

# State law prevails on gay marriage

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PROVINCETOWN – The town will temporarily suspend its policy of allowing nonresident same-sex couples who do not plan to live in Massachusetts from applying to marry in Provincetown.

Facing the possibility of legal action by the state, the town was the last of

four commonwealth communities to defy orders from Gov. Mitt Romney and Attorney General Thomas F. Reilly to stop issuing marriage licenses to out-of-state gay couples.

Although Provincetown has agreed to follow a cease-and-desist order issued Friday by Reilly, town officials and

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special town counsel Gretchen Van Ness maintain the order is based on a discriminatory state law that Romney, an ardent foe of gay marriage, is using to prevent nonresident gays and lesbians from marrying in Massachusetts.

Critics of that law, enacted in 1913 and which prohibits couples from marrying if the union would be illegal in their home state, say clerks in cities and towns have rarely, if ever, used the law to prevent nonresident heterosexual couples from applying for marriage licenses.

In a closed-door meeting Tuesday night, the selectmen voted to suspend Provincetown's policy of processing Notice of Intention of Marriage forms for nonresident couples who do not intend to reside in state.

The outcome of that vote was not officially announced until 1:20 p.m. yesterday, when it was posted on the town's Web site.

Provincetown joins Worcester, Somerville and Springfield, the three other municipalities that prior to this week had disregarded warnings from Romney and Reilly. Officials in the other communities earlier this week said they would comply with the order, making Provincetown the lone holdout.

## Policy reversal

Officials in Attleboro and Fall River Tuesday acknowledged they had also issued licenses to nonresident gay couples, but the number of licenses is believed to far less than the amount granted by the other four towns.

"We firmly believe that it is unlawful and unconstitutional to deny out-of-state, same-sex couples the right to marry in Massachusetts. The governor's last-minute policy change reverses decades of practice of welcoming out-of-state couples to Massachusetts who wish to marry here," Dr. Cheryl Andrews, chairwoman of the Provincetown selectmen, said yesterday in a statement.

"We were very disappointed

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to learn of the attorney general's opinion concerning Chapter 207, because it requires us to discriminate against a group of people in violation of the Declaration of Rights," Andrews said.

She was referring to the section of Massachusetts law that contains the 1913 statute that Romney, a Republican, and Reilly, a Democrat, have interpreted as prohibiting out-of-staters from marrying in the commonwealth if such unions would be illegal in their home states. Because same-sex marriage is illegal in all states but Massachusetts, unions performed here would violate the 1913 law, they have said.

Van Ness, a Boston attorney with expertise in gay and lesbian legal issues, said Provincetown is considering its next move and likely will offer its own interpretation of the 1913 law to the attorney general.

Reilly's "cease-and-desist letter," faxed to town hall Friday, asked town officials to inform the attorney general of the "reasoning" behind Provincetown's actions, and "that is an invitation that we're exploring," Van Ness said.

## Legal status unclear

She defended the town's so-called policy of defiance, which was fashioned on legal advice from attorneys at Kopelman & Paige, Provincetown's Boston-

based law firm.

The town "adopted the policy it thought was lawful," Van Ness said, noting that town officials had asked Reilly in March for his interpretation of Chapter 207, but "never received a response."

Meanwhile, the legal status of licenses granted to nonresident couples with no plans to live in Massachusetts remains unclear. Reilly and Romney have said that licenses issued to so-called Category 3 cases - out-of-state couples who do not live here - would be considered invalid. But many, including lawyers, are unsure how a nullification process would work, or when it might begin.

"I don't think anyone knows the answer to that question, and I think we're looking at a situation that's very much in flux," Van Ness said. "The folks who came to Provincetown certainly want to know."

The issue is of concern to Alfred D. McKinnon, who married his partner of 33 years, Yvan A. Carriere, in Provincetown last week.

"Yes, of course I'd be concerned," McKinnon, 61, of Southington, Conn., said in a telephone interview yesterday. "I hope it doesn't happen."

Coincidentally, McKinnon said, he and Carriere, 59, "got our (marriage) certificate in the mail today," the same day Provincetown announced its intention to stop issuing nonresident licenses.

## Lawsuit possible

McKinnon said he could not blame town officials for succumbing to legal pressure. "I think that the people in Provincetown - certainly the town clerk, the board of selectmen - have been heroic."

McKinnon and his partner have yet to be contacted by state officials regarding the status of their marriage.

"It will be interesting to see how the state of Massachusetts defends a law based on bigotry," he said, adding that he would consider joining a lawsuit against the commonwealth, de-

## GAY MARRIAGE NUMBERS

■ From May 17, the day gay marriage became legal in Massachusetts, through May 21, 217 same-sex couples filed intentions to marry with the Provincetown town clerk's office, according to the town's Web site.

■ Some 145 of those couples were Massachusetts residents, 58 are from out of state but intend to reside here, and 14 are nonresidents who do not intend to reside here.

pending on the scope of the suit and who represents the plaintiffs.

"If it were GLAD, and they needed me to, I would consider it," he said, referring to Gay and Lesbian Advocates & Defenders, the Boston-based organization whose attorney successfully represented gay couples in their suit against the state, resulting in the legalization of same-sex marriage.

As of yesterday, 33 same-sex marriage applications and three same-sex marriage certificates - all from out-of-state couples that do not plan to live here - have been forwarded to Attorney General Reilly for consideration, according to data from his office.

Reilly spokesman Corey Welford declined to comment on what the attorney general intends to do with the paperwork, forwarded to the state Department of Public Health by clerks in Provincetown, Worcester, Somerville and Springfield.

"These are forms referred to us by the DPH," Welford said, declining to say what action would be taken or if the state would move to nullify the unions.

When asked if same-sex marriage data from Attleboro or Fall River - two other communities that have issued licenses to nonresident gay couples - was available, Welford replied, "Not as of now. Nothing to report."

Reilly is now scrutinizing one Certificate of Marriage document and nine Notice of Intention of Marriage forms from Provincetown; 16 intention forms from Worcester; eight intention forms and one marriage certificate from Somerville; and one intention form from Springfield.