and the entire texture of American life, and using different approaches and methods.

B. Scope of Study

As said before this study will discuss about the happenings and phenomenon related to gays and their lives in Vermont state, USA, and their right

that is the right to get approval to their marriage from the government. And the study will focus on the backgrounds of marriage approval in Vermont state, that bore the official approval of marriage among gays on April 26, 2000 and also some aspects of gays' life which support the approval.

C. Problem Statement

Considering the idea that has been presented in the background, the writer formulated the problem statement as follows :

What backgrounds bear the marriage approval among gays in Vermont state, America issued on April 26, 2000 ?

D. Objective

The objective of this study is to describe the backgrounds of the marriage approval among gays in Vermont state, USA issued on April 26, 2000.

E. Benefits of the Study

From the research , the writer wants to get some benefits as the result of the study. The benefits are :

1. Theoretically, this study is expected to be able to be used as the source of information for other researchers who have the same interest with the topic.
2. Practically, this study is expected to be able to give information and

explanation about the background of the approval of marriage among gays in Vermont state, USA.

3. This study is also expected to be able to give contribution to the American Studies field.

F. Method of Research

1. Type of Research

This research is a descriptive research which applies the descriptive technique. It is descriptive as the researcher describes and interprets the data , and draws a conclusion. The research is qualitative one as it employs words, phrases, and sentences. D. Edi Subroto stated in his book *Pengantar Metoda Penelitian Linguistik Struktural* as follows

“ Penelitian kualitatif itu bersifat diskriptif. Peneliti mencatat dengan teliti dan cermat data yang berwujud kata-kata, kalimat-kalimat, wacana, gambar atau foto-foto, catatan harian, memorandum, video-tape. Dari data yang bersifat deskriptif itu peneliti melakukan analisis data untuk membuat generalisasi atau kesimpulan umum yang merupakan sistem atau kaidah yang bersifat mengatur atau gambaran dari orang-orang yang dijadikan subject penelitian” (Subroto, 1992, p.7).

2. Data

The data of this research are words , sentences, phrases, paragraph , pictures that are gained from the sources of data.

3. Sources of Data

There are two kinds of sources of data, namely, documents and figures source of data that contain information related to the topic:

a. Documents

The sources of data in form of documents are as follows :

1) Books

All kinds of books that serve information about gay community and gay marriage.

2) Newspapers

The newspapers that provide information about gay community and gay marriage. (Washington Post, The Christian Science Monitor, etc.)

3) Magazines

Magazines that give information related to the topic (Time magazine and Newsweek magazine)

4) Articles

The articles that are found in the Internet that give information about gay and all aspects of gays' life

b. Public Figures

The public figures here are the religious leaders who give their opinion and perspective to the marriage among gays based on their each belief and gay activists who concern to the existence and the struggle of gays to get equal right as heterosexual. The source of the data is in the form of interview.

4. Technique of Collecting the Data

The data of this study are found from the source of data related to gay community and their existence including all aspects of life and information about gay marriage.

a. Technique of collecting the data from documents

The source of data was read carefully and repeatedly. The next step is that the researcher made some notes on every related clauses, sentences, terms, quotations, and paragraphs related to the problem analyzed.

b. Technique of collecting the data from public figures

In order to get the data from the oral source of data, the researcher prepared the tools and questions for an interview and the researcher also points out the respondents who will be interviewed. The researcher also made a field

note or short memo during the interview to get the quotation during the interview. After the interview had been done , the researcher made the transcript of the recorded interview and arranged it into a good order. After reading all the source of data to get a good understanding, the researcher made some notes of the relevant problem.

5. Technique of Analysis

The problem statement will be analyzed through these steps of analysis :

a. Description Phase

In this phase the data are collected and classified according to the subject matters.

b. Analysis Phase

The theory which is the basic of this research is employed in this phase. The researcher shows the application of psychological, religious, medical, socio-cultural and the law approaches upon the available data.

c. Interpretation Phase

Through this phase, the analysis are crystallized based on the purpose and subject matter that has been formulated.

d. Evaluation Phase

The result of the analysis are evaluate to get conclusion.

G. Theory and Approach

In reaching the goal of this study, a multi-disciplinary approach will be used, as this study is based on American studies. As American studies is more than inter-disciplinary, it is an inter-discipline and one of the enduring quests is for a coherent method or theory (Bradbury & Temperly, 1994, p.378). There are some approaches that will be employed in this research. The researcher will use psychological approach, religion, medical, socio-cultural and the law that exist in Vermont state as the approaches.

1. Psychological point of view

In contemporary psychology, the most influential theory of homosexuality has been that of Sigmund Freud, who held that homosexuality is the expression of biological bisexual predisposition common to all human beings. (Encyclopedia Americana, 1990, p.333). Freud speculated that all persons go through a *homoerotic* phase in the process of achieving heterosexuality and retain from that phase some *latent homosexual* tendencies. This tendencies, he thought are for members of one's own sex, as well as in *feminine* attitudes or interests in males and in *masculine* attitudes or interests in females. (Encyclopedia of knowledge, 1999,p.354). This approach is used to analyze to the gay behavioral attitudes and intended to find out the psychology of gays.

2. Religious Approach

Religious approach is to find out the religious point of view toward gay and the background of religion that may become one of the backgrounds to the approval of gay marriage in Vermont state.

3. Medical Approach

This approach is to see the process of the marriage approval from medical point of view.

6. Cultural Approach

This approach is to see the approval of gay marriage from the culture in Vermont State.

7. The law of Vermont State

This approach is to see what the laws say about the gay civil union that results the birth of the approval of the marriage among gays. What is meant by the law here is the law in Vermont state in general and the law of marriage in Vermont State.

H. Thesis Organization

The presentation of this research will be arranged as follows :

Chapter one includes background of choosing the problem, scope of study, problem statement, objective of study, benefit of the study, method of research and theory and approach.

Chapter two includes definition of gay (homosexual), which talks about 1)definition of gay and homosexual marriage 2)gay's life and their problems in the family and society and its problem; 3) psychology of gays, 4) medical point of view; 5) religious point of view; 6) the socio-cultural condition in Vermont in 1990s, USA and 7). the law in Vermont State, which includes the law in Vermont and the marriage law in vermont.

Chapter three is the analysis. The analysis will discuss the background of marriage approval among gays in Vermont state, America based on and viewed from psychology, medical, religion, socio-cultural and law point of view

Chapter four is the conclusion and recommendation.

CHAPTER II

LITERATURE REVIEW

A. Definition of Gay (Homosexual) and Homosexual Marriage

Homosexuality , also called sexual inversion or usually defined as the sexual attraction of a person to one of the same sex (from Greek homo-, "same", not from Latin homo, "human being, "man"). (Encyclopedia Britanica vol 11, 1970, p.648). This attraction usually but not always leads to physical contact culminating in orgasm. Female homosexuality is often referred to as Lesbianism, from the Ageaan island of Lasbos, where the poet Sappho was leader of a group of women. (The New Encyclopedia Britanica vol 6, 1994p. 31). The use of the word gay to describe a homosexual has become a popular modern term. While, homosexual itself is defined as a person who prefers to have sexual relationship with others of the same sex, can be both male or female, but female homosexuals are often termed lesbians.

While according to *Kamus Lengkap Psikologi*, homosexuality is defined as follows:

1. Hubungan antar anggota jenis kelamin yang sama.
2. Daya tarik sexual bagi anggota jenis kelamin yang sama. Homosexualitas ini bias mencakup segenap jajaran tingkah laku, dari sexualitas yang tampak jelas--yaitu masturbasi timbal-balik—sampai pada hasrat terhadap lawan jenis kelamin yang ditekan kuat-kuat. (Kartono, 1989, p.228).

Homosexual behavior consists of choosing a partner of the same sex for sexual interaction. The term homosexual is used to characterize individuals who prefer romantic attachments and sexual interaction with the same sex and typically are maximally experienced by same-sex erotic imagery. The label homosexual is sometimes inaccurately applied to individuals who predominantly experience heterosexual arousal but who have experienced occasional or fleeting desire or fantasy of same-sex erotic activity (Encyclopedia Britanica, 1984, p.249).

Homosexuality is practiced by male and female children and adolescents in all societies and by some adults in some societies. Homosexual practices can be accidental, secretive, ritualized, institutionalized or maladaptive and most commonly they take the form of mutual exploration and masturbatory acts. Although simulated copulation, oral, or anal acts occur, they are generally less common. However with current sexual permissiveness in contemporary societies, this latter acts are becoming more prevalent and in some western societies they are tolerated during adolescence. Some States in America approve and tolerated this

acts. Vermont as one State of the America finally approves to this acts and legalized this behavior even to establish a union.

Some questions occur to the causes of homosexuality. According to Freud and Pinkava doing a tests that clearly formulated hypothesis concerning parent-child relations and homosexual patients in psychiatric hospital concluded that the changes of becoming homosexual or of developing severe homosexual problems appear to be high, for any son who is exposed to the combination of a "close-binding-intimate" mother who dominates and minimizes her husband, and a father who is detached or hostile.

Causes of homosexuality:

The factors may cause the individual becomes partly or totally homosexual are as follows:

1. A constitutional defect or deficiency related to the individual's image of his body development, gender, and sexual identity.
2. A history of disturbed family and peer relationships, e.g : when a mother is close-binding or seductive or else hostile, aggressive and competitive and a father is passive, indifferent and hostile, and detached (or vise versa).
The absence of both parents may also be determining factors.
3. Inordinate exposure to homosexual conditioning during crucial periods of gender and erotic identity development.
4. The use of homosexual fantasy, feeling and activity to deal with non-erotic life conflict, or to substitute for the use of other emotion that the person has become incapable of expressing.

5. Distortions or block-age in the expression of dependency, passivity, aggressiveness, hostility, and any other emotion that is culturally sex-linked.

(Collier's Encyclopedia vol 12, 1990, p.217).

The major causes of persistent homosexuality are to be found in disturbed family and peer relationships, particularly when they occur during crucial periods of young persons psychosexual development. It is during the establishment of a normal or male or female gender or erotic identity may take place. Typically the disturbed family and peer relationships partially or totally block or destroy the ability to achieve an appropriate erotic identity. The result from this process is that inability to identify with significant social, gender, emotional, and erotic role functions of the same-sex. There is only an inability to relate emotionally or erotically to a member of the opposite sex. And the identity of homosexual may occur in the person of this circumstances (Collier's Encyclopedia vol 12, 1990, p.217).

Homosexual has been discussed throughout man's recorded history. Contrary to some popular opinion, there are no particular physical or personality characteristic by which homosexuals can be immediately identified. Some males do affect high-pitched voices and effeminate manners, but more do not. Some homosexuals male may wear lipstick and nail-polish and otherwise fail to conform to the conventional attributes of manhood, but many don't. But some homosexual male adopt a strighter-than stright (heterosexual) identity symbol. Many of the people suggested that there was growing trend among the inner-city gay dance

party patrons to look and act strighter than heterosexuals. McDowell suggested that this new gay identity emerge during the last decade when ‘the masculine boy became the new icon’ tough and hard with firm pectoral and tight muscle...(McDowell in Lewis & Ross, 1994, p. 102).

Homosexuals or commonly called gay may have segregation that may take place in youth, at a time of hightened sexuality, in schools, camps. It may occur sometimes the case among loggers, sailors, explorers, practitioner of religions orders or prisoners.

While the institution of marriage is the socially recognized union between a man and a woman. (Encyclopedia Americana vol 18, 1990, p.137). According to Proffesor Neblet in his term paper,” Keep Marriage As It Should Be by Matt Hudson Philosophy of Law “, traditional practices define marriage as a union between one (living adult human) male and one (unrelated living adult human) female. This definition specifies the gender, number, familial relation, age living, status, and species that each marriage partner must be for the marriage to be legal. (Neblett term paper, April 23, 1997). In most societies of the worlds the husband and wife (partners) live together, because of the primary, although it is not essential, one purpose of marriage is the procreation of children. Sex is always recognized as legitimate part of marriage (although in some cultures marriage is not the only institution for approved sexual activity). All societies create around marriage a host of related cultural features having a lesser or greater degree of elaboration, which makes marriage superficially one of the most complex and varied of all human institutions.

States have different laws from each other. Some states prohibit marriage that preclude incest and bigamy, some prohibit person to marry another person who has specific diseases (epilepsy, TBC), prohibits marriage among different races and so on. There is also a number of unsuccessful attacks which have been made on the constitutionality of State statutes that limit marriage to heterosexual union, thus preventing homosexual from establishing valid marriage, but Vermont, one of the states in US finally approved to thee legal marriage among gays in its jurisdiction.

According to Edgar W. Butler in his article of “Traditional marriage and emerging alternatives”, Homosexual Union which has similar meaning to homosexual marriage, is the union of two persons of the same sex. Two partners of the same-sex are committed to one another. These unions make the same assumptions about fidelity, sharing of roles, and commitment to the growth of the other as heterosexual marriage (Butler in Powell, 1983, p. 295). As said before, in the *Family and Marriage*, Schulenburg stated that it has been estimated that about one of five gays and one of three lesbians (the term of female homosexual) enter a homosexual marriage.(Lauer & Lauer, 1994, p.51). The marriage may or may not be established by a formal ceremony. One male couple, for example , after four months of cohabitation, went to mass and let the service be their private ceremony of commitment. (Ammon, 1985, p.112). They use the term *marriage* to describe their relationship. Before there is no legal marriage for homosexuals, they can not establish and achieve for the approval for their marriage and of course they can form a family with their lover. And after the bill

H.847 of homosexual marriage, the state of Vermont particularly warrant homosexuals to adopt for their union as domestic partnership in a civil union. What homosexual couples should do is that they can go to their local town clerk's office to pick up the \$20 license.

B. Gays' Life and Their Problems in the Family and Society

It has been common issues that gays and lesbians face some discrimination and abuse from the society. In everyday life gays also have the same life as heterosexual as they have jobs, life and love romance. Gay people from time to time start to be open to their condition. Gays usually form a dance party that unites them to show proudly about their condition.

A wide degree of diversity exists among the types of individuals who identify themselves as homosexuals. The popular stereotype of the homosexual as sexually promiscuous who cannot or will not maintain a relationship reflects one type. There are, however, mainly gay people, female and male, who have formed long-lasting, sometimes life-long relationship. Many homosexuals raised children, alone or with partners. Gay persons are in every kind of jobs and are of every political persuasion, some are open about their homosexuality, and some are more private. Some view their orientation as a biological given and others as a preference (Grolier Encyclopedia of Knowledge vol 9, 1991, p.283).

On the other hand, it is well to remember that most gay men and lesbians are minorities even in their own families (Murphy, 1994, p.17). They do not

have familial opportunity to model their sexual lives on someone with erotic attractions like their kind. While growing up, many gay men and lesbians believe themselves, wrongly, to be the only one of their kind or they believe themselves to be destined to fates inferred from stereotyped representations in school yard jokes, fiction, and the movies. Boys will be teased about would-be girlfriends when in fact their sights are set on their classmates. Gay men do not have available chance to them either performed language for expression of their sexuality or performed social opportunities for the pursuit of erotic lives. They find themselves at the mercy of public discourse and symbolism in education, media, and religion that presuppose heterosexuals as the order of human nature. When they go to libraries for information, they find discussions of pathology, they find books stacked alongside thick book about pornography and prostitution, and the newspaper indexes will refer parties interested in homosexual to subject-heading of AIDS.

Gays often feel abandoned and do not get acceptance for people around them. *Gay community* is one of the realization gives way to self acceptance to gay people (Murphy, 1994, p.51), and then proceeds through the decision to integrate one's gay sexual orientation into one's life more or less completely. In the *community* a person discovers that there are others who have precede him through the same doubt and anxieties and who share his concerns. Moreover, such a person discovers there are real elements of *community* in the *gay community*. It is not merely a group of people defined by the accident of common sexuality but rather a group of people who are bound together by common desires, aspirations, concerns, and loyalties. (Murphy, 1994, p.51). Specifically, people entering the

gay community are often startled when they finally realize the obvious that other gays they meet share their concerns about exposure, and that as a result they are highly respectful of their privacy. At this point the closeted gay sense of alienation begins to dissolve in the realization that there is a loyal brotherhood that understands, perhaps even shares, and certainly respects, concerns of privacy in regard to sexuality.

1. Homosexuals and their problems in the family

Homosexual couples have to work through the same problems as heterosexual couples (Lauer, 1994, p.50). They face issues of household division of labor, power, sexual relationship, and money, and they also face problems arising from being in a socially stigmatized relationship. Gay couples have some unique sources of stress in their family. There are at least 4 factors causing the stress. 1) the stereotypical male role 2) the stereotypical sexual male role 3) homophobia 4) sexual dysfunction. (Lauer, 1994, p.50). One, the stereotypical male role. Man in our society is expected to be relatively unemotional, strong, competitive, independent, and in control. If the partners in a gay relationship each attempts to live by the stereotype, they will encounter serious problem. Two, the stereotypical sexual role of the male. In our society, men are expected to be sexually active, experienced, and prepared to engage in a sexual relationship at almost any time. This can create performance anxiety, an anxiety that may be intensified by spread of AIDS and the knowledge that

homosexual relationship is particularly vulnerable to AIDS. Three, Homophobia. Homophobia is an irrational fear of homosexuality. Because our society has viewed homosexuality negatively and as most homosexuals have grown up hearing such derogatory labels as “fug” and “queer”, most gays “ can not escape, at least for a period of time incorporating these negative societal messages into their own self-concept” (George and Behrendt in Lauer, 1994, p.51). One partner, therefore may still be struggling with his-self esteem and his own identity as homosexual. Further more Brewer stated that the partners (homo partners) may feel it is necessary to show their behavior that is acceptable for homosexual couples as public displays of their affection for each other (Brewer in Lauer 1994, p.51). The last factors cause stress is the sexual disfunction. Contrary to the popular image and to the general pattern of the homosexual male, some gays suffer from inhibited sexual desire. The problem (intersects) dealing with stereotypical male sex role and homophobia. That is the man who might have inhibited sexual desire because he is still battling his feelings of guilt or his ambiguity about his sexual orientation. But the inhibited desire intensifies his stress because he also may accept the stereotype of himself as one who is supposed to be a sexually active individual.

On the other hand, inside the family, the partners found that in gay and heterosexual couples, income tends to determine which partner will be dominant. Both heterosexual and gay couples who are disappointed with the amount of money they earn are likely to be less satisfied with their overall relationship. (Lauer and Lauer, 1994, p.50).

2. Homosexuals and their problems in the society

Homosexuality as a human practice existed throughout history. The society can not fully accept their existence, historically, if a person behaves an act of homosexuality, the consequences of committing to this action, is penalties such as life imprisonment, torture, castration, and burning at the stake to an almost total acceptance by the elite. In many countries, homosexual practices are always considered as something illegal. And some societies can not accept homosexuality and deemed it as sickness, and people which committed to this action, receive a bad treatment. In every place in this world, homosexuality gets torture. Iran executes citizens who are engaged in private adult mutually, considered homosexual acts. In 1990, Ibrahim Eren, Turkey's best known gay activist, was arrested and beaten by the police. In 1991, at least 40 gays transvestites in the Cihangir district of Istambul were stripped and beaten by police. In 1980 the University of Havana undertook "cleansing" of homosexual, targeting in particular, students who acted or appeared "that way". There are still many more other examples of homosexual torture and discrimination.

Incidents of violence and discrimination against lesbian and gay men routinely continue. They are largely committed or tolerated by State officials. The discrimination toward gay men still continue in practice. On the other hand, many gay and lesbian youth struggle because they are ostracized, rejected, ceased, and abused by their peers. Some gay men were victimized in junior and senior

high schools (Gross in Fabes and Martin 2000, p.498). In extreme cases, homosexual youth are the victims of terrible hate crimes recall the story of Matthew Shepard of Laramie Wyoming who was brutally attacked and killed in October of 1998 because he choose not to hide his homosexuality. The verbal and physical abuses toward gay and lesbians which may cause great stress are detrimental to their mental health; and often lead to school—related problems, substance abuse, prostitution, and even suicide. (William in Fabes and Martin 2000, p.496).

Until today, gay men and lesbians still receive discrimination in their social life. Gays and lesbians are clearly deterred from discovering who they are by the possibility of losing job, housing, and other important public accommodations (Murphy, 1994, p.158). If the society believes that people ought to be allowed to discover what is in their own interests, then it must grant to gays and lesbians the level of autonomy (in the sense of freedom from arbitrary discrimination) that would allow this discovery. For the past ten years have seen dozen of municipality and seven states pass civil rights legislation aimed at protecting gays and lesbians from discrimination in employment, housing, and places of public accommodation such as banks, hotels, mortgage companies, restaurants, retail establishments, and school (Murphy, 1994, p.148). So that gays and lesbians can discover their expression of their existence.

Gay and lesbians are also considered as a threat. By contrast, the danger of homosexual today are ordinarily cast in terms of threats to children, family, military and religion. Homosexual; threatens the authority claimed in religion,

government, and medicine to pronounce on and regulate the sexual lives and loves of all persons. Homosexual is considered also as a threat as it threatens socially institutionalized hypocrisy which would rather permit and perpetuate injustice than honestly face the lives that people do in fact have. Homosexual threatens moral philosophy which can only see the naked individual left thus exposed to the mercy of stark moral premises. (Murphy 1994, p.23). Rightly consider. However the threats of homosexual should not take its place alongside heterosexual as a vehicle of human hope, happiness, and love.

C. Psychology of Gays

A more common form of deviation in adolescent males is homosexuality. As in the case of female homosexual veil, a permanent lifestyle often reflects fear or hatred of the opposite sex, or else a psychological identification with it. Negative feeling toward girls may be expressed as frank disgust. Identification with the female role leads to conscious imitation of feminine ways in case where in many cases seem related to having an ineffectual father or to the father's being missing from home.

Recently, there is substantial body of evidence to suggest that human beings are born with sexual potential and that heterosexual, homosexual, bisexual, or asexual preferences unfold during the experiences of childhood and adolescence (Encyclopedia of Social Sciences 1991, p.219). Furthermore in contemporary psychiatry, the most influential theory of homosexuality has been

that of Sigmund Freud, who held that homosexuality is the expression of biological bisexual predisposition common to all human beings. Freud speculated that all persons go through a “homoerotic” phase in the processes of achieving heterosexuality and retain from that phase some ‘latent homosexual’ tendencies. These tendencies, he thought, are reflected in sublimated form in feelings of friendship for members of one’s own sex, as well as in “feminine” attitudes or interests in males and in “masculine” attitudes or interests in female. (Encyclopedia Americana, 1991, p.354). More recent investigations, however, have cast doubt on Freud’s theory of psychic bisexuality and point rather to a *psychosexual neutrality* in human beings at birth. This neutrality permits the development of enormous variations in each individual experience. Moreover, cross cultural studies have shown that patterns of behavior considered characteristically “feminine” or “masculine” vary markedly in different cultures and are by no means clearly rooted in the biological differences between the sexes. (Encyclopedia Americana vol 14, 1991, p.333).

Meanwhile human behavior covers a wide range, from exclusive heterosexuality through various degrees of bisexuality to exclusive homosexuality. To respond to this circumstances we might see from Kinsey’s 7 points side of classification. Alfred Kinsey and his associates suggest at 7 point side to conceptualize this range ‘0’ on the scale denotes exclusive heterosexual, ‘1’ predominant heterosexuality with incidental homosexual contacts, ‘2’ more than incidental homosexual behavior, but still more heterosexuality than homosexuality., ‘3’ an even balance of the two, ‘4’ a greater tendency toward

homosexuality; but with a substantial heterosexual component, '5' predominant homosexual behavior, '6' exclusive homosexuality (Encyclopedia Americana vol 14, 1991, p.333).

There are some misconception toward homosexuality that believe that homosexuals are “ born that way” , that are biologically or hormonally different from heterosexuals; the belief that homosexuality represent a unique personality types, and the belief that that homosexuals sexual patterns are irreversible(Encyclopedia Americana vol 14, 1990, p. 334). But to all those statements above there is no convicting evident toward those belief and there also no evidence that homosexuality is heritable. However homosexuality tends to be psychological conditioning toward individual.

In 1973 homosexuality was removed from the American Psychiatric Associations official list of mental disorder. Although none of the mental-health professions now officially considers homosexuality an illness there are still prominent theorists who insist that it is. (Grolier Encyclopedia of Knowledge vol 9, 1991, p.284).

The statement toward homosexuality which is considered as (mental) illness is also stated by other psychologists that most of them classified it as a form of mental illness. But some argued that homosexuality is heredity, whereas Sigmund Freud considers homosexuality as a result of conflicts of psychosexual development. This development includes the identification with the parent of the opposite sex. Other psychologists consider as social influences and psychological events in fetal development as possible causal of homosexuality toward

individuals. So we can conclude that many instances of homosexuality results from a combination of inborn factors or constitutional factors and environmental or social influences.

According to the theory of motivation by Freud, sex and aggression are particularly prominent in the system of psychoanalysis (Hilgard, 1962, p.154). Freud originally conceived of sex as the primary driving force ; in his view the psychic energy that drives men, called *libido*, is the origin of sexuality. As Freud contemplated man's cruelty, aggression was also assigned the role of a primitive, "instinctual" drive. At one stage Freud contrasted the two drives as a life instinct and a death instinct, but contemporary Freud's followers are usually satisfied that the two drives of sex and aggression as accounting for instinctively driven behavior in man. According to Freudian view, the unfolding of sexual behavior follows a developmental pattern from primitive self-love (narcissism) through various other attachments until adult sexuality is achieved. In the process of development of sexual behavior there is attachment to the parents, particularly to the parent of the opposite sex. This attachment is said to give rise to motivational conflicts because in loving one parent the child becomes a rival to the other parents. The love by the child for the parent of the opposite sex is known as *Oedipus Complex*. The attachment of the child to the parent may be recognized as an important stage in the development of the affectionate responses to people. Later on there is a stage of like-sexed attachment, represented in childhood by gangs or cliques, or in the "crushes" of a child on a heroic figure of the same-sex. A like-sexed affiliation is called **homosexual**. In the early stage of childhood a

child may fail in the process of gender identification, for example Freud believed that a boy identifies with his father (and with maleness in general) because he can process and imitate his mother and at the same time reduce his unconscious fear of his father-his powerful rival for his mother's hand. The homosexual male had a close relationship with his mother but was distant from his father. In a sense, he already possessed his mother, and since his father neither a rival nor a serious threat to him, the boy had no reason to identify with him. So this process may cause a homosexuality toward childhood.

Other theories of homosexuality have emphasized the learning factor: homosexuals were rewarded as children for inappropriate gender role behaviors, such as dressing like or imitating the mannerisms of persons of the opposite gender, and at last result to identify as members of that gender rather of their own (Green in Noppe & Hughes, 1985, p.164). A similar view is that homosexuals have been conditioned to associate pleasurable sexual feeling with same-sex contacts because as children they fantasized about same-sex people when they masturbate (Lauria & Rose in Noppe & Hughes, 1985, p. 164).

D. Medical Point of View Toward Homosexual and Homosexuality

According to medical point of view, homosexuality is a circumstances in which a person who shows his or her sexual behavior among people of the same-sex. If a person had engaged to this behavior, meaning that he or she had established pattern of sexual attraction to and genital sexual relations with persons

of the same-sex. There is no evidence showing the differences of structurally, hormonally and anatomically between heterosexual and homosexual. Some homosexual can be cured from their homosexuality by psycho-therapy.

In everyday life there are some problems faced by homosexual, as in the society they are still considered as illness and a sin. But beyond that homosexuals have a major risk of infected AIDS. The lifestyle of gays in the community of dancing party or gays community often undergo drugs abuse. Gays become the target of risky health as Gold and Skinner found that risky sexual behavior occurred more frequently in gay social venues that promoted the use of intoxicants (including alcohol) and “sex-on-premises” and it is found also by Trocki and Leigh that they found that this risky sexual behavior was often an “idiosyncratic” artifact of these gay social systems (including friendship network or contexts) and of the combining of drug use with sexual activity (Trocki & Leigh in Lewis & Ross, 1995, p.12).

Moreover homosexuals are considered as not healthy and unsafe. It can be seen in the comment of A conservative Commentator, Gene Antonio. He stated that :

Homosexuality per se must be thought as an unhealthy, unsafe and lethal sexual alternative. “ it is a very major risk to enter these communities” warns June Osburn, Dean of Public Health at the University of Michigan and a professor of epidemiology. “ so tell the fifteen or sixteen-year-old kid who’s going to declare his same-sex preference that there is a serious chance of infection that can truly be a matter of life and death” (

Murphy,1994, p.335).

“entering a community” and “ declaring a preference” are thus conflated with unsafe sexual practices, and also assigned moral blame. Antonio’s emphasis on the deadliness of homosexuality stressed to the danger of gay identity, desire and preference. And it also showed to the specific practices which put one at risk of HIV transmission.

Pathologization can take forms that are simultaneously medical and moral. Homophobia significantly influences many scientific conceptualization of HIV transmission. In the early years of the epidemic, for example transmission was discussed in terms of identities and “risk groups” rather than in terms of practices and Paulo A. Treichler noted that the term “general population” often used in measuring the significance of epidemic, is implicitly white, middle-class and heterosexual and risk groups is implicitly for homosexuals.

Many contractions of the “facts” of transmission have involved the pathologization of gay male sexuality, in the guise of stern warning about “the misuse” of organs. References abound in the critical literature to the 1985 *Discover* article which refers to the “fragile anus” and one which , in an apparently unconscious reversal of gender stereotype and also to the rugged penis. (Murphy, 1994, p.338).

The link with homosexuality was postulated to be the practice of rectal intercourse. Rectal mucosal damage is therefore common in a passive partner in homosexual intercourse. And this could well allow for the introduction of semen, with its immuno suppressive properties, directly into bloodstream. Furthermore.

In another detailed studies of homosexual, the studies established that individuals who regularly or exclusively acted as passive partners for intercourse were at considerably greater risk of AIDS than those who were regularly or exclusively active partners (Schoub,1994, p.5). A number of infectious agents are acting on their own or in concert with the effects of recreational drugs or the introduction of semen in the bloodstream with traumatic sexual intercourse. In particular, the receptive partner was especially in danger of acquiring infection because of the high frequency of trauma to the mucosa lining of the rectum during rectal intercourse. Furthermore, the rectal wall is richly supplied with lymphoid tissue which can provide a ready access for the virus to susceptible lymphocytes (Schoub, 1994, p. 96).

As we already known homosexual male often acts on the anal or rectal intercourse. The rectal mucosa may also be damaged by other activities commonly practiced by homosexual men, such ass the insertion of the hand into the anus and rectum (fisting) or the pushing of the foreign objects, such as sex toys into the rectum. Those activities above may endanger the health of homosexual and this behavior is not safe to continue that may cause infection and may get the viruses transmission as the mucosa of the rectum is not much hard to keep the infection away.

Since the earliest days of the AIDS epidemic, sexual promiscuity was alleged to be a major factor in the rapid spread of HIV infection in the male homosexual community. Undoubtedly culture of the bath-houses and other similar institution were a significant component of the homosexual lifestyle in certain

communities and this contributed very significantly to the rapid spread of HIV. Beside by having rectum intercourse among gays, HIV virus transmission of the infections caused by intravenous drug abuse as the homosexual men been the large percentage of using drugs. It is obvious that homosexual behavior is not healthy and unsafe and it may face a death because of the AIDS infection.

E. Religious Point of View Toward Homosexuality

Dated to the historical circumstances homosexuality occurs as a religious theme in ancient world among the Greek, and the Roman and in the ancient Arabia , in Islamic fringe areas, in feudal Japan, in ancient China and Indochina, and in selected Indo-European tradition. (Encyclopedia of Religion vol 5, 1987, p.446). Here, religious or ritual homosexuality occurs in relation to phallic cults and fertility symbolism, mythology, and ideas about spirit, feed, and soul, particularly as they concern the creation and the making of the cosmos and maleness in human kinds. Those above showed that homosexuality plays a role in respect to the experience of the sacred.

Islamic societies held a different and more tolerant informal attitude toward homosexuality. Indeed Sufis saw homosexuality relation as an expression of the spiritual link between man and God. Some authorities suggest that Islamic ideas influenced the biblical practice of oath taking on the father's penis. They point to Genesis 47: 29-31, where Jacob, on his deathbed, makes his son Joseph swear he will remove him from Egypt, pledging loyalty by touching Jacob's

penis(Encyclopedia of Religion, 1987, p.447). Dealing with this statement, of Islamic public figure give a comment to this , he said that “According to Islamic religion , the Suffis divided into some teaching and they believes that homosexuality is deemed and prohibited and there is not mentioned in the bible that homosexuality is approved by God and if homosexuality is prohibited so as the marriage between same-sexes, as the Moslem believes that marriage is the union of one man and one woman and , one purpose of marriage is procreation of Children “ said Uztad Mohammad Alamsyah” so that the statement above is not approved by Islamic society.

In ancient societies numerous examples of role-specialized homosexuality drew their support from the religiosity of divine bisexuality,. Male and female temple prostitutes who engage in homosexual activity under the protection of religious cults in Mesopotamia and Canaan are relevant. The Greek (in the roman world) and Semitic cults that utilized gender reversal and homosexuality were role-specialized. (Encyclopedia of Religion, 1987, p.451). In this social settings religious morality legitimized homosexual conduct.

Today there are some church and religions which approve the action committed by gay and lesbian in daily life and some deem this behavior and action and response rejectedly toward homosexuality and their marriage. D Michael Quinn is an ex-member of the church and ex-professor of history at Brigham Young University. Now an independent researcher, he has suggested that Joseph Smith, founder of the Church of Jesus Christ of the Latter day Saints (LDS), was accepting gay and lesbian relationships. Beside that Quinn gave two

examples of the religious practitioners who are involved in homosexual eroticism. The first examples is Evan Stephens (1854-1930), a director of the Mormon Tabernacle Choir and author of many Church hymns. In his life he was never married and he maintained intense friendships with several young men who lived with him and was his companion in his travelling of different times. The second example is Joseph F. Smith (1899-1964). He was a church Patriarch and identified himself as a homosexual. While he was an instructor at the University of Utah, in his life he had a homosexual relationship with a student. He later became sexually involved with another Mormon young man. Here from the two examples said by Quinn, he concluded that the Church tolerated homosexual eroticism until the mid-1950s. (www.religioustolerance.org/hom-Ids.htm).

While the Bishops of the Anglican Communion shared their opinion in regard to all persons who are homosexuals, they affirm that they have contrasting views on the Biblical, theological, and moral issues surrounding homosexuality. They respect to the condition of homosexuality and consider them as humans and nothing differentiate them in the view of God and this can be seen in their accord. There are three points of the accord:

1. That no homosexual person should ever be deprived of liberty, personal poverty, or civil rights because of his or her sexual orientation.
2. That all acts of violence, oppression, and degradation against homosexual persons are wrong and can not be sanctioned by an appeal to the Christian faith.

3. That every human being is created equal in the eyes of God and therefore deserves to be treated with dignity and respect.

(Episcopal Divinity School; Cambridge, Massachusetts, October 1,1999).

From the accord above we may see that religion practitioners fight against violence, and oppression toward person only based on sexual orientation and all persons are equal in the eyes of God so that nobody may disturb the existence of another person. And they suggest that homosexual may have the same right as heterosexuals. The accord invites every bishop and people to agree to the basic declaration of human rights. Rt Rev. Steven Charleston believes that the accord is one effective way for us to make a shared witness, across all divisions of theological opinion, to stand united in Anglican tradition of peace and the protection of human rights with dignity. But until a few years ago, it was a common consensus of human societies that marriage and family were predicated on the biological and psychological complementary and union of male and female, that is of man and woman. This in turn, was based on the biological potential for the transmission of human life which, again until a few year ago, was considered a core value of marriage and family. It is also true that a common consensus has existed among all religions that marriage and family are rooted in a heterosexual relationship. It is only in the last few years again that some religious groups in our society have begun to expand the notion of marriage and family to include other types of couplings.

The Scriptures, Hebrew, Christian and Moslem, however, are clear in teaching that marriage is based on the relationship of a man and a woman. And this is and was the will of God from the beginning. The concept of civil union undermines the unique position of marriage in our society and diverts resources from marriage and families. The Church teaches that the intimate partnership of a man and a woman which constitutes the married state has been established by its creator; which is a basic unit of society. Until today, there are some churches and their practitioners fight for the basic human being rights regardless sexual orientation. But on the other hand, there are also other churches and religion practitioners who denied the existence of homosexual and the marriage between same-sexes as on biblical that marriage never approved and is not a will of God. They still believe and hold the traditional marriage that between a man and a woman.

Moreover after the approval of the Civil marriage among gays in Vermont state, there still some arguments toward the birth of the bill H.847 that covers civil marriage into a law.

F. Socio-Culture Condition in Vermont

Vermont has held a steadfast traditional lifestyle. Vermonters are hardy and outdoor people. Vermont citizens enjoy universal suffrage. Universal manhood suffrage dates from the beginning of the state, but a voter must qualify by taking the Free-man Oath to vote' without fear or favor of any person' (Encyclopedia of

Americana vol 14, 1991, p. 28). Beside that from time to time Vermont existed as an independent republic to the present. It has been a state noted for its independence of thought and action, giving rise to the expression, "Vermonters will do nothing that you tell them to ; most anything that you ask them to "(Encyclopedia of Americana vol 14, 1991,p.27). And this is proved by the action of the approval of the bill of civil marriage among gays and lesbians in their state. Vermont has the closest thing in the United States to a gay-partnership Law. Last Spring year 2000, the state legislature approved a law creating civil unions , a legal institution the same in meaning to marriage that provides the same rights, benefits and responsibilities to same-sex couples. On July 22, 1997 two lesbian and one gay couples brought a lawsuit in order to obtain marriage licenses and to have their subsequent marriage recognized by the state. And on December 20, 1999 Vermont Supreme Court decided that the current law in that state discriminated unfairly against homosexual couples. It orders the state legislative to correct the problem with appropriate legislation that would allow gays and lesbians to marry and expand the right to all sexual orientation. At the Burlington Free Press it was reported that the result of a Mason Dixon Poll of 635 regular voters, taken in September 1996, 54% of the respondents said that the state should not recognize same-sex marriage and 35 % are in favor of the recognition and 11% rest stood undecided. While the CBN (Christian Broadcasting Network) reported on a public radio a survey found 40 % of the respondents are against it and in the second poll, it is found 53% of the respondents are against it.

Struggling for the recognition of the same-sex marriage, some Vermont lawmakers risk their political lives but they believe it's the right thing to do as they think that this opposition provided a real learning experience about what it must be like to be gay in the Vermont society that most respect gay's life. Even many controversies are against this issue but Vermonters respect the basic human rights, some lawmakers and attorney fight to the existence and the fight to get recognition of marriage of the same-sex couples. Arguments are launched by some religious practitioners. The Roman Catholic bishops urge the committee to preserve traditional, heterosexual marriage and oppose the creation of domestic partnership legislation, because it is believed that it is only a political stepping stone toward legislation of same-sex marriage. And after two months of often emotional debate, Vermont's House Judiciary Committee approves the Bill that concern and discuss about same-sex marriage for consideration by the legislative.

G. The Law in Vermont State

1. The Law of Vermont State

Vermont as one of the states of America was a logical choice for same-sex lawsuit. Vermont is a liberal state and it is one of 11 US states that prohibit discrimination based on sexual orientation (www.religioustolerance.org/hom-mar8.htm#why). Vermont has a long liberation tradition, its citizen are very independently minded. The basic reason for the law to guarantee all citizens to do

what they want to do is that as Americans, they have the right to choose and to be equal. Vermont has the closest thing in United State to a gay-partnership law. The state of Vermont declares its Constitution established on July 9, 1793. The state protects the basic right of its each citizens , and all Vermonters are equal before Vermont law. All person are born free; as their natural right. All persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore no person born in this country, or brought from oversea, ought to be hold by law to serve ant person as a servant, slave or apprentice. All US citizens are equal before the law and all have the right to liberty of expression, right to life and pursuit of happiness. This statement is also supported by Declaration of Independence of United State that stated :“ We hold these truths, to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are Life, Liberty, and the pursuit of Happiness”

Vermont is a free country, all things related to its citizens rights are guaranteed and protected by law. Related to religious matter, Vermonters have a natural and unalienable right to worship Almighty God. According to the dictates of their own consciences and understandings, their opinion shall be regulated by the word of God. No person can be justly deprived or abridged of any civil right as a citizen, or account religious sentiments, or peculiar mode of worship. And no

authority can or ought to interfere with or control the rights of conscience in the free exercise of religious worship.

Vermont protects Vermonters and stated that the people of Vermont ought to obtain right and justice, freely, and without being obliged to purchase completely and without any denial, promptly and without delay, and conformably to the law (www.religioustolerance.org/hom-mar8.htm#why). With this statement it is clearly that Vermonters get their natural right from government and equal right to the law. the people of Vermont free to express their expression of lifestyle, or their thought including their action. When gays and lesbians in Vermont fight their right to get approval to their marriage, this mean that they step on the basic law of the constitution of Vermont state.

Whatever happen, the government of Vermont, as stated in its Constitution in Article 7 said that “ Government is or ought to be, instituted for a common benefit, protection and security of the people, nation, or community including gay community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community” (www.religioustolerance.org/hom-mar8.htm#why). On the other hand, the community have an indubitable, unalienable, and infeasible right, to reform or alter government, in such manner as shall be by that community, judged most conducive to the public weal.

As they expect the approval of the marriage for same-sexes given by the government, the gay couples from another states are able to establish a legal marriage in Vermont. They will come to Vermont to get married.

Looking up to the structure of Vermont Government, we know the state has a distribution of power into Legislative branch that include the Senate and the House of Representative. A new bill or law must passes the House of Representative of Vermont. The power of the state is also distributed into Executive , and Judiciary branches.

In the case of Justice, The Court of Justice in Vermont shall be open for a trial of all causes proper for their cognizance; and justice shall be therein impartially administrated, without corruption or unnecessary delay.

Marriage between same-sexes in Vermont become the hot issue in the government and society. In 1997 a two gay and lesbians couples fail to get recognition for their marriage before the law. Responding to this issue, The Vermont government needs to review its marriage law. based on this statement nit shall not deny and avoid the approval of marriage between same-sex, and the government should protect the benefit of gay couples who will enter into marriage.

On January 4th , 2000, Pre-hearing activity was organized in the Government Court. Thomas A little , a Chair-Person of the House Judiciary Committee, wrote a letter to committee members mentioning that the Vermont Supreme Court has ruled that the Vermont marriage statutes unconstitutionally discriminate against same-sex couples who seek to establish a permanent, stable family relationship. A new Bill to authorize the recognition of same-sex families started to be heard in the House Judiciary Committee which conducted the hearing , and taking testimony and drafting the bill for consideration by the House. In January 11th to

14th , testimony was heard by the committee. Ms Murray and Ms Robinson, lawyers representing the plaintiffs in the Baker case, stressed that the issue related to a civil marriage not a religious marriage. Chief Assistant Attorney General (Mr. Bill Griffin) and assistant Attorney General (Mr. Bridget Asay) reviewed the Court ruling. They took no stand on whether the legislature should expand marriage laws to include same-sex couples or create an alternative legal structure such as domestic partnership. Griffin said that the former might be easier to defend legally (www.religioustolerance.org/hom-marr/why#). The Committee also held a public hearing, the first public hearing which heard the testimony from historians and lawyers about the legal and social history of civil marriage. The testimony also present the witnesses testifying in favor of extending full marriage right to same-sex couples. No witnesses appears to have supported the concept that the Committee eventually compromised on the State recognition of gay and lesbian civil union with the same right and privileges as married heterosexual couples. The citizens gave testimony including Christian faith groups (Roman Catholic, Episcopal, and United Church of Christ) and two Jewish faith groups and one unidentified minister. They gave conflicting testimony and the Catholic Roman Bishop Agell urged the Committee to preserve traditional, heterosexual marriage. But after long debate and hearing testimonies finally the bill of case *Baker V Vermont* , Bill H.847 (bill of the same-sex marriage) passes the Committee and this become the consideration by the legislature.

There was bill which supported Bill H.847. Bill H.0649 that was sponsored by Dean Corren (P- Burlington) and 5 others , stated that it would

delete references to men and women ,brides and grooms in the current marriage act in such a way that it would permit marriage by either same-sex or opposite sex couples. Bill HR.0033, a bill to authorize a straw poll in response to Baker decision was sponsored by Oreste Valsangiacomo (D-Washington) and 15 others, stated that it would require towns to hold public meetings and take ballot of voters attending the meeting on the topic of equal rights to same-sex partners. And on March 2nd ,2000, The Bill H.847 was given the 1st reading in the House of Judiciary. It describes a certificate of civil union that would be obtained in the same way as marriage certificate. According to this bill, person may establish a reciprocal beneficiaries relationship and dissolve such a relationship through signed, notarized declarations submitted to the commissioner of health. The Senate Judiciary Committee passed a two-part, proposed amendment to Vermont Constitution. It would have defined marriage as the legal union of one man and one woman. And it also would add the following statement that The General Assembly shall define the legal benefits and responsibilities associated with marriage. No provision of this Constitution shall be held to require that any such benefits and responsibilities be extended by the General Assembly or the Judiciary to any grouping of people other than one man and one woman. But the Senate rejected this dual amendment. Meantime, the House and Senate are required by the Vermont Supreme Court to extend equal rights to gays and lesbians. At last, after a long emotional debate, the bill passes the House and Governor Howard Dean signed the bill H.847 into law. This is the victory of gays and lesbians struggle to their marriage approval.

The approval of the bill into law , gay and lesbian couples feel the benefit of marriage that approve their marriage and with this law, Vermont builds on a long tradition of respect for individual rights and responsibilities. Parties to a civil union shall have all the same benefits, protections and responsibilities under Vermont law whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage. And a religious society, institution, organization or denomination in the state may choose whether to certify a civil union according to the rules, customs, canons and traditions of the society, institution, organization or denomination. Now, after the bill passed as law, gay and lesbian couples freely to obtain recognition to their legal marriage without fear as the state protects their marriage.

2. The Civil Union Law in Vermont

Although the expression of marriage contract is often used in everyday speech, marriage is technically what is known as an anomalous contract and from a legal standpoint is not to be confused with other form of contract. (Grollier's Encyclopedia of knowledge, 1991, p.137). The term of marriage is often used to refer to a union in which no legally sanctioned wedding ceremony has taken place. It is in fact a misuse during the early period of the common law of England. Marriage by contract between the bride and the groom or between their kin was a recognized mode of marriage , even though neither church nor state had any

direct involvement in it. United States states have declared by fiat that if two people live together for a certain period of time, an express or implied contract can be assumed and therefore their union can be treated as tantamount to be a marriage for legal purposes. In Vermont, the government guarantees and protects the marriage among its citizens, as Vermont is a free and liberal country. The Vermont General Assembly finds that civil marriage under Vermont's marriage statutes consists of a union between a man and a woman. This interpretation of the state's marriage laws was upheld by the Supreme Court in *Baker v. State*.

Vermont's history as an independent republic and as a state shows one of equal treatments and respects for all Vermonters as a free state. The State's interest in civil marriage is to encourage close and caring families, and to protect all family members from the economic and social consequences of abandonment and divorce, focusing on those who have been especially at risk. So that the government of Vermont is responsible to its citizens matter. The legal recognition of civil marriage by the state gives source of benefits, responsibilities and protections under the law of the state for married persons and their children. It has been at least 25 years that Vermont probate Courts have qualified gay and lesbian individuals as adoptive parents as it is based on the state's tradition of equality under the law and strong families. For a decade, Vermont was the first state to adopt Comprehensive legislation prohibiting discrimination on the basis of sexual orientation. And its marriage law does not specifically state that marriage is limited to one man and one woman, however, it does not contain references to "bride", "groom", a "husband", and "wife". (www.religioustolerance.org/hom-

[mar8htm#why](#)). The state Constitution states that Government must give protection and security to the people, nation, or community, and not for the particular emolument or advantage of any single person, family or set of persons, who are a part only of that community to their marriage. So that all persons in Vermont are equal in their right to get married. But the present practice in Vermont is to issue marriage license only to a single and set of persons , namely heterosexual. So that the government also has a strong interest in promoting stable and lasting families including same-sex couple.

Under Vermont Civil Union Law, the state protect gay and lesbian individuals from social and economic discrimination. So that many gay and lesbian Vermonters have formed lasting, committed, caring and faithful relationship without any fear of any men who do not like them. These couples live together, participate in their communities together and some raise children. Just as heterosexual couples who are married under Vermont law.

On the other hand, the system of civil unions in Vermont does not bestow the status of civil marriage. It does not satisfy the requirements of the Common Benefits Clause. Vermont government grant the benefits and protection to same-sex couples through a system of civil unions which will provide due respect for tradition and long-standing social institutions.

Someone may establish a civil union in Vermont, if the parties to a civil union satisfy all of the following criteria, that they are not to be a partly to another civil union or a marriage and the party is not the party to another civil union.

There is no statement that said and restrict a same-sex couples from getting married.

In any state, any country, there are some restriction toward a marriage . Vermont's marriage law stated that a woman shall not enter a civil union with her mother, grandmother, daughter, grandmother., sister, brother's daughter, sister's daughter, father's sister or mother's sister. Or vice versa. While civil union between persons prohibiting from entering a civil union is subjection above , according to Vermont law is invalid or illegal. No prohibition can be found in the civil union law in Vermont constitution. So that gay and les may establish their marriage under Vermont law. Vermont law restricts a marriage to parties who are under 18 years of age, the parties are under guardianship, without the written consent of such guardian.

According to Vermont civil union law , a town clerk shall is the one who shall issue a civil union license in the form prescribed by the department, a Marriage Department. The clerk shall enter thereon the names of the parties to the proposed civil union, fill out the form as far as practicable and retain a copy in the clerk's office. The marriage will be accurate at least one party to the proposed civil union shall sign the application attesting to the accuracy of the facts stated.

There are some requirements to obtain a marriage license in Vermont, Individual of the party who is going to marry or establish civil marriage must be 18 or older when he or she intended to obtain a marriage license. And according to the law, there is no waiting period to receive license. No blood test is required to get the marriage license according to the law. In Vermont state one may need a

license when she or he want to get marriage. And when a party after a marriage, upon application in form prescribed by the department, a town clerk shall issue a civil union or marriage license and shall enter there on the names of the parties to the proposed civil marriage. In gaining few license, at least one party to the proposed civil marriage shall sign the application to the accuracy of the fact stated. Both resident or non resident of Vermont state may obtain a marriage license. This marriage license is needed to present to the officiate presenting over your ceremony before your marriage ceremony is performed. The license may be purchased up to 2 months before the marriage ceremony , and the license becomes void sixty days from date of issue if the proposed marriage is not solemnized, the parties to a marriage have to pay \$20 cost for the license.

In purchasing a marriage license, if one or both of the parties are Vermont residents. The residence town clerk will provide the license. If the parties to the marriage, both are out of the state residents. They must decide first where in Vermont they wish to be married. Then visit a town clerk in the Vermont country where the wedding will be hold. Any town clerk in that country can issue the license.

Someone has to know his/her town of residence and place and date of birth to purchase a marriage license in Vermont. Beside that he or she needs to know this parent's name. Including mother's maiden name, and the state the parents were born. A certified copy of your birth certificate can supply most of this information. In the wedding ceremony, the official will complete the section pertaining to date, place, and officiate information, and will authorize the license

with signature within 10 days of the ceremony. The rule of Vermont's marriage requires that the authority of the license registers to and records the marriage license in the town's clerk. The signed license is not a legitimate legal document until it has been recorded in the town clerk's office where it was purchased.

After obtaining a marriage license one will get a copy of Vermont marriage certificate and there are 3 ways obtain a copy of your marriage certificate. The first thing to do is that when one purchase his license, he can arrange with the town clerk to mail a certified copy at his certificates soon at the marriage license is recorded. The cost will be \$ 25. According to Vermont's law the license of the civil unions may be certified by a supreme court of justice, a superior court judge, a district judge, a judge of probate, an assistant judge, a justice of the peace or by a member of the clergy residing in this state and ordained or licensed, or the license is regularly authorized by the published laws or discipline of the general conference, convention or other authority of his or her faith or denomination, or by such a clergy person such as church, temple, mosque or other religious organization.

CHAPTER III

ANALYSIS

Backgrounds which Bear the Marriage Approval Among Gays in Vermont State, America on April 26, 2000

A. Background of Gays' Existence and Gays' Suit on Their Marriage Approval Toward the State of Vermont.

Homosexuals, both male and females, can be found in cultures throughout the world, whether advanced or primitive, large or small, ancient or modern. Societies vary widely in their tolerance of homosexuality ranging from strict prohibition through casual acceptance to active encouragement. Until 1961 homosexual acts were illegal throughout America. Since 1960s gay in the USA fight for their rights which is known as Civil Right Movement. The movement has helped to change people's thinking. While some attitudes toward gays change,

however, prejudice against homosexual males still exists. In everyday life, gays often receive bad treatment from other people who do not like them. They often get discriminatory attitudes from society. The criminal Justice System itself whose purpose is to protect and defend the rights of its citizen, often seems to forgive the assault on those rights.

Gays in Vermont struggle for their rights as citizens and as human beings. They struggle to get equal right as heterosexuals in their daily life, such as, rights of property, right to use public accommodation, right to express their thought, and right to get equal jobs, etc.

Gays' movement undergoes great dilemma as the society in USA particularly in Vermont considers that people who tend to be gays or people who are committed to gay practice is abnormal and against the religion and morality that exists in the society. Gays are often considered as threat to the society even to a family. People think that their existence is a danger to the life of a family and society. Many people hate and enemize them. The gays are banished socially. They even do not have chances to show and to express their mind and their lifestyle. They are abused by people who do not like them and people who can not accept the gays will endanger the life of the gays. Being gays is not something that gays themselves wanted. They never ask to be born as gays. Therefore they deserve a normal life just as heterosexuals. But in fact the society condemn and do not approve the existence of gays including the formal marriage among them as it is against the law, religion and morality.

In every state in the USA, gays woke up from being treated differently and badly. They want to be treated as human beings. They are tired of the prejudice from the society which consider and think that gays are strange even weird people. They fight for their basic right as human beings who are free to determine their own life without interference from other people.

1970's is known as black era, and in the 1980s is the abortion era (Bransford, 1994, p. 9). By the beginning of 1990s, in USA the gays appear on the surface to show their existence and they dominated the issue of that years. Gays exist in all states in America. Looking at gays everyday life, we find that they have normal life just as heterosexual persons. They have job, house, education, etc.

Gays demand the state of Vermont to protect their rights. Gays in Vermont step ahead demanding for the approval of their marriage by government. This issue boils in both government and society. Gays fight to change and influence the government to review the former constitution dealing with marriage act which is not only for heterosexual couples but also approve for homosexual couples. Gays want that the constitution basically to approve marriage without regard to sexual orientation. According to the data census in the year 2000, gay in Vermont includes 1,933 persons. But there are still many gays who do not report their existence. According to the census bureau, Vermont has the second largest gay community in America after California that includes 92,138 gays. In Vermont, gays have been contributing to the familial life even a social life, therefore they deserve the same right as other citizens who have different sexual orientation.

At the end of the 1990's gays in Vermont become the focus of government discussion and concern. In the society, gays had enough unfair treatment from others who do not approve to their existence. Gays have no chance to express who they are, and they accept discriminations in all aspects of life. The expression of homosexuals may, after all, be an adventure in discovery, an act of vengeance, a cold manipulation, an experiment of pleasure, a flirtation, an act of cowardice, an expression of sympathy, an act of a willful expression of difference and a rescue. In their life gays feel abandoned from the society. Therefore they formed a community of brotherhood where they can feel acceptable. Entering the community, a gay person will discover that he is number no longer alone. This group is not merely a group of people defined by common sexuality but rather a group of people who are bound together by common desires, aspirations, concerns, and loyalties (Murphy, 1994, p. 51). The community help gays to feel that they are no longer exposed. In the community gays found a loyal brotherhood that understands, perhaps even shares, and certainly respects, concerns of privacy with regard to sexuality. On the other hand there is still a difficulty for young gays. In real life, the school environment often does not recognize the existence of homosexual adolescent. Young gays also face difficulty and little support in entering the community as adult gays community is reluctant to provide services for young gays because of the lingering myth that associates homosexuality with pedophilia (sexual preferences for children, a psychiatric disease).

Gays in the US have, of course, never been subjected to slavery, but they have been subjected to murder, torture, and the most horrendous medical experimentation forced upon them against their will. Even today, half of the states in the US, a gay man can be legally imprisoned for making love with his life-partner (Murphy, 1994, p. 185).

Gay people often refuse to report crimes that occur against them, even if the crimes themselves have nothing to do with their sexuality. If the crimes do involve their sexuality, either as hate crimes or simple vandalism of their cars when parked near a gay bar, the reluctance is intensified. Gays often do not report the violations which happen to them. The reason why gays' violation is often unreported by the victims is clearly because of the prejudice of the society that portrayed gays as guilt regardless of the crimes committed against them. It is useless for gays to report the crimes since the society blamed them guilty of being gays. Even judges with all the symbolism of judiciousness and fairness attached to their office, are capable of the most appealing judicial behavior with respect to gay people (Murphy, 1990, p. 190). In the United States it has been shown that, even where a jury trial is possible, obstacles to a fair trial remains.

Although evidence of a defendant's homosexuality is generally not admissible in the court and the defendant's sexual orientation is not at issue, there will be no defense raised toward them. If such evidence is admitted in the court, appellate courts often find no prejudicial error in the case. In addition, in the court, prosecutors may impute the defendant's homosexual preference in their opening or closing statements. Although courts generally prohibits such remarks

due to their propensity to disparage the defendant in the eyes of the jury, such remarks are generally held non prejudicial when the court instructs the jury to disregard them. When references to a defendant's homosexuality in a closing argument appear to comment on the evidence presented, courts have also declined to find the commentary to be prejudicial error. Therefore the court should protect gays from being disparaged in the court regarded to their sexual orientation.

Unlike cases involving racial bias, the court has held that the mere presence of issues related to homosexuality does not automatically warrant an investigation into potential anti-gay prejudice. Nevertheless, jurors with anti gay prejudices will be more likely to treat gay defendants unfairly (Heinze, 1995, p. 274).

Anti gay often abuses gays in their life. They attack, even murder them because of simple hatred that anti gay thinks that gays have no right to enter society. Moreover, Television "evangelists" like Jerry Falwell and Pat Robertson, in their syndicated television programs, under the guise of spreading the "gospel of love" stir up and fuel to the fire of hatred against gay people. Continuing to use the slogan " the wages is death" as a code while making reference to AIDS, they reinforce anti gay bigotry in most reprehensible way. They link homosexuality with the disease (without ever mentioning the fact that AIDS is also a disease among heterosexuals). This action is unjustified.

The legal abuse of gay people extends back to the earliest colonial days in which the punishment for homosexual acts was death. Thomas Jefferson , a man noted for liberality and reason, whose founding principle of ' life, liberty, and the

pursuit of happiness' is lofty enshrined in the Declaration of Independence, was among the liberals who in 1777 suggested that sodomy be punished by castration rather than death (Murphy, 1994, p. 185). Furthermore, he said that homosexuality should be punished, if a man, by castration, and if a woman, by cutting through the cartilage of her nose a hole of one-half inch in diameter at least (The Cameron brochure " Medical Consequences of Homosexual Do").

Although they have normal life like heterosexual in which they have jobs, family, house etc, they face some difficulties within themselves and in the society they live in. Gays also have high rates of mental problems and are consistently engaged to behavior commonly associated with guilt, and it is believed that gays feel the contradiction between their action and their conscience which tells them to do. Besides, they face household division of labor, power, sexual relationship, and money. (Lauer, 1994, p. 50). Gays should not be treated differently as they are humans too.

Throughout history, suicide has been uniquely human response to the misery of illness and perceptions of the inescapable death. Increased rates of suicide among persons with serious illness have been well documented; these risks are especially high when the illness includes a psychiatric disorder. Social isolation and a lack of identity with other people have been associated with suicide, for which gays appear to be at risk. It is important to remember that those psychological difficulties experienced by some gays are due to the social prejudices and stresses, not homosexuality as a mental illness. Therefore the government should protect gays from anti gay violation. Religion has been the

single most powerful ideological weapon used to keep gay people under oppression in the country. There must be a move toward the reformation of laws and attitudes. Church leaders often enter the political discussion in opposition to proposed gay rights legislation and protect the gays from violation and discrimination.

In fact, for past 10 years people have seen dozens of municipalities and 7 states pass Civil rights legislation aimed at protecting gay and lesbians from discrimination in the employment, housing, and places of public accommodation such as, banks, hotels, mortgage companies, restaurants, retails establishment, and schools. While the past 15 years people have seen several federal bills introduced to protect gays' and lesbians' civil rights, including one currently pended in Congress. Bill Clinton has openly supported federal civil rights bills to protect gays and lesbians.

Clearly, some discrimination in employment such as favoring persons who are appropriately educated to practice law or medicine over those not so educated is justified, while, most discrimination based on race, religion, gender, or disability is not justified. Denying lesbians and gays access to housing, jobs, and places of public accommodation based on irrational prejudice or irrelevant evidence is unjustified and it may create unhappiness and frustration, and loss for benefits to the society from the minority members of the society that are gays and lesbians. Gays are human too, therefore they should not be deprived of their rights and discriminated. The right of gays should be guaranteed and protected by law. It is stated in the Bill of Right amendments 14 and 13 that are not the only source

of national power to legislate against discrimination. The government may use the power to tax and spend to prevent not merely social discrimination but also discrimination based on ethnic origin, sex, disability and age.

Gays and even lesbians are not hired, not promoted, and are harassed or dismissed at the work place because of their sexual orientation. This situation is unfair to them because that policy is based on the basis of competence. They are still discriminated. This discrimination perhaps happens as there is circular justification that workplace disturbance is caused by the presence of homosexuality. The fact that they are homosexuals dismisses their ability to contribute in the workplace. Their jobs may be in jeopardy simply through their exercise of their fundamental rights, such as rights of speech or association. Responding to this kind of discrimination, the States has laws to protect gays and lesbians from discrimination in jobs. The title VII of the Civil Right Act 1964, also states that : “The constitution forbids government to deny persons employment because of race, color, religion or sex, and national origin” (Burns & Peltason, 1989, p. 118).

When some employers discriminated and rejected gays and also lesbians and violate the constitution inside the Civil Right Act , this means that he or she may be deprived of rights by law. Gays are in doubt showing their identity of being gay or hide their identity. When people find out about his real identity that he is a gay, he is in fear of losing jobs. Beside discrimination on the employment, gays are often discriminated in the using of public accommodation. But the state also protects them by the law. It is stated on the Civil Right Act 1964 that the state

protected all citizens unexceptionally. The constitution of Civil Right Act 1964 title II states :

Forbids discrimination in places of accommodation and makes it a federal offense to discriminate against any customers or patron because of race, color, religion, sex to national origin. It applies to any inn, hotel, motel, or lodging establishment (boarding house) to any restaurants or gasoline station that services interstate travelers commerce and to any movie house, theater, concert hall, sport arena, or other places or entertainment that customarily present films, performance, athletic teams, or other sources of entertainment that are moved in interstate commerce (Burns & Peltason, 1989, p. 117-118).

Those statements state that no one is expected to be prohibited in enjoying public accommodation that serves entertainment and pleasure etc.

Gays or lesbians also face discrimination in the enjoyment of a number of goods and services. Particularly serious is discrimination in the area of housing. They face discrimination both during and after the process of seeking for the housing. Because many gays and lesbians do not live in a traditional family structure, many of them fare badly in the housing market, especially in those areas where housing is scarce, Landlords, real estate agents and other housing distributors often directly or indirectly advantage traditional families over others. Some housing authorities explicitly refuse to offer housing to gays and lesbians.

Besides, gays were threatened of losing their house when people find out they are gays. Discrimination of housing based on sex is not justified as stated in the Civil Right Act 1866 and 1869 with regard to housing that stated :

Fair housing is the last frontier of the Civil Right Acts crusade.

The area in which progress is slowest and genuine change. For all housing the Act forbids owner to refuse to sell to rent to any person because of race, color, religion, national origin” (and since 1974) sex is included (Burns & Peltason, 1989, p. 119-120).

Gays should get equal rights as heterosexual. Besides, gays should be able to feel good about his feeling and themselves, because they no longer have to suppress that central element as personal identity which is the basis for decisions about things they prefer to do. Gays become open about their identity as the government protects their rights. With the benefits of rights and protection given by government, gays no longer stay in the shelter to hide their identity.

With the enjoyment of the protection of their rights from the government, gays no longer hide their identity and they have more opportunity to express their ideas and contribute any activities both in family and society. Gays in Vermont demand that the state gives them fundamental right that is the right to marry the person they love by giving them marriage approval under the law. Gays in Vermont step ahead demanding for the approval of their marriage by the state.

In the middle of 90s gays awoke from silence that they claimed to deserve the same right and protection, as citizens just as heterosexuals, of the enjoyment of the benefit of marriage. The action began in the year 1995, when a group of

lesbians and gays in Vermont organized the Vermont Freedom to Marry Task Force. This group had two main targets. They are raising public awareness and concern about the denial of gays and lesbian's right, that is the fundamental human right, the right to marry, to marry the person one loves, the person with whom one wants to share one's life. The case boiled down to the simple belief that changed and banning same-sex marriage is no longer reasonable. The attorney General's office opposed the couples. They claimed that Vermont's history and traditions do not support including same-sex marriage within the fundamental right to marriage. Marriage has always been composed of one man and one woman to bridge their differences. It promotes a family setting which provides both male and female role models.

The Vermont Freedom to Marry Task Force also collects signatures on the marriage resolution which promotes equal access to marriage for all adults, access to marry regardless of sexual orientation. Gays and lesbians in Vermont step ahead to fight and demand their right to enjoy the benefit of marriage. The fight began on July 22, 1997 when three same sex couples in the state of Vermont sued the state as well as the towns of Shelburne, South Burlington, and Milton VT. Their goal was to obtain marriage licenses and to have their subsequent marriages recognized by the state. The couple consisted of Stand Baker and Peter Harrigan who have committed a relationship for 4 years. Nina Beck and Stacy Jolles, have committed a relationship for 7 years and have been raising a family. Other couple were Lois Farnhom and Holly Puterbaugh, who have been together for 25 years and also raising a family and have one daughter. People and the state of Vermont

take action to the case and it is known as *Baker V. Vermont* case. The case was filed on July 2, 1997. With their lawyers they fight to get the right to enjoy marriage. But the sue failed. The refusal to allow gay couples to marry violates both state marriage law and the state constitution, which require that all citizens and families have the same access to the legal protections and obligations of civil marriage. Marriage is a fundamental, individual, personal choice, which should be available to all Vermonters. Many gays and lesbians are actively involved in trying to enlarge marriage to include both opposite-sex couples and same sex couples. Their reasons are many and varied. Based on emotional reason, many same-sex couples feel a desire to have society recognize their lifetime commitment to each other, just as many opposite-sex couples do. Dealing with security reason, many gays and lesbians have a desire to enjoy the security, protections, and cost saving which would flow from marriage. Regarded with political background, gays and lesbians actively involve themselves in enlarging their marriage. The laws which discriminated same-sex behavior are falling. Human right laws granting protection in accommodation and employment are being created. But barriers which appear say that the right of marriage is only for heterosexuals. It should have allowed homosexuals to marry, and receive the same rights and privileges as are currently enjoyed by heterosexual couples. In struggling for the protection of their clients' marriage right, the plaintiffs' lawyers stressed that marriage is a fundamental of all human and civil rights, a fundamental component of society, and should not be denied to gay and lesbians. The case of the approval of legal marriage for gays and lesbians involves one of

the most fundamental rights of all human, that is the right to marry the person we love, the person with whom we want to share our lives. The submission is comparable to the Vermont attorney general's position which is similar to that of 1966 Virginia Supreme Court, which upheld a state law against interracial marriage.

B. Psychological Background which Supports the Approval of Marriage Among Gays in Vermont State

The debate over homosexuality in the society arises. It is not only a debate over scientific conceptualization. It is a debate over values and a vision of society and the kind of life deemed good and desirable for people to live. Obviously attitudes toward homosexuality are shaped not only by scientific considerations, but also by moral, social, religious, cultural and personal psychological influences.

It would be easy and pointless to cite many examples of prejudice against homosexuality. Some view it as disorder, sexual behavior, deviant or pathological. Therefore it becomes the object of treatment and the disappearance of their homosexual behaviors would be seen as an indication of improvement. But this argument is biased. Before the 19th century, homosexuality was considered as a sin. As an act, the sin was deemed a matter of choice with consequences. Stake burning, hanging, beating, whipping and castration are only some of the legally prescribed, and clerically and theologically endorsed, responses. By the end of

nineteenth century, theological, political, and social subscription to homosexuality was entrenched throughout western civilization. Alternatives which were sufficiently repressed appear rare, aberrant and unnatural (Heinze, 1995, p. 39). The explanation toward homosexual became phenomenon. The phenomenon transformed from sin to sickness. In 1973, gays were considered to have mental illness. Many scientists believe that gays can control homosexuality and that they do not inherit it genetically and it is not a matter of choice. After the year 1973 gays were considered to be deviant or disorder. Structurally, anatomically, homosexuals both males and females do not differ from individuals with normal interest in the opposite sex. Some homosexuals can be cured from their homosexuality by psycho-therapy. Until the end of 19th century, it was generally believed that people were either heterosexual or homosexual. Today it is more accepted to view sexual orientation along a continuum from exclusive heterosexuality to exclusive homosexuality rather than as either position. Investigation finds no differences between homosexuals and heterosexuals in a wide range of attitudes, behavior, and adjustment. Therefore they should not get different treatment from heterosexuals. What differentiates homosexual from heterosexual is just the desire and the attraction to the same-sex relation. No psychological finding stated that homosexuals both male and female are sick people. Scientists' theory said that homosexuality is genetically caused but this theory was defeated by the theory that someone becomes gay because of nature.

If homosexuality is a hereditary, it follows the assumption that homosexuals reproduce less than heterosexuals. Some explanation for the

persistence of homosexual genes in the population is required. Social-biologists have provided four different models that account for this, but have put forth no convincing evidence that homosexuality is hereditary. Therefore biologically there is not enough evidence to show that homosexual male and female are different from people with normal life. Genetically they are the same. It is obvious that gays are just like ordinary people. Even if homosexuality has a biological basis, the homosexuality is not caused or made by humans, it is not artificial, and it exists in nature, and if homosexuality is not caused or made by humans, it is not artificial, and it does exist in nature, therefore gays and lesbians deserve rights, recognition, and protection against discrimination (Murphy, 1994, p. 289). This shows that gays deserve equal rights in both society and under law. The government ought to protect them from any violation by other people who do not like the existence of gays in the community.

What causes homosexuality still becomes a discussion among scientists. One of the causes of homosexuality is to be found in disturbed family particularly during the crucial periods when the young person is in the psychosexual development. It is believed that human beings are born with sexual potential whether heterosexual, homosexual, and bisexual or even asexual preferences unfold during the experiences of childhood and adolescence (Encyclopedia of Social Sciences, 1991, p.219). This means that everyone has possibility to be one of those sexual orientations. Therefore, it can not be blamed when one's sex orientation appears dominantly.

Some psychologists consider that homosexuality is mental illness, heredity and process of learning in the very early age of human development. Practitioners subscribing to the illness model claimed to be able to change the orientation of their patients. Yet, they succeeded, at best, in changing patient's sexual conduct. The therapists never demonstrated the ability to change sexual orientation itself. They interpreted failure of the patient who failed to respond to their therapy not as failure of the theory, but rather as the patient's refusal to cooperate (Heinze, 1995, p.167). Patients were chided, indeed ridiculed, as demonstrating a lack of will to change. This lack of will was deemed just another symptom, hence more proof, of illness (Heinze, 1995, p.167). Freud described that the development of homosexuality is merely a variation of the sexual function, and is nothing to be ashamed of, no vice, no degradation, adding that it can not be classified as an illness. Homosexual is not a matter of choice (Dacey & kenny, 1997, p. 287). According to Socarides the conception of homosexuality is not a choice and a failure to negotiate the maturational process properly (Murphy, 1994, p. 314).. Just as Freud, he refers homosexuality as development fixation as distinct from libidinal fixation. The pre-oedipal period especially the years between one and a half and three is crucial to the genesis of sexual perversion. There are 5 indications underscored in Socaridess list : firstly, it indicates a primary indication with the mother accompanied by severe gender confusion. Secondly, the intense anxiety upon attempting separation from the mother. Thirdly, it is a general behavior markedly childish (this is elaborated to mean that acting out replaces remembering, an oral and anal fantasies and practices). Fourthly, it is a

moderate to severe disturbance in the sense of ego boundaries and body image. The last factor, that is suggested by Socarides is that it indicates the presence of oral incorporate, oral aggressive complexes which dominate the person's life and maybe accompanied by semi-delusional oral anxieties, dreams of internal persecuting object, fears of poisoning, or fear of being swallowed. A child will undergo a process of development of sexual behavior. There is attachment to parent of opposite sex and will identified himself as his mother. Then the sex link will occur as homosexuality (Hilgard, 1962, p. 154). Freud rejected the characterization of homosexuality *per se* as a sickness, and doubted that sexual orientation could be easily changed. Freud also states that discrimination toward gays are not reasonable.

Gays are the same as heterosexuals. They are humans just as heterosexuals who deserve equal rights in their life and also in the society. From time to time homosexuality is transformed from a sin, mental illness to mental disorder but evidence that supports those arguments is still in a discussion. Even though many scientists believe that gays can control their homosexuality, after all, being gay is not a matter of choice. So far investigation finds no differences between homosexual and heterosexual in a wide range of attitude. Homosexual and heterosexual are basically the same. What differentiates them is just the desire and the attraction of sexual orientation. Gays are not harm. As a human, no discriminations toward gays should be allowed and they should not be deprived of their rights. Therefore, gays deserve to get the enjoyment of marriage. The state has a reason to protect their marriage.

C. Religious Background which Supports the Approval of Marriage Among Gays in Vermont State

The support in getting the marriage approval was not the reflection of all Vermonters as a whole. In fact it gives the benefits to some people who are committed and involved in the struggle to get approval of gays' marriage. In Vermont some religious practitioners argue to the issue of gay marriage approval and prohibit the government in issuing license to gay's marriage. Some people and some Christian faith groups still consider gays and their behaviors as sins and against the value of religion belief. Since the creation of human, homosexuality is considered as sin. It is showed in the Bible that God destroyed Sodom and Gomorrah for committing homosexual activities (Genesis 1:1-29). God creates a man and a woman and unite them into one flesh and the union is called as marriage. The marriage among gays shows that people no longer respect and do the will of God. It is stated in the Bible : “ ... and said, for this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh?” (Matthew, 19: 5).

From the words from the Bible , it is clear that Christian faith group hold on the value of the Bible teaching that marriage is between one man and one woman that shall be one flesh. The group sees that gay's marriage is beyond the will of God.

With the help of the lawyer this case brought awareness to Vermont both society and the government. Some lawyers risk their job by representing gays and

lesbians to sue the state of Vermont. The Lambda Legal Defense and Education has prepared a partial list of special rights, privileges and responsibilities which are available only to heterosexual couples in USA. It is believed that marriage is a fundamental human right to all people. Marriage is a fundamental component of society and should not be denied to gays and lesbians. Civil marriage is powerful and it is not religious marriage. It is stated by Freedom to Marry Collaborative (FMC), a core group of gays and gay leaders. They stated that Civil Marriage is a powerful and important affirmation of love, a source of social recognition and support and the legal gateway to a vast array of protection and responsibilities and benefits most of which can not be replicated in other way. As in 1997 on July 22, gay couples and lesbians sued the government to approve their marriage. Their demand also includes everything from access to health care, to parenting and immigration rights, to social security benefits and to transferring property without adverse tax consequences. The inequities and the legal and cultural second-class status that exclusion from marriage reinforces affect all gay people, but it does not affect gays who are poor and less educated, as they do not realize, do not understand and are not fully aware that they deserve equal right as heterosexuals rights. The suit involved many lawmakers and lawyers and law institution. But the suit failed. The denial of the freedom to marry undermines young gays' sense of self and dreams of a life together with a partner. After some times of debates, on December 20, 1999 the Vermont Supreme Court decided that the current law in the state of Vermont discriminated unfairly against homosexual couples. Vermont Supreme Court ordered the state legislature to take one of two actions to pass

legislation that is either to allow gays and lesbians to marry, that is to expand the right to marry include couples of all sexual orientations, where currently, marriage is a special right extended only to heterosexuals or the legislature pass the legislation that would set up a parallel domestic partnership status to give gay and lesbian couples the right to register their relationship and receive the same rights as heterosexual couples. The case becomes the discussion in the government and the society of Vermont.

The religious practitioners in Vermont state gave argument toward the case. Christian faith groups gave conflicting testimony, which seems to have neutralized their input to the process of marriage approval. Roman Catholic bishop Angell urged the committee to preserve traditional heterosexual marriage. The church supports to protect gays and lesbians from discrimination. But dealing with the marriage among them, Roman Catholic church denies and disapproved of the marriage. The Church's idea on marriage is that it is an absolutely, clearly defined as faithful, exclusive and lifelong union between one man and one woman, established by God with its own proper law. Church's opposition to homosexual marriage has also been vocally and adamantly stated. Roman Catholic church considers that human sexuality is God's gift and that sexual intercourse is to be enjoyed as the Scriptures teach: only within the marriage of one man and one woman. The Roman Catholic church considers that the approving and blessing of same-sex marriage is sinful and displeasing to the Lord and Savior, Jesus Christ, Right Reason, Holy Scripture and the spirit of Christ within us which testifies that homosexual practice is contrary to God's

will. This statement can be seen in the Bible :

...for this cause God gave them up unto vile affections; for even their women did change the natural use into that which is against nature, And like wise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which unseemly, and receiving in themselves that recompense of their error which was meet. And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient; Who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them (Romans 1: 26-32).

The Bible tells us the story in which men and women no longer do the will of God. They change the natural use into one which is against the nature. The man leaves his wife to have sexual affairs with another man and so as the wife. This is what we called homosexuality. God never approves such behavior as it is against the proper law. People no longer keep God in their life, therefore God gave them over to a reprobate mind that they can do whatever they want regardless of the sin they made. Furthermore the Bible said that the punishment of this behavior is by death. The punishment is not only for the persons who are committed to the action but also for those who approve such behavior. Therefore, it is clear that the Bible does not approve homosexuality and it is against the will of God.

Long before the issue of gay marriage arose in Vermont state, some Christian faith practitioners have dealt with homosexuality. They gain some voices to support gays as they saw the fact that gays and lesbians were treated roughly. The church was concerned about it. The bishop of Anglican, issued an accord which sought to respond to the program against homosexuals by clarifying the Anglican position through a shared statement by the bishops of the church. It recognized that the bishop had divergent views on the biblical, theological, and moral issues surrounding homosexuality. They invited people to standardize point that no homosexuals should ever be deprived of liberty, property, or civil rights because of his or her sexual orientation and the accords also stated and explained that all acts of violence, oppression, and degradation against homosexuals are wrong and could not be sanctioned by an appeal to the Christian faith and the last point the accords said that every human being was created equal in the eyes of God and therefore deserved to be treated with dignity and respect. But dealing with gays marriage, the church opposed it as the marriage was only between one man and one woman which appropriate with the will of God and under proper law. Just as Roman Catholic church, the Church of Christ, regards any form of sexual behavior before or outside of marriage to be immoral. This includes pre-marital intercourse, adultery, homosexuality, bestiality, incest, polygamy and polyandry. The church believes that those who practice such immorality will not enter the kingdom of Heaven. People recognize that some adults are attracted to members of the same sex. This is not regarded as a sin because they just keep it in their feeling and it does not involve action toward the feeling. When people are

acting upon the feelings, it is definitely sin, meaning as they involve homosexual behavior psychically with other same sexes. Members who continue to engage in homosexual relationship (whether casual or in committed relationship) are not allowed to remain in the church. But in 1977 the church passed a resolution which deplored the use of scripture to generate hatred, and the violation of civil right of gays and bisexuals. Hence gays may enter the church and take part on the church activities. The Church of Christ's ordination of active homosexuals was formally accepted by the denomination in 1980. Different from Roman Catholic church, the Church of Christ's clergies are also free to bless same-sex union.

Opposing civil union, the Jewish leaders approved a resolution that gives rabbis the option of presiding at gay commitment ceremonies. Though many religious denominations are struggling against the issue, the decision by the Central Conference of American Rabbis makes it, to date, one of the most influential religious groups to approve same-sex unions, although in Vermont any movements toward same-sex marriage face legal obstacles.

The marriage among gays and their behaviors and attitudes showed us that people no longer care what they have done whether it is right or wrong, whether it breaks the tradition or religious teaching, whether it is against the will of God. People tend to justify every behavior they made and feel right in the unrighteousness. People no longer recognize their Creator and become vain in their imaginations and their foolish heart which was darkened. People are in unclean condition, through the lust of their own hearts, to dishonor their own bodies between themselves.

Even though the majority of Vermonters are Christian, but Vermont does not underlie the constitution based on the religious law. It can be seen in the Vermont's Constitution that the Constitution has liberal basis. The open minded and liberal characteristic of Vermonters supports to the protections of gays and lesbians. Dated back in the past years, Vermont has a long liberal tradition. Its citizens are very independently minded. Vermont was the first state to abolish slavery. Stepping from this background, Vermonters respect more the basic human rights, regardless of race, religion and sex.

Meanwhile, the people immigrated to US in order to seek for freedom to practice their religious matters. It is seen in the constitution that the government and the church (religious affairs) were separated. The separation of religious affairs with the government can be seen in Bill of Rights that were ratified on December 5, 1791, in its 1st amendment – Religion, Speech, Assembly and Politic:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances “ (Hamilton, 1982, p. 492).

In the first words of the amendment which are emphatic and brief; Congress shall make no law respecting an establishment of religion; yet the first Amendment to the US Constitution suggest “ free exercise” must go hand in hand with “ non-establishment” with what Thomas Jefferson called a “ wall of separation” between governmental powers and religious institutions of influence.

The contemporary *rechstaat* indeed protects religious institutions, but as a matter of individual choice, and not intrinsic dominion. Hereby, The Supreme Court has construed the constitution to erect a high wall of separation between church and state to prohibit any law or governmental action designed to confer any benefits on religion even if all sects are treated the same (Levy in Burns, 1989, p. 67).

It is clear that the government of Vermont has no power to interfere with religious affairs or any activities established by the church and the church also has no power to interfere with the governmental affairs. In time when the state of Vermont approves the marriage among gays and lesbians, it is not proved that the church has lost its voice and its authorities. It also does not mean that the church has no power to stop the state of Vermont by establishing a marriage license to gays and lesbian, but it is because the church and the government are two institutions that are basically separated by law. Moreover it is a Civil marriage, and civil marriage is powerful and it is not religious marriage. So the state of Vermont has more power and authority to establish law protecting such marriage.

D. Medical Background which Supports the Approval of Marriage Among Gays in Vermont State

Some mass media reported gays and their journey in achieving the approval of their marriage in the state of Vermont. The topic becomes the headlines in almost all news media. The society of Vermont is against the approval as they think that gays are not healthy as AIDS can be transmitted

through casual contact, or hugging and kissing. It is present in parents or child interaction. This factual inaccuracy, this prejudice is further accused. Some medical practitioners believe that homosexuality is not a healthy practice as it involves anal penetration. It is dangerous as it involves the insertion of dangerous devices, the insertion of hands, or pushing the foreign object such as sex toys in the anus. The anal is located in the end of human digestion system where bacteria and poisons lie and which can cause diseases. Gays are sensitive to some kind of diseases such as diarrhea, or other digestion problems. Gays probably undergo impotence as they insert the penis into the rectal that cause the disfunction of the nerves that cause imbalance of the organ function in having sexual intercourse. People believe that gays are also have contracting and spreading HIV. Individuals who regularly or exclusively acted as passive partners in gays' sex intercourse were at considerably greater risk of AIDS than those who were regularly or exclusively active partners (Schoub, 1994, p.5). The transmission of the disease frequently occurs in the sharing of contaminated needles during inter venous drug abuse including the promotion of the use of intoxicants (including alcohol) and sex activities. Medical practitioners think that gays are the risk group of AIDS. While the first confirmed case of AIDS in US was reported in California on June 5, 1981,. AIDS initially was centered in 5 American metropolitan localities, among a relatively affluent, predominantly white, gays or bisexuals. The statement of unhealthy gays behavior is also supported by Gene Antonio, A Conservative commentator who said "Homosexuality per se must be thought as an unhealthy, unsafe and lethal sexual alternative. Furthermore |" it is a very major

risk to enter these communities” warns June Osborn, Dean of Public Health at University of Michigan. (Murphy, 1994, p. 335). Seeing the danger of gays activities and behavior, people of Vermont urge the state not to legalize their marriage as they have unhealthy, unsafe, and lethal sexual activities. Besides, approving gays’ marriage means increasing the risk of group infected by HIV.

In fact being a gay is not something that everyone wanted. Even gays have normal life in their daily life, they face difficulties within themselves or in the society they live in. Gays also have high rates of mental problems and consistently engaged to behavior commonly associated with guilt. It is believed that gays are contrary to their conscience. They face issues on the household division of labor, power, sexual relationship, and money. Besides, they also face problems arising from being socially stigmatized relationship. Gays also undergo stress in their family that are connected with their personality as men that men usually feel dominant to others. Throughout history, suicide has been uniquely human response to the misery of illness and perception of the inescapable death. Increasing rates of suicide among persons with serious illness have been well documented; risks are especially high when the illness involves a psychiatric disorder (Schoub, 1994, p. 124). But the prejudice of wrongly abnormal activities done by gays that involve anal intercourse is also done by heterosexual persons. It is used primarily as a source of variety in sexual activity. According to Kinsey, about 50 % of male homosexual in US utilize anal intercourse as a source of sexual pleasure. Anal intercourse may be extremely painful if the anus is not properly lubricated. Vaginal intercourse should not allow anal sex. The reason is

that the anus contains bacteria which could be carried on the penis into the vagina and possibly causes infection. Scientific opinion indicates that there is nothing physically or psychologically wrong with non vaginal methods including anal intercourse (Hoffman, 1977, p. 313).

Based on medical point of view, homosexuality and its activities including sex intercourse is not an unhealthy behavior and it is not unsafe nor dangerous. Therefore, the state of Vermont is able to approve the marriage among gays.

E. Socio- Cultural Background which Supports the Approval of Marriage Among Gays in Vermont State

In Vermont , people debated on the issue. The group in society who agrees to support gay marriage is pro Civil Right, and the other who does not agree to the marriage is called anti Civil Right. Anti civil right group insists on government's preserving and respecting the nature of marriage. Natural law adherents consistently claims that homosexuality is wrong just as behavior regarding polygamy and adultery in which all rational citizens are aware of this. People think that heterosexual intercourse is natural, safe and morally inoffensive. Homosexuality is immoral and deserves condemnation and correction.

Besides, the society of Vermont at that time were also in dilemma. The Vermont Family Value was obviously against the marriage approval and held the traditional marriage which is a sacred union between a man and a woman. This

group of people still respects the sacredness of marriage that is under the proper law and they think that homosexual marriage threatens the society and beyond the will of God. Therefore, The Vermont Family Value thinks that such a marriage should be illegal and the government of Vermont should not take Baker case into legislature consideration. The society considers gays as a threat to a family, and society. The society thinks that homosexuality is a threat and dangerous to the existence of society itself as there are myths and prejudices against homosexuality. Society considers homosexuals are child molesters. In fact heterosexuals have greater chance of committing child molester. Society thinks that homosexuals try to seek to recruit or convert children, or to change children's sexual orientation. As Rivera noted, "that sexual orientation is fixed in children at a very early age, and that no evidence suggests that the component of parents or other influential persons can change it" (Rivera in Heinze, 1995, p.285). Society thinks that a child raised by homosexuals will be teased and stigmatized. But this statement is not true as the children who are raised by a homosexuals, majority are heterosexual when they are young. Society also considers that homosexuals *per se* are immoral, and hence gay parents are unfit as parents. But one can not be inferior to another and such accusation is not rational.

Moreover with the advanced world of invention, people feel that they have easier life and they can get everything they want no matter how they achieve it. People who do anything do not realize that they have broken the law of nature. People will justify every action they made even as they are in the unrighteous action.

The society's prejudices toward gays, which threaten and endanger society have no strong and justified basis. The prejudices have no accuracy related to the existence of homosexuals themselves. Dr Evelyn Hooker, a leading authority on homosexuality has found through investigations that homosexual poses no threat to public morals (Hoffman, 1977, p. 318). A National Institute of Mental Health Investigation led by Dr Hooker recommended that US should follow the example of Great Britain, which in 1968 made legal any homosexual act performed discreetly between consenting adults. No ill effect have been suffered in Britain as a result of legislation. The anxieties of gays and lesbians have probably been considerably reduced. Gays often conflicted in their life and they undergo high rates of mental problems and consistently engage to behavior commonly associated with guilt. Gays do not feel accepted in the society as it is probably true that many gays suffer from extra anxieties because of the fact that they are discriminated and the discrimination and prejudice directed toward any individuals or groups will cause frustration and tensions on them. If they were treated with more comfortable atmosphere, they will live happily in the society and will not be a threat to society. People consider gays as danger and criminal that the consequences toward the activities is life imprisonment. According to Kinsey, he found that of all sex offenders, gays and lesbians have the highest social-economic status and are the best educated (Hoffman, 1977, p. 319). Drinking and drugs are not main factors in their behavior. They are subject to the same anxieties and stresses of fulfillment and pleasure as are heterosexuals. So, gays are neither dangerous nor criminal. Kinsey said " they do not damage

society, they merely do not fit into it” (Kinsey in Hoffman, 1977, p. 319). Moreover, gays and lesbians in Vermont state have formed a family without marriage and have had children. In many cases, the children were born when the individual was a part of a heterosexual marriage. Gays fathers have more difficult, disclosing their homosexuality to their children than do lesbian mothers (Bozett in Schulenburg, 2000, p. 52). Their children generally have a positive attitudes about the homosexuality and large majority of children raised by homosexual parents identified themselves as heterosexual when they were young (Lauer, 2000, p.52)

It is generally accepted among psycho-therapists that people (especially men) who have underlying fear of their own homosexual tendencies are most abusive in their attacks against gays. But for those who do not feel threatened by any gays tendencies within themselves are more understanding and relaxed in their dealings with gays. Therefore the state of Vermont has reasonable basis to approve the existence of gays and the state has right reason to approve gays' marriage as the prejudices toward gays in the society has no rational and accuracy basis and their existence in the society endangers nobody.

F. Law Background which Support the Approval of Marriage Among Gays in Vermont State

Gays should get equal rights as heterosexuals under the law. Besides, gays

should be able to feel good about their feeling and to themselves. Vermont is a liberal state. It is one of 11 US states that prohibits discrimination based on sexual orientation. Vermont state protects all Vermonters. The people of Vermont ought to obtain right and justice freely; and without being obliged to purchase completely and without any denial, promptly and without delay, and conformably to the law (Vermont Constitution July 9, 1793). Referring to the statement above, it is obvious that the people in Vermont are free to express their expression of lifestyle, thought, and their actions. When gays and lesbians in Vermont sued the state related to the law protecting their legal marriage, the state of Vermont has responsibility to guarantee the right of its citizen. The suit on July 22, 1997 failed. The refusal of the marriage proposal by the state of Vermont seemed unfair to gays. Baker and other homosexual couples and their lawyers consider that the constitution violates both his rights by prohibiting him to enjoy the benefits of marriage which is the fundamental right of human being and the state also violates the constitution which protects its citizen under the law. The suit was naturally opposed by the Attorney General's Office as Vermont's history and tradition do not support same-sex unions within the fundamental right to marriage. It is stated that marriage in Vermont state has always been composed of one man and one woman (www.religioustolerance.org/hom_marg.htm). There are 7 cited arguments against same-sex marriage which insists the suit is dismissed. The state claimed that they have interest in giving special privileges to heterosexual couples because marriage between heterosexual unites men and women. The arguments were : 1. to bridge their differences, 2. the marriage promotes a family setting

which provides both male and female role models, 3. it also preserves the "time honored "institution of marriage , 4. it ensures that the Vermont marriages are recognized in other states, 5. it preserves the legislature authority to channel behavior and make normative statements, 6. the marriage is proposed to minimize the use of modern fertility treatments in order to avoid increased child custody and visitation disputes, and 7. the last argument further links between procreation and child rearing (www.religioustolerance.com/hom-marg.htm). Chittden Superior Court Judge, Linda Lewitt described that the 1st six arguments are invalid, speculative, difficult to grasp, or without common sense or logical basis. But she accepted the last one which stated the marriage is the link between procreation and childrearing. Therefore she dismissed the suit on that basis. In fact, two of the three plaintiff couples have children and it is yet nobody talks of invalidating a man and a woman's marriage because they are childless. The gay and lesbian couples' lawyers think that the decision was unfair and violate their clients' rights.

Moreover , during the discussion, the state has strong power to prohibit their marriage. The General Assembly of the state of Vermont issued an act related to prohibiting same-sex marriage. This act is introduced by Representatives Sheltra of Derby, Brunelle of Winooski, Clark of St. Johnbusry, helm of Casleton, Hoag of Woodford and Robb of Swanton, Act Sec. 1. 15 V.S.A; says :

- (a) A person shall not marry another person of the same sex.
- (b) In the construction of laws in this state "marriage" means only a legal union between one man and one woman as husband and wife.

(c) This state shall not give effect to any public act, record, or judicial proceeding of any other state, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state, territory, possession, or tribe, or a right or claim arising from such relationship.

(www.leg.state.vt.us/docs/1998/bills/intro/H-182.HTM).

Referring to Bill H 182, gays and lesbians in Vermont have no power to sue and demand the state to issue a marriage approval among them. The society or clerk of civil union has no right to protect gays and lesbians. If they respect to their union , the government will take an action under the law. Hence, the state of Vermont dismissed the case.

In fact , the Vermont's Constitutional law states that all persons are born equally free and independent and have certain natural, inherent and acquiring, possessing and protecting property and pursuing and obtaining happiness and safety. Gays in Vermont are inhabitants of the state of Vermont, so they have equal rights which are mentioned under the law. The state always takes on consideration dealing with every action related to its citizens right. The state of Vermont considers that the Constitution of Vermont discriminates gays from their rights. Finally in late December 1999, with the help of the plaintiff couples' attorney , their marriage's proposal was brought to the committee of Judiciary to be taken into consideration. The journey of getting the marriage approval among gays was not smooth. There occurs debate on it, both the society and in the government. The Committee heard testimony from historians and lawyers about

the legality of civil marriage. Certainly at that time historians presented the recorded marriage history, which says “ an ancient and powerful tradition on same-sex marriage”.

Laws governing same-sex marriage apparently dated at least as far back as the Hittites, who ruled Asia Minor more than three thousand years ago. Cicero, whose knowledge of Roman law under the Republic was exhaustive, quoted as considering same sex marriage legally binding. By the time the Roman Republic became the Roman Empire, among the lower classes, same sex marriages continued as were well-known in the Roman Empire until the mid-fourth century. While the precise definition of marriage has varied from one community to another and from one era to the next. There is a tradition of Christian same-sex marriage ceremonies celebrating unions that considered marriages in the same sense in which opposite sex couples marriage. The tradition of same sex marriage transcends thousands of years of human history. The testimony of the historians supported the state to approve the marriage toward same-sex couples. About 1000 Vermonters attended the meeting. 115 witnesses were selected in random to give testimony. Their testimony was balanced but polarized. About half the witnesses testified in favor of extending full marriage rights to same sex, and half of the witnesses oppose the extension of any legal rights to same sex couples (www.religioustolerance.com/hom_mar8/htm#why). The state held second public hearing. The Committee heard testimony from the Human Right Commission, the Government’s Commission on Women and the Attorneys for the Baker plaintiffs. In the public hearing, the Christian faith groups in Vermont also gave conflicting

testimony. The tone of the testimony and demeanor of the witnesses (and also the crowd in the meeting) were polite and respectful. It shows that Vermonters are always respectful to the very basic human rights. No witnesses appear to have supported the concept that the committee eventually compromised on the state recognition of gay and lesbian civil union with the same right and privileges as married heterosexual couples. After two months of often emotional debates, Vermont's House Judiciary Committee approved a bill for consideration by the legislature.

Being taken into consideration by the legislature, Bill H 847 (a bill guarantee same sex marriage in Vermont state) showed that there has been amazing civil process since the public hearing showed agree to disagree. The question of gay's marriage has recently become civil right issue for some people and institutions in Vermont society. It seems that there is an assumption that if one can have sexual relationship with someone, of either gender, one is entitled to all the benefits of marriage. Sometimes these relationships are not called marriage but domestic partnership and apply equally to homosexual and heterosexual partnership. The state issued three alternative bills to support bill H.847. The first bill is H.069. It gives an Ability to Marry. It was sponsored by Dean Corren (P. Burlington) and five others. This bill would delete references to men, women, brides, and grooms in the current marriage act in such a way that it would permit marriage by either same sex or opposite couples. Therefore with this bill , the state of Vermont has supported to the marriage among gays. The state also issued another bill, HR-0033, a bill that authorizes a straw poll in response to Baker

decision. This would require towns to hold public meetings and takes a ballot of voters attending the meeting on the topic of equal to same sex partners. With the issuance of this alternative bill, the state of Vermont showed that the state is a liberal country that gives any persons in the state opinions toward government policy. The last bill issued by the state, called bill HR 0034, is sponsored by George Schianone (R. Shelburne) and 68 others. This bill is called on the legislature to reaffirm and sustain the definition and positive values of traditional marriage and protects them from alteration by actions taken in other states. After the reading of the alternative bills and discussion in the Committee, bill 847 was given in the first reading in the judiciary. The *Hardwick* law also supported the state of Vermont to the approval of the marriage. As Justice Blackmun noted that , unlike ordinary rights and restrictions, fundamental rights are not intended, and may not be interpreted, in light of general beliefs about the collective good, however long established or strongly felt. The proposition of *Hardwick* , indeed becomes the cornerstone of United States constitutional law. Justice Blackmun dissenting :

We protect, right of privacy not because they contribute , in some direct and material way, to the general public welfare, but because they form so central a part of an individual's life.

The concept of privacy embodies the 'moral fact that a person belongs to himself and not others nor to society as a whole'.

And so we protect the decision whether to marry precisely because marriage is an association that promotes a way of

life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social project. We protect the decision whether to have a child because parenthood alters so dramatically an individual's self-definition, not because of demographic considerations or the Bible's command to be fruitful and multiply. And we protect the family because of a preference for stereotypical households. The court has recognized that the ability independently to define one's identity that is central to any concept of liberty (Blackmun in Heinze, 1995, p. 196).

Based on *Hardwick* law, the state protects one's privacy and considers that a person is an individual who belongs to himself and nobody else owns him, therefore he has the right to determine his life and the state gives protection to him. The state also respects the marriage of its people because marriage "is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social project" (Heinze, 1995, p. 196).

The issuance of *Hardwick* law helps the marriage approval among gays in the court. The state of Vermont steps further to the processing of the same-sex marriage approval. In reading the bill in the House of Judiciary, bill H.847 will have a power and protection to gays and lesbian marriage as it described a certificate of civil union that would be obtained in the same way as a marriage certificate. After a long debate, the Senate judiciary Committee passed the bill.

Vermont Supreme Court decided that the state Constitution requires benefits for persons of all sexual orientation, but on April 18 the senate rejected the amendment. The Senate has reason not to approve the amendment as it is a complex and time consuming task in that state. In the mean time, the House and the Senate are required by the Vermont Supreme Court to extend equal right to gays and lesbians in Vermont. The action went on. During the discussion, the Church practitioners still fight and urge the state not to approve the marriage among gays but Ms Murray and Ms Robinson, lawyers representing the plaintiffs in the *Baker* case stressed that the issue related to civil marriage is not a religious marriage. Therefore Chief Assistant Attorney general (Mr. Bill Griffin) and Assistant Attorney general (Mr. Bridget Asay) reviewed the court ruling. The discussion continued. After a series of discussions, the society of Vermont considers that gays also have the rights to enjoy the fundamental rights including the enjoyment of the benefit of marriage. When the Christian Faith groups conflicting the approval of bill H 847 ,basically, they rejected gays marriage as religious marriage but in fact gays marriage in Vermont is not totally religious marriage.

On the other hand, the state of Vermont interest in civil marriage is to encourage close and caring families, and to protect all family members from the economic and social consequences of abandonment and divorce, focusing on those who have been especially at risk. Therefore the state of Vermont is responsible for protecting its citizen's affairs regardless of sexual orientation. The legal recognition of civil marriage by the state gives source of benefits,

responsibilities and protections under the law of the state for married persons and their children.

For a decade Vermont was the first state to adopt Comprehensive Legislation prohibiting discrimination on the basis of sexual orientation. Stepping on this tradition, Vermont state has interest to approve marriage regardless of one's sexual orientation. Moreover, Vermont's marriage law does not specifically states that marriage is limited to one man and one woman. However, it does not contain references to "bride", "groom", a "husband", and a "wife" (www.religioustolerance.org/hom-mar8.htm#why).

Gays and lesbians should be able to get married. Vermont's civil marriage law does not show specifically the prohibition toward same-sexes. In Vermont, one may establish a civil union, if the parties to a civil union satisfy all of the following criteria that she or he is not a part of another civil union or marriage. According to Civil union law, a woman can not marry her mother, daughter, grandmother, sister, brother's daughter, sister's daughter, or father's sister, mother's sister or vice versa. Those above are invalid or illegal in Vermont. But different from gays and lesbians marriage, the state has no law which restricts their marriage. The state of Vermont rejected a marriage, for those who have blood relatives. Therefore, it is unfair that gays and lesbians are prohibited to get marriage approval. Furthermore, the restriction of marriage under Vermont law is clear that the party to marriage is under 18, the parties are under guardianship, without the written consent of such guardian. The marriage law in Vermont does not mention that gays and lesbian can not purchase a marriage license or enjoy the

benefits and responsibilities associated with civil marriage. Gays and lesbians suffer numerous obstacles and hardships in getting marriage approval from the state.

All persons in Vermont are equal to enjoy their right to the benefits of marriage. Seeing the fact that in the present practice Vermont issues marriage license only to a single person namely heterosexual. The government of Vermont has a strong interest in promoting stable and lasting families including same-sex couples. The government of Vermont is, or ought to be, instituted for the common benefits, protection and security of the people, nation, or community. It is not instituted for the benefits and security of a particular emolument or advantage of any single person, family, or a number of persons, who are only a part of particular community. The community has an indubitable, unalienable, and inalienable right, to reform or alter government in such manner as shall be, by that community, judged most conducive to the public interest. Despite longstanding social and economic discrimination, many gays and lesbians in Vermont have formed lasting committed, caring and faithful relationship with persons of their same sex. These couples live together, participate in their communities together, and some raise children and care for family members together, just as other couples who are married under Vermont law. While the system of civil unions does not bestow the status of civil marriage, it does satisfy the requirement of the Common Benefits Clause. Granting the benefits and protection to same sex couples through a system of civil union will provide due respect for tradition and long standing social institution, and will permit

adjustment as unanticipated consequences or unmet needs arise. The Constitutional principle of equality embodied in the Common Benefits Clause is compatible with the freedom of religious belief and worship guaranteed.

The Vermont senate passed the bill H.847, a bill similar to the House bill. The main difference is the date of implementing of the bill. The Senate version calls on July 1, but the House version specifies September 1. In the voting, the House defeated on vote 79 to 69. So, the House accepts the Senate version that the marriage would be effective on July 1st. After months of often emotional debates on Wednesday, the Vermont Senate approved civil union giving gay and lesbian couples many of the benefits of marriage. The House is expected one week after the Senate approval of the bill gave the final approval to the legislation, which is expected to be signed by Governor Howard Dean. Finally on Wednesday, April 26, 2000, Governor Howard Dean signed the bill into law. Therefore Vermont became the first US state with such law. Vermont legislation came in response to Vermont Supreme Court ruling that same sex couples deserve all the same rights as heterosexual spouses. Vermont's civil union law for homosexuals became the nation's strongest recognition of gay couples and strongest recognition to marriage regardless of sexual orientations.

Although the bill carries Vermont to the edge of recognizing gay marriage, lawmakers still sought to preserve the term " marriage" for the union of a man and a woman, adapting an amendment making clear.

Gays from other states will come to Vermont to marry, it is a heaven for gays and lesbians as they can enjoy the benefits of marriage. The Lambda Legal

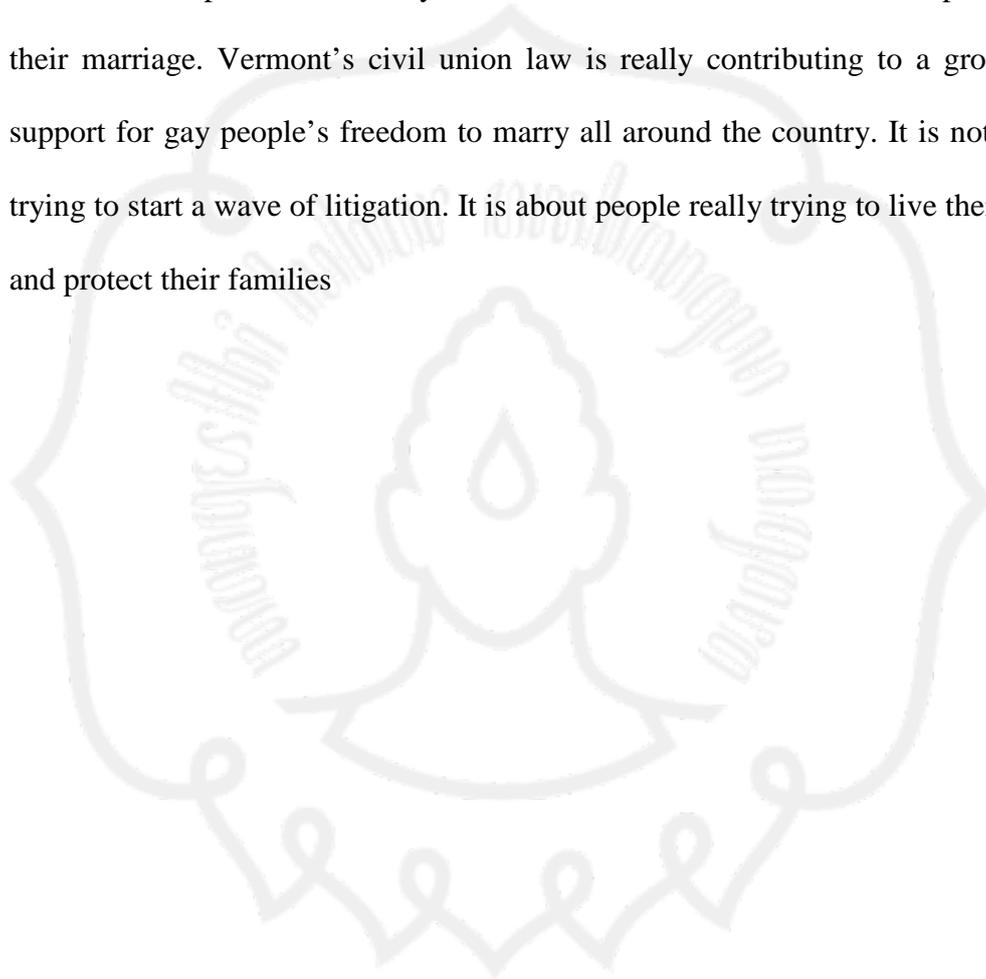
Defense and other plaintiff lawyers, the gay and lesbian Advocates & Defenders, believes that winning the vote of the bill into law is a glorious day and tremendous victory. The Vermont highest court has ordered an end to unequal treatment of lesbians and gays families. James Dobson, president of Focus on the Family, a fundamentalist Christian group, responses to the marriage approval that the Court decision violates common sense and the entire course of western civilization. “ ... it really represents a slap in the face for marriage between a man and a woman” said Jay Sekulow, Chief Counsel for the American Center for Law and Justice, which opposed gay marriage (www.religioustolerance.org/hom-marg.htm).

Many debates occur opposing the approval of same sex marriage. But, gay and lesbian couples in Vermont officially enjoy their right and protection and most of all, the protection of the benefit of marriage. The Court supports that gay and lesbian couples should get rights include access to a spouse’s medical, life, and disability insurance, hospital visitation and other medical decision-making privileges, spousal support, certain right of inheritance and homestead protection.

Ministers of some faith groups will conduct a union ceremony for the couples, their family and friends. The state of Vermont gives choices to the churches whether to establish such marriage or not. Harrigan and Baker were among the three same sex couples who sued the state of Vermont for the right to marry, and ultimately won equivalent rights and benefits of heterosexual marriage under the state’s first-in-nation civil union system. Nearly 300 people attended a religious ceremony of Harrigan and Baker, with two priests and on 18 persons

choir at St. Paul Episcopal Cathedral in Burlington. “ our ceremony was really as much a victory party as a civil union or a wedding” said Harrigan (Washington Post, September 4, 2001, p A03).

Finally the journey of getting the marriage approval among gays in Vermont end up with the victory that the state of Vermont issues a law protecting their marriage. Vermont’s civil union law is really contributing to a growth in support for gay people’s freedom to marry all around the country. It is not about trying to start a wave of litigation. It is about people really trying to live their lives and protect their families



CHAPTER IV

CONCLUSION AND RECOMMENDATION

A. Conclusion

Gays had existed throughout history, since the creation of man and in modern world. Societies vary widely in their tolerance toward homosexuality. Some societies accept it, but others are against it. Since its first existence, gays received bad treatment and discrimination in their life such as, in employment, housing and enjoyment of public accommodation. From time to time, gays struggle for their equal rights as heterosexuals. After the year of 1964, in USA, the States issued Civil Right Act granting gays to enjoy the equal rights in employment, housing, and the enjoyment of public accommodation. With such an enjoyment of rights, gays in Vermont step ahead demanding a marriage license from the state. The state of Vermont rejected the suit. The state issued a bill H.182 which prohibits same-marriage in Vermont state. After debates, however, the state of Vermont considered that the constitution discriminates gays' right, the right to marry. It demands the legislature to review the constitution. Many debates about marriage among gays in the society and the government occur.

The debate over homosexuality in the society arises. It is not only a debate over scientific conceptualization, but it is a debate over values and a vision of a society and the kind of life that is good for people to live in. Homosexuality is considered as mental illness, then it is transformed as mental disorder. What causes homosexuality still becomes a topic of discussion. Homosexuality is not a

choice. Its development is merely a variation of sexual fixation and is nothing to be ashamed of, no degradation and it can not be classified as illness. Investigations find no differences between homosexuals and heterosexuals in wide range of attitude, behavior and adjustment. Structurally and anatomically, homosexuals and heterosexuals are the same. Psychologically homosexuals are as normal as heterosexual and the only thing which differentiates them is sexual orientation. Therefore the state of Vermont has strong reason to protect and approve marriage among gays in Vermont as they are also the citizens of Vermont.

Religious practitioners fight against gays' marriage. They preserve traditional marriage and respect to its sacredness. People think that homosexuality is sin. God will destroy them as written in the Bible. But, the state's constitution separates the government affair with religious affair. The Supreme Court has construed the constitution to erect a high wall of separation between church and state to prohibit any law or governmental action to interfere with the religious activities and so does the church has no power to interfere with the government's policy. Moreover the marriage is not a religious marriage, it is a civil marriage. Therefore according to religion point of view, the state of Vermont has strong reason to approve the marriage among gays in Vermont.

Gays are considered to have unhealthy behavior. The practice of homosexuality is unhealthy as it involves anal penetration and involves the insertion of dangerous devices, hands and sex toys in the anus. The anal is located in the end of human digestion system where bacteria and poisons lie which can

cause disease, such as diarrhea, or digestion problem or one may undergo impotence. People believe that gays are also contracting and spreading HIV in which the disease transmitted by sharing contaminated needles during intravenous drug abuse. Medical practitioners think that gays are the risk group of AIDS. Approving gays' marriage means increasing the risk of group infected with HIV.

Gays also undergo stress in their personality that causes suicide. But those prejudices above are not true. Anal intercourse may be extremely painful if the anus is not properly lubricated. Anal intercourse should not be followed by vaginal intercourse. Scientific opinion indicates that there is physically nothing wrong with non vaginal intercourse. AIDS is not the disease of gays but it also infected heterosexuals. Based on medical point view, homosexuality and its behavior including sex-intercourse do not indicate an unhealthy behavior, unsafe, and dangerous. Therefore, the state of Vermont gives marriage approval among gays in the state.

People debated on the issue. The society holds on the traditional marriage and respect to sacredness of the marriage. Some prejudices occur in the society which consider gays as a threat, a danger and a criminal. Gays are child molesters but this is not true as heterosexuals have greater chance of contracting to child molester. The society's prejudices toward gays have no strong and justified basis. Gays poses no threat to the society and family. Gays suffer great anxieties as they are discriminated by the society. If only they are treated with more comfortable atmosphere, they will live in happiness. Gays are not a criminal as they do not

damage the society but they are considered not fit into it. Only those who have underlying fear of their homosexual tendencies are most abusive in their attacks against gays. But those who do not feel threatened by any gays tendencies within themselves are more understanding and relaxed dealing with gays. Moreover Vermonters are open minded and always respectful to human beings and their right regardless of sexual orientation. Therefore, the state of Vermont has reasonable basis to approve the marriage among gays in Vermont state.

Since 1997, gay and lesbian couples in Vermont struggle to demand a marriage license from the government. With the help of the plaintiff's lawyers, in December 1999, the state considered that the constitution discriminated gays' right to marry. It orders the legislation to review the constitution. The discussion continued in the state legislature and public hearings from historians, citizens of Vermont, religious practitioners and other witnesses. Vermont's constitution states that all persons are born free and the state of Vermont protects its citizens' right. After discussions, bill H. 847 issued granting the marriage among gays. The *Hardwick* law also supported the approval of gays' marriage. Vermont's interest in civil marriage is to encourage close and caring families regardless of sexual orientation. Moreover, Vermont is a state which prohibits discrimination on the basis of sexual orientation. Its marriage law does not prohibit marriage based on sexual orientation and it has clear restrictions for one who can not get a marriage license from the state. Vermont also has strong interest in promoting stable and lasting families including same-sex couples. After months of often emotional debates, the senate and the house of Vermont approved the bill H.847 approving

marriage among gays. On Wednesday, April 26 , 2000 governor Howard Dean signed the bill into law. On this day gays feel the victory on their right to get marriage approval from the government.

B. Recommendation

The writer hopes that this thesis will be able to give more information to other researchers who are interested in researching gays in USA, particularly in Vermont with regard to its marriage or other aspects of gays. However, the researcher realizes that nothing in this world is perfect, including this research. Furthermore, it is possible for other researchers to research the marriage approval among gays in other states in USA with different point of view. The researcher also hopes that this thesis will be able to enlarge and chance the prejudices of the readers toward the existence of gays. The researcher also hopes that people will change their mind toward gays as they are ordinary people as heterosexuals that have normal life, job and family. What differentiates between homosexuals and heterosexuals is the sexual orientation. Gays should not be blamed, discriminated and tortured. Therefore the researcher wish that the readers be more wise and tolerant to gays and treated them equally and in good atmosphere.

Last but not least, although it is far from being perfect, this simple research is also hoped to be able to give any benefits, particularly to the students of English Department who are interested in further study on gays.

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