

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 1:09-cv-10309

NANCY GILL & MARCELLE LETOURNEAU,)
MARTIN KOSKI & JAMES FITZGERALD,)
DEAN HARA,)
MARY RITCHIE & KATHLEEN BUSH,)
MELBA ABREU & BEATRICE HERNANDEZ,)
MARLIN NABORS & JONATHAN KNIGHT,)
MARY BOWE-SHULMAN &)
DORENE BOWE-SHULMAN,)
JO ANN WHITEHEAD & BETTE JO GREEN,)
RANDELL LEWIS-KENDELL, and)
HERBERT BURTIS,)

Plaintiffs,)

v.)

OFFICE OF PERSONNEL MANAGEMENT,)
UNITED STATES POSTAL SERVICE,)
JOHN E. POTTER, in his official capacity as)
the Postmaster General of the United States of)
America,)
MICHAEL J. ASTRUE, in his official capacity)
as the Commissioner of the Social Security)
Administration,)
ERIC H. HOLDER JR., in his official capacity)
as the United States Attorney General, and)
THE UNITED STATES OF AMERICA,)
Defendants.)

JOINT AFFIDAVIT OF MARY AND DORENE BOWE-SHULMAN



Mary Bowe-Shulman (“Mary”) and Dorene Bowe-Shulman (“Dorene”), being duly sworn, hereby depose and say as follows:

1. Mary and Dorene: We have been a committed couple for 13 years, since 1996. We were legally married at our home in Somerville, Massachusetts on May 23, 2004, with our two daughters by our side. We married as soon as we were able, within the first week that marriage became available to us in Massachusetts. It was very meaningful for us, and for our families, that we were able to legally wed.

2. Mary and Dorene: On August 9, 1997, before we were able to legally marry, we held a commitment ceremony that was attended by family and friends. It was very special to us and it signified our lifelong bond.

3. Mary and Dorene: We have two daughters. Emma is 10 years old and Olivia is 7 years old. Our daughters attend the Acton public schools, where we currently live. They are active in town soccer, softball, dance, community theater, Brownies and Hebrew School.

4. Mary and Dorene: We first lived together in a two-family home in Somerville, and Mary’s mother lived with us there for part of the year, too.

5. Mary and Dorene: In 2005, we bought a single family home in Acton. Our Acton home includes an in-law apartment that we had renovated so that Mary’s

mother could live with us there, too. Mary's mother lives with us for approximately 3-4 months per year, and spends the remaining months in Florida.

6. Mary: I am an attorney employed by the Commonwealth of Massachusetts. I work for the Appeals Court as a Staff Attorney. I have worked there for 16 years.

7. Dorene: I am self-employed as a licensed acupuncturist. I also teach acupuncture courses. Prior to becoming an acupuncturist, I worked as a database manager for several non-profit organizations in the Boston area. While our children are young, Mary and I have decided that I should work part-time so I can be at home with them.

8. Dorene: Before we were legally married, getting health insurance coverage for me was a struggle and a source of stress. I am a two-time cancer survivor, and my mother died young of cancer. For years, we had to cobble together health insurance coverage because I could not be covered by Mary's employer-based plan despite the fact that Mary was already paying for a family plan that covered our children. There were times when I was not sure if I would continue to have adequate coverage and that caused us worry.

9. Mary: Immediately after our legal marriage, I added Dorene to our family health insurance plan provided by my employer, the Commonwealth of Massachusetts. Our two daughters had already been on my family health insurance plan, but Dorene was not eligible until after our marriage.

10. Mary: Several months after I added Dorene to my family plan, I received a paycheck that was approximately \$1,000 less than my regular paycheck. I was very

alarmed and called my Human Resources representative. During that call, I learned that I was obliged to pay federal income taxes on the value of Dorene's health insurance coverage because of DOMA.

11. Mary: The first decreased paycheck I received represented the cumulative effect of several months of this federal taxation. Subsequently, additional imputed income was added to each of my bi-weekly paychecks, forcing me to pay higher federal income taxes. The amount of added income varies each payroll year, and currently it is \$262.28 per bi-weekly pay period.

12. Mary and Dorene: DOMA has increased the amount of federal income tax that we pay. We file our state income tax return with the Commonwealth of Massachusetts as Married Filing Jointly, but, under DOMA we are required to file separate federal income tax returns as though we are unmarried.

13. Mary: Each year since our marriage in 2004, I have filed my federal income tax returns using the "Head of Household" filing status, even though I am legally married. Also, each year since our marriage the value of Dorene's health insurance has been added to my federally taxable income, resulting in higher federal income taxes paid by me than I would pay if our marriage was recognized. Employer-sponsored health insurance for spouses is not normally taxed.

14. Dorene: Each year since our marriage in 2004, I have filed my federal income tax return using the "Single" filing status. This makes me uncomfortable, because I know that I am married and that I have two children with Mary. It makes me feel like we are a fractured family because we cannot all be represented on one federal income tax return.

15. Mary and Dorene: In 2006, we paid \$3,332 more in federal income tax than we would have paid had we been permitted to file as Married Filing Jointly. Also, if we would have been permitted to file as Married Filing Jointly, Mary would not have had to pay federal income tax on imputed income attributable solely to the value of Dorene's spousal health insurance.

16. Mary and Dorene: After paying our 2006 federal income taxes in full, we submitted an amended federal income tax return for 2006 on IRS Form 1040X, changing our filing status from Mary filing as Head of Household and Dorene filing as Single, to the two of us filing together as Married Filing Jointly. In our 2006 amended federal income tax return, we also excluded the imputed income attributable to the value of Dorene's spousal health insurance, since employer-sponsored health care benefits provided to an employee's spouse are not taxable under the Internal Revenue Code.

17. Mary and Dorene: Our 2006 amended federal income tax return included a claim for refund in the amount of \$3,332.

18. Mary and Dorene: With our 2006 IRS Form 1040X amended federal income tax return and refund claim, we attached the Form 8275, Disclosure Statement and 8275-R, Regulation Disclosure Statement to explain our changes to our originally filed federal income tax returns.

19. Mary and Dorene: The Explanation of Changes, Form 8275 Disclosure Statement and Form 8275-R, Regulation Disclosure Statement states:

**Attachment To Form 1040X, Part II, Explanation of Changes
Form 8275, Disclosure Statement
Form 8275-R, Regulation Disclosure Statement
2006 Tax Year**

REFUND CLAIM BASED ON UNCONSTITUTIONALITY OF THE “DEFENSE OF MARRIAGE ACT”

The taxpayer, Mary Bowe, ID #[###-##-####], a spouse in a same-sex couple, was married under the laws of the Commonwealth of Massachusetts as of December 31, 2004. For the tax year of this amended return, the taxpayer filed a joint Massachusetts income tax return with her spouse as a married couple. However, in accordance with the federal law known as the Defense of Marriage Act (“DOMA”), the taxpayer filed an individual, federal income tax return as though she was unmarried. The taxpayer believes that being required to file as though she is unmarried amounts to unequal treatment compared to other married persons in Massachusetts. The taxpayer believes that her marriage, which is valid under Massachusetts law, should be respected for federal tax purposes, just like the Massachusetts marriages of heterosexual couples. Although this position is contrary to DOMA, the taxpayer believes that DOMA is unconstitutional and that she should be allowed to file this amended joint return with her spouse and receive the refund shown herein.

Further, the taxpayer believes that she should not be taxed on the value of employer-based health care benefits provided to her spouse, when such benefits would be excluded from federal income tax if the taxpayer were in a heterosexual marriage. In accordance with DOMA, the taxpayer’s federal W-2 issued by her employer included as additional taxable income the value of the employer-based health care benefits provided to her spouse. Because the taxpayer believes that DOMA is unconstitutional and that the value of employer-based benefits provided to her spouse should be excluded from income, just as it would be for heterosexual couples, this amended return reflects such exclusion. For the aforementioned reasons, the adjusted income reported on this amended return is necessarily inconsistent with the federal wages reported on the taxpayer’s federal W-2.

If the taxpayer were able to file as married filing jointly and to exclude the value of employer-based health care benefits provided to her spouse, such a filing status would decrease federal tax from \$5,860 to \$2,542. The taxpayer previously paid \$5,860 in federal income tax in her original return for this taxable year.

As a result of these adjustments, the amount of overpayment is \$3,332.

20. Mary and Dorene: In early October 2009, we received a letter from the IRS, by certified mail, disallowing our amended return and refund claim for 2006. The IRS letter stated that “We are unable to process your claim for the tax period(s) shown above. As yet, the federal government does not recognize same sex marriages.”

21. Mary and Dorene: The money we overpaid in federal income taxes, and that we continue to overpay, would be very helpful to our family budget. It could go into household savings or be saved towards our daughters' educational expenses. Also, Emma and Olivia both enjoy extracurricular activities, and we have had to cut back on some of them recently due to cost.

22. Mary: I am also upset that, because of DOMA, Dorene cannot be on my FSA account. Dorene is the one with the potential for greater medical expenses that might not always be covered by our health insurance. If Dorene could be on my FSA, just as our children are and as other spouses typically are, we would have additional tax savings that could help our family.

23. Mary and Dorene: There is always an extra burden that we face, especially when handling even routine financial issues. Because we have to keep everything artificially separate for tax purposes, we are always extra-cautious about everyday things such as who signs certain checks. Other intact families don't have to be so cautious and worried, either one can pay because everything ultimately ends up on one joint income tax return anyway.

Signed under the pains and penalties of perjury on this 12th day of November, 2009.

/s/ Mary Bowe-Shulman

Mary Bowe-Shulman

/s/ Dorene Bowe-Shulman

Dorene Bowe-Shulman

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 17, 2009.

/s/ Gary D. Buseck
Gary D. Buseck