

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 RITCHIE AND KATHLEEN BUSH



Kathleen Bush (“Kathy”) and Mary Ritchie (“Mary”), being duly sworn, hereby depose and say as follows:

1. Mary and Kathy: We have been a committed couple since 1990 and recently celebrated our 19th anniversary together. We live in Framingham, Massachusetts in a home we bought together in 1991.

2. Mary and Kathy: We married because a “marriage” is what we felt described the commitment and permanence in our relationship with each other. We married on the first weekend after marriage became available, on May 22, 2004. Our children, families and friends witnessed and celebrated with us. We have now been legally married for over 5 years.

3. Mary and Kathy: We are close with both of our large extended families, nearly all of whom live nearby. Between us, we have 10 brothers and sisters, and 15 nieces and nephews, along with 3 of our parents.

4. Mary: I have been with the Massachusetts State Police for 21 years. I graduated from the Police Academy in 1988 and joined the Massachusetts State Police as a Trooper that year. In 2005, I was promoted to Sergeant. In 2008, I qualified for a promotion to Lieutenant and am awaiting that appointment. Currently, I supervise major

crime scenes and crime scene forensics at one of the state's seven labs accredited by the Society of Crime Laboratory Directors.

5. Kathy: I am a college graduate and concentrated on the social sciences. For 15 years before taking leave to care for our children, I worked for the New England Journal of Medicine in sales and marketing.

6. Mary and Kathy: We decided that one of us would stay home when our children were born, so Kathy stopped working when our son Ryan, now 10, was born on January 13, 1999. We welcomed William, our second son, into our family 8 years ago on May 25, 2001.

7. Mary and Kathy: Our sons attend the local public schools. Both boys enjoy legos, soccer, baseball, and basketball. At school, Ryan particularly enjoys math and science, and he is learning to play the saxophone. William enjoys wrestling, art and is learning to play the drums.

8. Kathy: I try to keep our family connected when Mary works as well as all of those other times – day and night - when she is called in for emergencies or summoned to a crime scene. I have volunteered in our sons' school for years. I still read in the classroom, work in the library, and currently serve as Vice President of the PTO, an organization I joined when Ryan started kindergarten. In recent years, as a PTO Executive Board member, I have helped manage the budget and oversee fundraising for school programs.

9. Kathy: Being married to a State Trooper brings a special set of worries. I am aware every time I say goodbye to Mary that it could be the last time I do so.

10. Mary: We have purchased extra life insurance on my life because if I am killed in the line of duty, Kathy will not have access to the same benefits that other spouses of law enforcement officers receive under the federal Public Safety Officer Benefit laws. Although the death benefit would go to our children, Kathy would not necessarily be free to use it in the ways that she thinks best for the family under the difficult circumstances – as she would be able to do if it were paid directly to her as my spouse. Moreover, Kathy would not be eligible for the educational benefit that allows surviving spouses to re-train and get a job to support the family. The different treatment of my marriage is caused by DOMA.

11. Mary: DOMA has also increased the amount of federal income tax we have to pay. I claim the two children as my dependents, and I also claim Kathy as my dependent since she does not earn any income. But Kathy is not my “dependent,” she is my spouse. It feels shameful, secretive and degrading not to be able to identify her as my spouse on the federal income tax forms.

12. Mary and Kathy: For the tax years since our marriage, that is from 2004-2008, we submitted amended federal income tax returns to the IRS, on IRS Form 1040X, changing our filing status from Mary filing as Head of Household to both of us filing together as Married Filing Jointly.

13. Mary and Kathy: Each of our amended federal income tax returns to the IRS included a claim for refund. We requested refunds as follows:

- In 2004: \$1,054
- In 2005: \$2,703
- In 2006: \$4,390

- In 2007: \$ 6,371
- In 2008: \$4,548

14. Mary and Kathy: Each time we filed an amended federal income tax return, we attached to the IRS form 1040X an additional Form 8275, Disclosure Statement and the 8275-R, Regulation Disclosure Statement explaining our changes to the originally filed federal income tax return.

15. Mary and Kathy: For the 2004 tax year, the Attachment states:

**Attachment To Form 1040X, Part II, Explanation of Changes
Form 8275, Disclosure Statement
Form 8275-R, Regulation Disclosure Statement
2004 Tax Year**

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

The taxpayer, Mary E. Ritchie, 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.

In particular, if the taxpayer were able to file as married filing jointly, such a filing status would affect the following adjustments:

The federal tax as decreased from \$5,331 to \$4,277.

The taxpayer previously paid \$5,331 in federal income tax in her original return for this taxable year.

As a result of these adjustments, the amount of overpayment is \$1,054.

16. Mary and Kathy: With each successive amended federal income tax return and refund claim filed, we included the same Explanation of Changes and Disclosure Statement Attachment described above, except that the tax year, amount of federal income tax paid and amount of refund claimed were adjusted to reflect the proper tax year.

17. Mary and Kathy: We also received letters from the IRS disallowing our refund claims for 2004-2007. For example, in 2004, under the heading “Why We Cannot Allow Your Claim,” the IRS stated that: “[t]he Federal Government does not recognize same sex marriages and differs with Massachusetts on this point.” In 2005, the letter simply said, “The Federal Government does not recognize same sex marriages.” For our 2006 taxes, the IRS said “[c]urrent federal law does not recognize same sex marriage even if legally constituted by a sovereign state.” In 2007, the IRS reply stated “[f]or federal tax purposes, a marriage means only a legal union between a man and a woman as husband and wife.”

18. Mary and Kathy: We expect our pending amended return for tax year 2008 to be rejected as well.

19. Mary: Because we have not been able to file our federal income tax return as married filing jointly, and instead I have filed as a “head of household,” we have paid a total of \$19,066 more in federal income taxes than other married couples in identical circumstances from 2004 through 2008.

20. Mary and Kathy: We both would like to save for retirement, especially since Kathy is not earning money now in order to care for our children and manage the household given the demands of Mary’s job.

21. Mary: Because Kathy has sacrificed her career in order for me to keep mine and also be at home with our children when I am away on police work, I would like to contribute funds to a 'spousal IRA' for Kathy and contribute to her and our retirement security in the future. Yet, I am unable to contribute to a spousal Individual Retirement Account (“IRA”) for Kathy as other working spouses may do for their non-earning spouses. Specifically, due to our inability to file federal income tax returns as Married Filing Jointly, I cannot take the allowable tax deduction for any contribution to Kathy’s IRA account, even though other working spouses can take the same deduction. Nor can I contribute on a tax-advantaged basis to Kathy’s IRA as is ordinarily permitted for spouses under Section 219(c) of the Internal Revenue Code, as amended (“I.R.C.”).

22. Mary and Kathy: We are careful with our money and have enough to live on. All the same, we would prefer that the extra federal income tax monies we have paid to go instead to supporting our children’s lessons and sports fees, as well as savings for college and our own retirement. We expect this tax burden to carry on for another decade until our children are raised and it could be longer.

23. Mary and Kathy: Apart from all of the financial issues caused by DOMA, we feel like it undermines our marriage when compared to others, and therefore undermines our own security as a family. Even ordinary transactions like refinancing our house requires us to sit down and explain our situation as a couple who are married, but yet unmarried at the federal level. We still encounter people who think our marriage isn’t real, or that there are really two kinds of marriages, those in Massachusetts and those in the rest of the country.

Signed under the pains and penalties of perjury on this 8th day of November,
2009.

/s/ Mary Ritchie

Mary Ritchie

/s/ Kathleen Bush

Kathleen Bush

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