

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION  
NO. 1:09-cv-10309

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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. )

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AFFIDAVIT OF HERBERT BURTIS



I, Herbert Burtis, being sworn, hereby depose and say as follows:

1. I am 79 years old and a resident of Sandisfield, Massachusetts.
2. I am a musician, and currently teach music to private students and as an adjunct professor at Smith College.
3. I met John Ferris (“John”) in 1948 while we both attended Michigan State University. John had interrupted his college career to join the United States Army, and left military service in 1947 and returned to college. We were brought together by our mutual interest in classical music and we both had long careers as musicians.
4. We moved from Michigan to New York City after John was accepted into a graduate program at the School of Sacred Music of Union Theological Seminary. I transferred to Columbia University, where I received my degree, to be closer to John. In New York City, I worked part-time as the associate organist and choirmaster at St. Paul’s Chapel, Columbia, while pursuing my own graduate studies at Union Theological’s School of Sacred Music. During this time, John worked as the choirmaster and organist at a church in New Jersey.
5. In 1958, John left New York to become Harvard University’s Choirmaster and University Organist, a position he held for 32 years. During his time there, he was editor of the Harvard Hymnal, and integrated the previously all-male choir into a mixed

choir of men and women for the first time in Harvard's history. He also taught at the Harvard Divinity School and at Boston University.

6. When John took the job at Harvard, I left my job at Columbia University and assumed John's former position at the church in New Jersey.

7. We maintained our relationship even as we had to commute. In 1961, we purchased our home in Sandisfield, Massachusetts, so that we could be together when we did not have work responsibilities.

8. In 1979, I left my church position in New Jersey and moved to Arlington, Massachusetts so that John and I could begin living together full time once more. During this time, I gave private music lessons to students at Harvard and at studios I maintained in New York City and in New Jersey.

9. In 1990, at age 64, John retired from Harvard University and began to collect Social Security benefits based on his own work record after working his entire adult life. At age 62, I began to collect Social Security benefits based on my own lifetime work record.

10. Even though we were "retired," we were both deeply involved in teaching music and lecturing. John also took over the directorship of a choir at a nearby church in Connecticut. I continued teaching and maintained studios in New York City and New Jersey until 2005.

11. John's health began to deteriorate in 1990. He was diagnosed with Parkinson's disease in 1992. We worked and traveled as much as we could consistent with taking care of John's health needs. As time went on, John was able to do less and less, and I did more and more.

12. We were married by a justice of the peace at our home in Sandisfield, on May 23, 2004. After 55 years together, we believed we were already a family, but with John's failing health, we hoped that marriage would increase our legal protections and that I would be included on John's medical insurance from Harvard. That never happened.

13. John's longstanding struggle with Parkinson's disease intensified considerably in 2005. I had to make "911" calls a number of times, as John developed infections and other conditions requiring repeated hospitalizations up through the time of his death in 2008. I was his principal care-provider at home, tending to his personal and medical needs, arranging for medical treatments and hospitalizations, and dealing with the many emergencies, medication questions, and other issues that arose as John's condition worsened.

14. We both wanted John to be at home as much as possible, so I made the house as safe and comfortable as it could be for someone who had such difficulty standing or walking. I tended to all of his personal needs, helped with medications and monitored his condition at all times. I carried him about the house as much as I could, but eventually injured myself doing so. I created devices to keep him from falling if I had to leave the room. I hired health aids to assist me part of the time, but I was the one responsible for him 24/7 over the last three years of his life.

15. John had a stroke at home on July 3, 2008. He then went back and forth between the hospital emergency room and a nursing home. He died on August 1, 2008 at the Great Barrington Nursing and Rehabilitation Center in Great Barrington, Massachusetts, at age 82.

16. When John died, I had been in a committed relationship with him for 60 years and had been married for more than four. His death has left a hole in me that will never again be filled. It has also taken time for me to regain my health after years of operating what John and I referred to as our “one bed nursing home.”

17. As I began to put my financial house in order, I applied to the Social Security Administration (“SSA”) for the “One-Time Lump-Sum Death Benefit” of \$255 normally available upon the death of a spouse through Social Security. I also applied for the Social Security survivor benefit normally available to a surviving spouse whose own Social Security payment is lower than that of the deceased spouse. The survivor benefit would increase my monthly Social Security payment by approximately \$700 per month, to the level of the monthly payment John received before his death.

18. My applications were denied, and by letter dated January 20, 2009, SSA informed me that my request for reconsideration had also been denied. I later entered into Expedited Appeals Process (EAP) agreement with SSA.

19. In my 79 years, I have not talked very much about my sexual orientation, and that’s worked out for me. In my 60 years with John, it was not all moonlight and roses, but we stuck by each other through everything as spouses do.

20. I think equality under law is a very important part of the American system. I know many widows who are eligible for the surviving spouse benefit and it makes an enormous difference to them. The widower’s benefit would to me, too, helping me pay my Medicare Part B coverage, as well as my asthma and high blood pressure medications. DOMA tells me that my marriage doesn’t count, and I think that makes my

marriage lesser and my country a lesser entity. I simply believe I should be treated like the surviving spouses of other married people.

Signed under the pains and penalties of perjury this 6<sup>th</sup> day of November, 2009.

/s/ Herbert Burtis

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Herbert Burtis

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

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Gary D. Buseck