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Feb. 4: The ruling means gay marriages will be carried out in Massachusetts for months before the Legislature can act. NBC's Pete Williams reports.

MSNBC

Green light for gay marriages in Massachusetts

State's high court insists on full rights

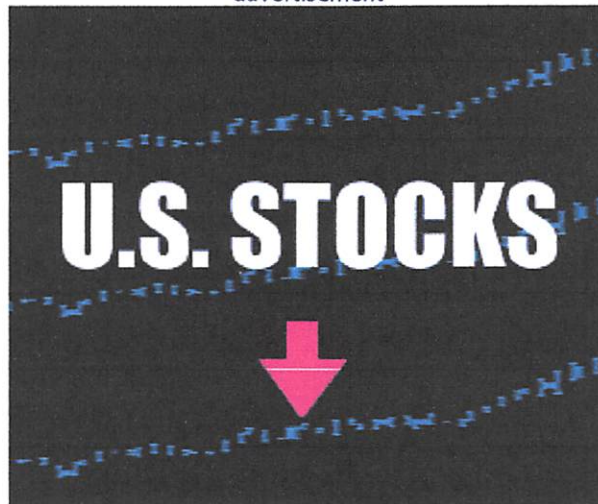
The Associated Press
Updated: 4:25 p.m. ET Feb. 04, 2004

BOSTON - The high court of Massachusetts ruled Wednesday that only full, equal marriage rights for gay couples, rather than civil unions, were constitutional, erasing any doubts that the nation's first same-sex marriages could take place in the state beginning in mid-May.

The state Supreme Judicial Court issued the opinion in response to a request from the state Senate about whether Vermont-style civil unions, which convey the state benefits of marriage, but not the title, would meet constitutional muster.

"The history of our nation has demonstrated that separate is seldom, if ever, equal," the four justices who ruled in favor of gay marriage wrote in the advisory

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opinion. A bill that would allow for civil unions but falls short of marriage would make for "unconstitutional, inferior, and discriminatory status for same-sex couples," they added.

Critics of gay marriage immediately attacked the ruling. "Today's decision ... leaves no doubt what is at stake in Massachusetts," said Tony Perkins, president of the Family Research Council, a religious activist group. "Either the institution of marriage will be protected, or it will be redefined out of existence."

At the White House, press secretary Scott McClellan called the ruling "deeply troubling."

"The president has always believed that marriage is a sacred institution between a man and a woman," he said. "He is firmly committed to protecting and defending the sanctity of marriage."

Constitutional convention

The much-anticipated opinion sets the stage for a constitutional convention next Wednesday, at which the Legislature will consider an amendment that would legally define marriage as a union between one man and one woman. Senate President Robert Travaglini had said the vote would be delayed without the opinion.

The soonest a constitutional amendment could end up on the ballot would be 2006, meaning that until then, the court's decision will be Massachusetts law no matter what is decided at the constitutional convention.

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• **Attorney: No denial of gay marriage rights**

Feb. 3: Mary Bonauto, the attorney for the plaintiffs in the gay marriage lawsuit, reacts to the ruling.

MSNBC

"We've heard from the court, but not from the people," Republican Gov. Mitt Romney said in a statement. "The people of Massachusetts should not be excluded from a decision as fundamental to our society as the definition of marriage."

Travaglini said he wanted time to talk with fellow senators before deciding what to do next.

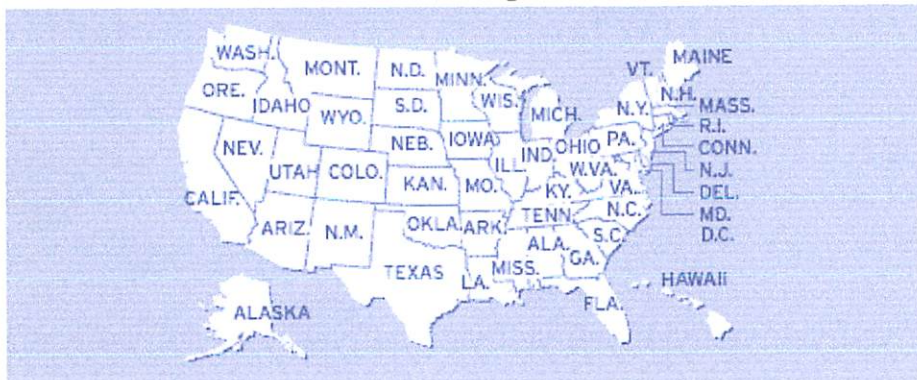
"I want to have everyone stay in an objective and calm state as we plan and define what's the appropriate way to proceed," Travaglini said.

Conservative leaders said they were not surprised by the advisory opinion and vowed

to redouble their efforts to pass the constitutional amendment.

Mary Bonauto, an attorney who represented the seven couples who filed the lawsuit, said she anticipated a fierce battle. "No matter what you think about the court's decision, it's always wrong to change the Constitution to write discrimination into it," she said.

STATE-BY-STATE Same-sex marriage laws



In 1996, the federal government passed the Defense of Marriage Act, which defines a marriage as a union between a man and a woman. It also permits states to deny recognizing a same-sex marriage in any state. Such laws have been passed by 37 states. Click a state to learn more.

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National reaction

When it was issued in November, the 4-3 ruling set off a firestorm of protest across the country among politicians, religious leaders and others opposed to providing landmark rights for gay couples to marry.

President Bush immediately denounced the decision and vowed to pursue legislation to protect the traditional definition of marriage. Church leaders in the heavily Roman Catholic state also pressed their parishioners to oppose efforts to allow gays to marry.

And legislators were prepared to vote on a proposed amendment to the state constitution that would seek to make the court's ruling moot by defining as marriage as a union between one man and one woman, expressly making same-sex marriages illegal in Massachusetts.

What the case represented, both sides agree, was a significant milestone in a year that has seen broad new recognitions of gay rights in America and Canada and abroad, including a U.S. Supreme Court decision in June striking a Texas ban on gay sex.

Gray areas remain

Legal experts, however, said the long-awaited decision, while clearly stating that it was unconstitutional to bar gay couples from marriage, gave ambiguous instructions to the Legislature.

Lawmakers remained uncertain whether civil unions went far enough to live up to the court's ruling or whether actual marriages were required.

When a similar decision was issued in Vermont in 1999, the state's high court told the Legislature that it could allow gay couples to marry or create a parallel institution that conveyed all the state rights and benefits of marriage. The Legislature chose the second route, leading to the approval of civil unions.

The Massachusetts decision made no mention of an alternative, but it instead pointed to a recent decision in the Canadian province of Ontario that changed the common law definition of marriage to include same-sex couples and led to the issuing of marriage licenses there.

The state "has failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples," the court wrote. "Barred access to the protections, benefits and obligations of civil marriage, a person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions."

Background to case

The Massachusetts case began in 2001, when seven gay couples went to their city and town halls to obtain marriage licenses. All were denied, leading them to sue the state Public Health Department, which administers the state's marriage laws.

A Suffolk Superior Court judge threw out the case in 2002, ruling that nothing in state law gave gay couples the right to marry. The couples immediately appealed to the Supreme Judicial Court, which heard arguments in March.

The plaintiffs argued that barring them from marrying partners of the same sex denied them access to an intrinsic human experience and violated basic constitutional rights.

Over the past decade, Massachusetts' high court has expanded the legal parameters of the family, ruling that same-sex couples can adopt children and devising child visitation right for a former partner of a lesbian.

Massachusetts has one of the highest concentrations of gay households in the country, at 1.3 percent of the total number of coupled households, according to the 2000 Census. In California, 1.4 percent of the coupled households are occupied by same-sex partners. Vermont and New York also registered at 1.3 percent, while in Washington, D.C., the rate is 5.1 percent.

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