

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.)

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The Plaintiffs respectfully move, pursuant to Fed. R. Civ. P. Rule 56(a), for summary judgment in their favor as to all of the counts asserted in the Plaintiffs' First Amended and Supplemental Complaint.

In support of this motion for summary judgment, the Plaintiffs rely upon the following documents that are being filed simultaneously with this motion:

- (1) Plaintiffs' Statement of Undisputed Facts Pursuant to Local Rule 56.1 in Support of Plaintiff's Motion for Summary Judgment;
- (2) a Separate Statement of Non-Adjudicative Facts for Purposes of Determining the Level of Scrutiny for Plaintiffs' Equal Protection Claim;
- (3) a Memorandum of Law in Opposition to Defendants' Motion to Dismiss and in Support of Plaintiffs' Motion for Summary Judgment;
- (4) the Joint Affidavit of Nancy Gill and Marcelle Letourneau;
- (5) the Joint Affidavit of Martin Koski and James Fitzgerald;
- (6) the Affidavit of Dean T. Hara;
- (7) the Joint Affidavit of Mary Ritchie and Kathleen Bush;
- (8) the Joint Affidavit of Melba Abreu and Beatrice Hernandez;
- (9) the Joint Affidavit of Marlin Nabors and Jonathan Knight;
- (10) the Joint Affidavit of Mary and Dorene Bowe-Shulman;
- (11) the Joint Affidavit of Jo Ann Whitehead and Bette Jo Green;
- (12) the Affidavit of Randell Lewis-Kendell;
- (13) the Affidavit of Herbert Burtis;
- (14) the Affidavit of Michael Lamb, Ph.D.;
- (15) the Affidavit of Gary M. Segura, Ph.D.;
- (16) the Expert Affidavit of Gregory M. Herek, Ph.D.;
- (17) the Expert Affidavit of George Chauncey, Ph.D.; and
- (18) the Affidavit of Gary D. Buseck.

The reasons for granting the Plaintiffs' motion are set forth in full in the Plaintiffs' Memorandum of Law identified as Document (3) above.

CERTIFICATE UNDER LOCAL RULE 7.1(A)(2)

I hereby certify that I have conferred with counsel for the Defendants, Mr. Scott Simpson, with respect to this motion and that, after a good faith attempt, we were unable to resolve or narrow the issues raised by the motion.

REQUEST FOR ORAL ARGUMENT

The Plaintiffs believe that oral argument will assist the Court in the resolution of the significant constitutional, and other, issues presented by this motion. Therefore, the Plaintiffs request oral argument.

Respectfully submitted,

/s/ Gary D. Buseck
Gary D. Buseck

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DATED: November 17, 2009

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