

# CAPE COD TIMES



**Sense of hope**  
Joe Martin's decade of survival with Lou Gehrig's disease.  
**Health & Fitness /B-1**

**TODAY'S WEATHER**  
Partly cloudy, highs in the lower 30s /B-6

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# Votes fall just short

Two state constitutional amendments that would have banned gay marriage but allowed civil unions narrowly defeated; debate resumes today



STEVE HEASLIP/Cape Cod Times

Opponents and supporters of gay marriage demonstrate outside the House of Representatives chamber at the Statehouse yesterday.

## O'Leary's dilemma: Voting on principle



**Robert O'Leary**  
Has supported gay-marriage rights

**By JACK COLEMAN**  
STAFF WRITER  
BOSTON – Until Tuesday, state Sen. Robert O'Leary, D-Barnstable, had not wrestled with the issue of gay marriage. He had consistently supported extending the rights of marriage to gay couples.  
"As I've said in the past, there are really good people on both sides of this issue and it's a complex issue, but for me in the end, it's been a civil rights issue," O'Leary said.  
Yet, O'Leary said, measures presented to

Please see **O'LEARY /A-7**

### HOW THEY VOTED

Local lawmakers' votes yesterday on amendments that would have banned gay marriage but allowed civil unions

	F	C
<b>SENATE</b>		
Therese Murray, D-Plymouth	N	Y
Robert O'Leary, D-Barnstable	N	Y
<b>HOUSE</b>		
Demetrius J. Atsalis, D-Hyannis	Y	N
Thomas N. George, R-Yarmouth	Y	N
Shirley Gomes, R-Harwich	Y	N
Matthew Patrick, D-Falmouth	N	N
Jeffrey D. Perry, R-Sandwich	Y	N
Eric Turkington, D-Falmouth	N	N

**F: Finneran amendment**  
A proposed amendment offered by House Speaker Thomas Finneran that would have defined marriage as a union of a man and woman but allowed lawmakers to establish civil unions for same-sex couples.

**C: Compromise amendment**  
A proposal, crafted by a bipartisan group of Senate leaders, would have banned gay marriage but automatically legalized civil unions in November 2006. It would have reclassified any gay marriages that had taken place between 2004 and 2006.

By **DAVID KIBBE**  
TIMES BOSTON BUREAU  
and **THE ASSOCIATED PRESS**

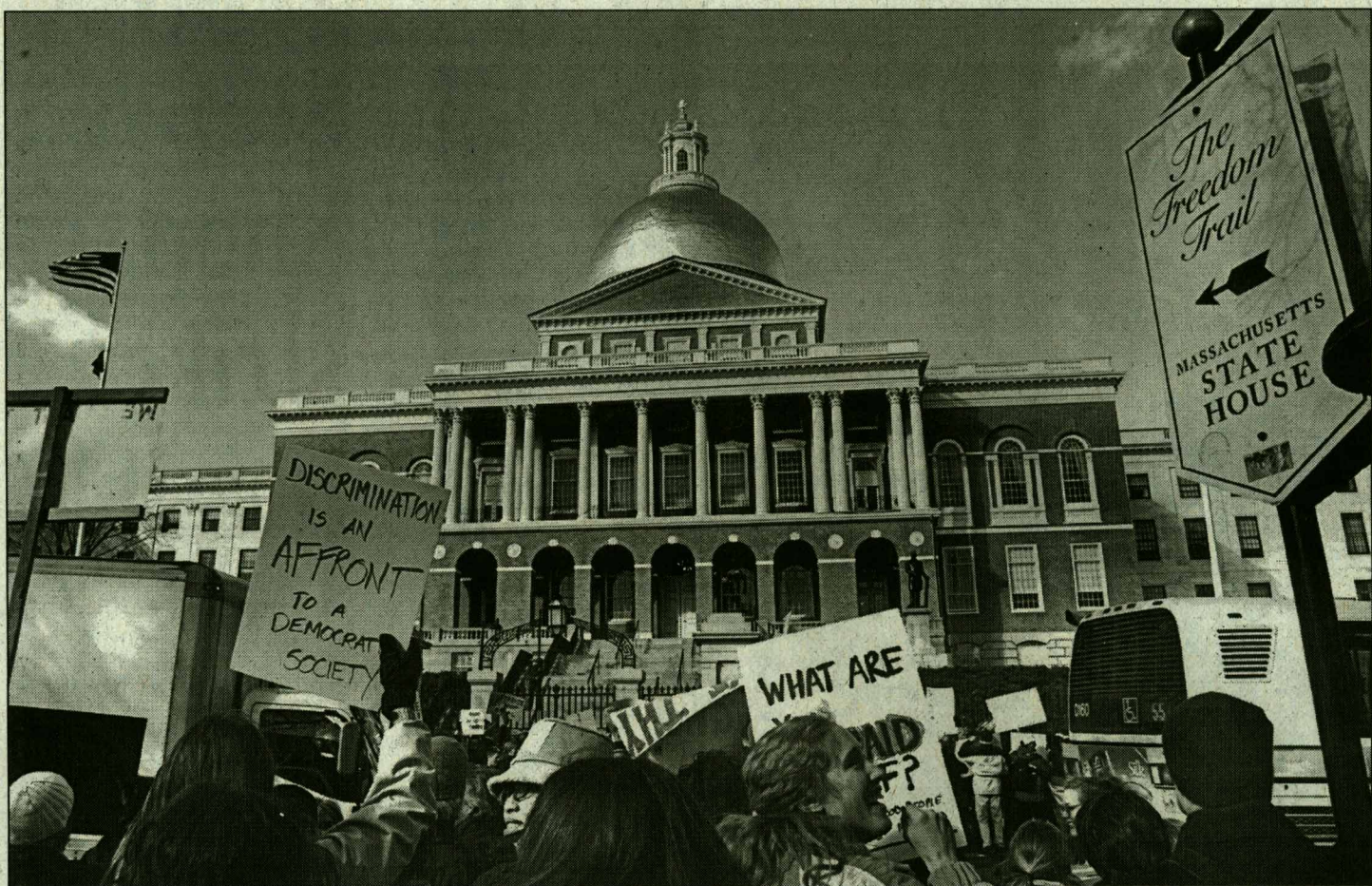
**B**OSTON – In a day and evening of emotional debate, the state Legislature narrowly rejected two constitutional amendments yesterday that would have barred gay marriage, but the debate is far from over.

Weary legislators return today to take up new proposals to define marriage as a union between one man and one woman – leaving open the possibility that it could still bar gay marriage or let the Supreme Judicial Court's historic decision stand.

House Speaker Thomas Finneran said he would try to forge a compromise with Senate President Robert Travaglini that a majority of legislators could accept

Please see **GAY MARRIAGE /A-7**





STEVE HEASLIP/Cape Cod Times

The opening of the Constitutional Convention on Beacon Hill yesterday was marked by throngs of supporters and opponents of gay marriage and a host of reporters and film crews.

# Gay marriage: Lawmakers to try again today on compromise

*continued from A-1*

when today's session begins at noon.

Rep. John Rogers, D-Norwood, a senior member of Finneran's leadership team, was working on a new constitutional amendment that would bar gay marriage while guaranteeing civil unions. The Legislature could also take up a proposed amendment from Rep. Philip Travis, D-Rehoboth, that opponents say would ban both gay marriage and civil unions.

"I believe we will see an amendment from the speaker and John Rogers with Defense of Marriage Act language and the promise of future legislation for civil unions," said Sen. Robert O'Leary, D-Barnstable. "That's what I think we are looking at tomorrow."

## Intensely watched debate

The Legislature, meeting in joint session in a Constitutional Convention, debated gay marriage for more than six hours yesterday before a packed House gallery and an international contingent of reporters.

By a vote of 100-98, the Legislature rejected a Finneran amendment that would have defined marriage as between one man and one woman, while giving the Legislature the power to enact civil unions in the future.

Later, the Legislature defeated Travaglini's amendment that would have barred gay marriage but guaranteed civil unions for same-sex couples in the state constitution. The Travaglini amendment was voted down, 104-94.

If the Legislature approves any amendment on gay marriage this year, it would have to pass the Legislature a second time in the 2005-06 session before it could go to voters in November 2006. Many believe it would not stop same-sex couples from getting marriage licenses on May 17, when the Supreme Judicial Court's land-

mark, 4 to 3 ruling legalizing gay marriage goes into effect.

Under the Travaglini amendment, same-sex marriages would have been recognized as civil unions if the constitutional amendment was approved in 2006.

Gay rights groups and gay marriage opponents were equally angered by the civil union compromise. Supporters of gay marriage said civil unions failed to offer the same protections of marriage, including federal benefits and recognition by other states.

The SJC ruled last week that civil unions would not satisfy its historic Nov. 18 decision that it was unconstitutional to deny same-sex couples the right to marriage.

Opponents of gay marriage derided civil unions as gay marriage by another name.

"I believe there are going to be a lot of constituents out there disappointed in the votes of their legislators," said Ron Crews, a spokesman for the Coalition for Marriage, which includes dozens of groups that oppose gay marriage.

"A lot of people engaged in this process, met with their legislators, made those telephone calls," Crews said. "I think the electorate has been engaged in this process like no other that I've seen before."

But state legislators believed most of their constituents supported civil unions as a compromise, and wanted a chance to vote on it in a statewide ballot.

## Murray's plea

During a speech on the House floor, Sen. Therese Murray, D-Plymouth, who voted for the civil union amendment, urged lawmakers "to take the rhetoric and hate out of this and just look at the facts."

"They are here," she said. "We need to give them the benefits they deserve. And please, put this on the ballot and let the people decide."

She said the state had an obligation to help same-sex

couples after the state courts allowed adoption by gay parents a decade ago, and the practice was encouraged by social services agencies.

Murray said it would give same-sex couples protection "for health benefits, for survivor's benefits and to be able to speak to each other when they are ill. That's all. There is nothing crazy about this. The people have asked me to put this on the ballot and give them the opportunity to vote on it."

Rep. Jeffrey Davis Perry, R-Sandwich, emerged from a House caucus before the vote with a resolve to put the issue of gay marriage to the voters. He voted in favor of Finneran's amendment, but opposed Travaglini's compromise for civil unions.

"I think marriage in our commonwealth has historically been defined as one man and one woman," Perry said. "As a representative of the people in the Fifth Barnstable District, I have heard overwhelmingly, by 85 to 15 percent, that the people in my district want the opportunity to vote on this, and furthermore, I believe that my own views and the views of my district are the same."

Perry added that same-sex couples deserved legal protections, but if the definition of marriage is changed, "it should be up to society to change it."

## Distrust of Finneran

Finneran promised to pass civil union legislation in the House later this month, but many supporters of gay rights did not believe him. The House has failed to advance Senate legislation on civil unions and domestic partnership benefits in the past several years.

"It has not happened up to now," said Sen. Brian Lees, R-East Longmeadow, who co-sponsored the civil union compromise with Travaglini. "I don't see lighting striking in this Legislature and making it happen in the next few weeks."

Rep. Demetrius Atsalis, D-

Hyannis, voted for Finneran's amendment, which was offered as a surprise.

"Most members were surprised, but the speaker used the power any member has, and no one objected," Atsalis said.

He thought Finneran's amendment was defeated because it said the Legislature "may" enact civil unions, instead of "shall."

"What you might see tomorrow is something similar, but with the word 'shall' in there," Atsalis said last night.

With crowds chanting "Let the people vote!" and "Equality now!" just outside the House chamber, lawmakers agreed to delay consideration of several other proposed amendments at the top of the constitutional convention's agenda so it could immediately wade into the gay marriage debate.

Opponents of a ban on gay marriage opened with arguments rooted in the constitution's guarantee of every citizen's right to life, liberty and the pursuit of happiness. Sen. Dianne Wilkerson, D-Boston, drew upon her experience a black woman growing up in Arkansas, where the public hospital did not allow her mother to deliver her children.

"I know the pain of being less than equal and I cannot and will not impose that status on anyone else," a teary-eyed Wilkerson said. "I was but one generation removed from an existence in slavery. I could not in good conscience ever vote to send anyone to that place from which my family fled."

Supporters of a ban called for the Legislature to respect 3,000 years of tradition.

"Every society, every culture, every nation in all of recorded history, including Massachusetts, has up until this point at least defined marriage as one man and one woman," Finneran said.

Cape Cod Times staff writer Jack Coleman contributed to this story.



# Towns to sue state over gay unions

By **CONOR BERRY**  
STAFF WRITER

More than a dozen Massachusetts municipalities, including Provincetown and Nantucket, are expected to file suit against the state in Suffolk County Superior Court today, requesting immediate relief from an order requiring cities and towns to stop issuing marriage licenses to nonresident same-sex couples.

Yesterday in Boston, a month after the legalization of gay marriage in Massachusetts, lawyers for the American Civil Liberties Union and the Gay & Lesbian Advocates & Defenders announced two lawsuits, each seeking to overturn a 1913 state law they say is being used to discriminate against homosexuals.

The GLAD suit - Cote-Whitacre v. the Department of Public Health, named after Vermont couple Sandra and Roberta Cote-Whitacre, who were married in Provincetown last month - is being filed on

*"It's extraordinary for city and town officials to be so united."*

**SARAH WUNSCH**, ACLU lawyer

behalf of eight nonresident couples who either married in Massachusetts or were denied the right to wed by town clerks that heeded a cease-and-desist order from the state.

The May 21 order, issued by Attorney General Thomas F. Reilly, warned clerks not to grant marriage licenses to nonresident gay couples if they do not plan to reside in Massachusetts, because such unions would not be legal in those couples' home states.

The lawsuits seek injunctions against Reilly and other state officials, barring them from taking action against clerks who issue licenses to same-sex couples who do not plan to live in Massachusetts.

The lawsuits also ask the court to declare unconstitutional the 1913 state statute cited by Reilly and Gov. Mitt Romney as the reason why municipalities cannot issue licenses to nonresident gay couples.

Romney, an outspoken critic of same-sex marriage, is not a defendant in either suit. "He has no legal role. He's not an appropriate defendant," attorney Gretchen Van Ness said.

Provincetown hired Van Ness, an expert on gay-rights issues, to help the town implement November's landmark Supreme Judicial Court decision, which led to the legalization of gay marriage May 17.

ACLU lawyer Sarah Wunsch said her organization hired

Boston law firm Palmer & Dodge to act on its behalf. The firm is representing 13 municipalities in the lawsuit, including Provincetown and Nantucket. Van Ness will continue to represent Provincetown on same-sex issues and will work with Palmer & Dodge attorneys on the case.

"It's extraordinary, in a way, for city and town officials to be so united," Wunsch said of the multiparty suit, which includes Somerville, Springfield and Worcester.

Those municipalities, along with Provincetown, had openly defied state orders to stop issuing marriage licenses to nonresident couples. However, each municipality suspended that practice after state officials threatened "enforcement action" and possible fines and jail time for renegade town clerks.

Provincetown is the only municipality in Massachusetts that actually made it town policy to defy Reilly's order, according to Van Ness.

The state Department of Public Health and the state Registry of Vital Records and Statistics - and the heads of each of those agencies - are listed as defendants in the GLAD suit. Reilly is the subject of the ACLU suit.

Corey Wellford, spokesman for the attorney general, said Reilly's office would have no comment until it has a chance to review the lawsuit.

Lawyers for the plaintiffs argue the state Supreme Judicial Court's November ruling made it clear that homosexuals could not be denied the right to marry in Massachusetts. They also say the 1913 statute, contained in Section 11 of Chapter 207 of state law, is unconstitutional and unenforceable.

"Every single city and town is potentially liable for a civil rights violation for turning away a same-sex couple," Van Ness said.

Mary Bonauto, GLAD civil rights director, said: "We believe that Section 11 violates both



File: KEVIN MINGORA/Cape Cod Times

**Sandra and Roberta Cote-Whitacre of Vermont, seen May 17 in Provincetown after filing for a marriage license, are at the center of a lawsuit filed on behalf of eight gay couples protesting the Bay State order denying nonresident couples the right to marry in the state.**

the liberty and equality provisions of the Massachusetts Constitution. This was a law that clerks were instructed to ignore for decades, yet the governor pulled it off the shelves just to deny marriage to some gay and lesbian couples."

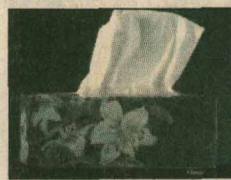




# COD TIMES

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## Staff infection



There are no easy answers at a small business when workers call in sick.  
**Business**  
**Tuesday /B-1**

**TODAY'S WEATHER**  
Mostly cloudy, lower 40s. **B-8**

Tuesday, February 10, 2004

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A10 ■ Cape Cod Times

## Divide: Lawmakers split on same-sex marriage ban

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decided, and three said they had no comment. Fifty-three did not respond.

There is probably nothing lawmakers can do to prevent the nation's first gay marriages from taking place May 17. The earliest the proposed amendment could end reach the ballot is November 2006.

That is because the proposal first needs to be approved by a majority of lawmakers in two successive legislative sessions, which in Massachusetts last for two years. That means a revamped Legislature would take up the issue after next fall's elections.

### Lobbying intense

Veteran Statehouse observers called the situation extremely fluid, with some lawmakers flipping under intense lobbying by members of the clergy, fellow politicians and gay-rights advocates. There's also the scrutiny of the national media and the fact that it is an election year.

"In 20 years of lobbying, I've never seen such a fluid issue," said Arline Isaacson, co-leader of the Massachusetts Gay and Lesbian Political Caucus. "There's such a high degree of emotion in this building and emotions are guiding legislators, who would rather be more thoughtful about this."

Supporters of the amendment said they were basing their position on personal beliefs and public opinion.

"Marriage has been a tradition for 3,000 years," said Rep. David Flynn, a Democrat. "I don't think you can change the laws of nature, and I don't think waiting a couple of years to see how people feel about it is the wrong thing to do."

Sen. Robert O'Leary, a Democrat whose Cape Cod district includes the gay mecca of Provincetown, said he will vote against the amendment.

"It's a civil-rights issue," he said. "I don't think we should be amending the state Constitution to narrow people's rights."

### Top leaders want ban

Both Republican Gov. Mitt Romney and Democratic House Speaker Thomas Finneran have

expressed their adamant support for the amendment. Most of the Republicans who responded were in favor of the amendment, but they occupy only 29 of the 200 legislative seats in the heavily Roman Catholic Legislature. (One seat is vacant.)

The Supreme Judicial Court issued its original ruling last November, saying gay couples have a right under the state Constitution to the benefits of marriage. Last week, the court clarified its ruling at the request of lawmakers who thought that Vermont-style civil unions might satisfy the court. But justices said only gay marriage would suffice.

It is far from certain that the Legislature will actually get to the gay-marriage issue tomorrow.

For one thing, it is eighth on the list of proposed amendments. Unless two-thirds of the Legislature votes to change its rules, seven other amendments will have to be debated first. In addition, several procedural steps could delay a final vote for several days.

As the hours ticked down to the convention, the competing sides held dueling news conferences yesterday.

Conservative organizations presented people claiming expertise who said that being gay is a choice, rather than a genetic decision, and argued that raising children in single-sex households is unhealthy.

Gay-rights advocates argued that it should not be left up to the voters to decide whether to deny a minority certain rights.

"We should not take the historic step of writing prejudice into the constitution," said Pam Wilnot, leader of Common Cause of Massachusetts. "Democracy is not always about sending something to a vote."

Meanwhile, a poll taken after last week's court opinion shows that by a 2-1 margin, Americans do not want laws in their states that would legalize gay marriages.

The National Annenberg Election Survey of 814 adults was conducted Feb. 5-8 and has a margin of sampling error of plus or minus 3 percentage points.

## Poll: Vote is split on gay marriage

■ Lawmakers vacillate over the amendment that would prohibit same-sex weddings.

By JENNIFER PETER  
THE ASSOCIATED PRESS

BOSTON — A survey shows a Legislature deeply divided over the proposed constitutional amendment to ban gay marriage in Massachusetts, where the nation's first legally sanctioned same-sex weddings could take place as early as May.

The 199 members of the House and Senate — all of whom are up for re-election in November — are scheduled to take up the volatile issue at a constitutional convention tomorrow.

The debate intensified last week when the state's high court declared that anything less than full-fledged marriage for gays would be unconstitutional. The opinion put Massachusetts lawmakers at the center of a political maelstrom that is being watched across the country and could play a role in the presidential race.

All of Massachusetts' legislators were contacted by telephone and e-mail by the AP after last week's Supreme Judicial Court opinion, and 146 responded. Of those, 61 said they would oppose the constitutional amendment, while 70 said they could support it. An additional 12 said they were un-

Please see **DIVIDE /A-10**



## **Romney may seek way to block May marriages**

BOSTON – Republican Gov. Mitt Romney hinted yesterday that he would join Democratic House Speaker Thomas Finneran in trying to block the issuance of gay marriage licenses until November 2006, when citizens may have a chance to vote on a constitutional ban on gay marriage.

Under a high court decision issued in November, gay couples will be allowed to marry in mid-May.

This would be more than two years before any constitutional ban could go before the voters for approval.

Before yesterday's constitutional convention, Romney said that he – like Finneran – was concerned about the legal chaos that would ensue if gay

couples were allowed to marry during the interim.

## **Record shows Kerry fought gay wedding ban**

WASHINGTON – Democratic presidential hopeful John Kerry, who opposes gay marriage and hints he might support a limited ban, just two years ago signed a letter with other congressional colleagues urging the Massachusetts Legislature to drop a constitutional amendment outlawing homosexual nuptials.

And when Kerry opposed federal legislation in 1996 that defined marriage as a union between a man and a woman, he compared the law to 1960s efforts in the South to criminalize interracial marriages and accused his supporters of engaging in the “politics of division.”

Kerry has left open the possibility he could support a Massachusetts ban on gay marriage if civil unions and other protections were an alternative.

## **Mass. constitution oldest in the world**

The Massachusetts Constitution, adopted in 1780, is the oldest still-governing written constitution in the world. It was the model for the U.S. Constitution, which was drafted seven years later.

It has been amended 120 times, most recently in 2000, when voters endorsed making the federal census the basis for legislative redistricting and also stripped voting rights from incarcerated felons.

The last time an amendment was rejected by voters was in 1986, when they were faced with a question regulating the

practice and public funding of abortions.

## **San Francisco mayor backs gay marriages**

San Francisco Mayor Gavin Newsom put California right in the middle of the fight over same-sex marriage Tuesday, saying he wants the city to try to find a way to issue marriage licenses to gay and lesbian couples in defiance of state law.

The San Francisco Chronicle reported that Newsom's plan would make San Francisco the first city in the state to allow gays and lesbians to marry and would almost certainly lead to legal challenges. That would force the California courts to determine whether barring same-sex couples from marrying is discriminatory and unconstitutional.

**FROM WIRE REPORTS**