

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 MELBA ABREU AND BEATRICE HERNANDEZ



Melba Abreu and Beatrice Hernandez, being duly sworn, hereby depose and say as follows:

1. Melba and Beatrice: We have been a committed couple since 1987 and married in Massachusetts in May 2004, after 17 years together. This month of November we celebrate our 22nd anniversary and have been married legally for over 5 years.

2. Melba and Beatrice: We moved to Massachusetts from Florida in 1992. We lived in Brighton, Massachusetts for 17 years, and recently moved nearby when we purchased a condominium in July 2009.

3. Melba: I am 54 years old and have an educational background in accounting and architecture. Since 2007, I have worked as the chief financial officer for a rapidly growing non-profit organization located in Boston that works on educational and workforce advocacy and reform. I previously worked for many years at Harvard University as a financial professional.

4. Beatrice: I am 48 years old and have an educational background in design, technology, and architecture. I am in the process of founding my own web design practice. The company is presently in its initial stages and generates no income. I am also pursuing my passion for writing and am currently in the process of working on a

book of poetry in English and a collection of short stories in Spanish. Before transitioning into these ventures, I worked for a number of years at Harvard University as an administrator. I left the university in order to independently pursue career development and to maintain our household given that Melba faces so many demands with her work. Due to the recent purchase of our home and the added financial responsibilities of home ownership, I am now actively seeking a return to the workplace and am placing on hold the continuing development of my practice.

5. Beatrice: My parents left Cuba to come to America shortly before I was born. In so doing, they left everything behind – the accomplishments of their work and that of the generations before them. They sacrificed to ensure a future of opportunity and prosperity for their children. For me, the American dream is the dream of all Americans to have a level playing field, a government of laws and an economic system in which people can count on enjoying the fruits of their labor without government interference. Like any other American, I want to provide for my family and our future.

6. Melba: I left Cuba at age 26 in a search of both freedom and prosperity. For me, it is responsible to work hard, and important to know that the rewards of that work will protect my family. I work to ensure the well-being of our present and future years, with a goal that we may never need to depend on anyone, not even our government. This is of great importance to Beatrice and I.

7. Melba and Beatrice: Our experience of the federal Defense of Marriage Act (“DOMA”) is that the government denies the validity of our civil marriage and in so doing, disrespects the reality of our marital status, altering our security in the process.

We recognize the importance of having our federal government treat all those who marry equally. We live with the results of that non-recognition and denial.

8. Melba and Beatrice: DOMA prevents us from correctly stating our civil status as married, effectively forcing us to misrepresent our civil status at the federal level. It is incorrect to say that we are not married on official government forms given our legal marriage to one another. This feels perilous for us as responsible and law-abiding Americans, and we find it impossible to reconcile this contradiction. Melba: As a CFO, I am particularly aware of the need to be accurate in one's statements, especially in the forms filed with the federal government.

9. Melba and Beatrice: Since marrying in 2004, we have filed our state income tax returns with the Commonwealth of Massachusetts as Married Filing Jointly. We are forbidden by DOMA from doing so for our federal income tax returns. Melba: What this means is that I file and pay federal income tax returns as though I am "single" rather than acknowledging my married household. Beatrice: Beginning in 2004, I have had no income and have not been required to file any federal income tax return.

10. Melba: For each tax year since our marriage, that is 2004-2008, I prepared and paid our federal income taxes as DOMA requires.

11. Melba and Beatrice: For the tax years 2004-2008, we have also submitted to the IRS an amended federal income tax return on IRS Form 1040X, with requests for refunds representing the difference between what Melba paid as a single filer and what we would have paid as joint filers.

12. Melba and Beatrice: With each amended federal income tax return and refund claim, we attached a Form 8275, Disclosure Statement and 8275-R, Regulation

Disclosure Statement in order to explain the changes to the originally filed federal income tax return. For 2004, we provided the following:

**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, Melba Abreu, 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 \$16,306 to \$11,619. .

The taxpayer previously paid \$16,306 in federal income tax in her original return for this taxable year. As a result of these adjustments, the amount of overpayment is \$4,687.

13. Melba and Beatrice: 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.

14. Melba and Beatrice: However, for each tax year, the IRS disallowed our refund claims. For our 2004 refund claim, under the heading “Why We Cannot Allow Your Claim,” the IRS stated that: “Same sex marriages are not recognized at the Federal level.” The other denials were similar. We expect the same disallowance of our pending 2008 refund claim.

15. Melba and Beatrice: Because DOMA requires Melba to file our federal income tax returns as single rather than allowing us to file as married filing jointly, we have paid more in federal income taxes than other married couples like us. The extra income taxes paid are as follows:

- tax year 2004: \$4,687 more in federal income tax;
- tax year 2005: \$3,785 more in federal income tax;
- tax year 2006: \$5,546 more in federal income tax; and
- tax year 2007: \$5,697 more in federal income tax,

for a total of \$ 19,715 in just four tax years. Assuming our 2008 refund claim is denied in the amount of \$5,644, the total in additional tax payments will be \$25,359.

16. Melba and Beatrice: As American citizens seeking equitable treatment, we would pay more in taxes if our incomes required it, so long as we are paying based on a filing status that is consistent with our civil status as married persons.

17. Melba and Beatrice: Because of DOMA, any time federal law intersects with our lives and marriage, we are put at a disadvantage and routine matters become complicated. In connection with our recent condominium purchase, we will be unable to benefit from the federal government’s first-time home buyer credit of \$8,000, despite the facts that we are first time home buyers and our purchase has helped to stimulate the

economy. In addition to our real estate attorney, we had to incur the cost and seek the counsel of an estate planning lawyer. We had to think ahead to how our financial circumstances might change over the rest of our lives, and to the certainty of death, and then factor in how with DOMA, we would not be able to pass our estates to one another without tax complications as federally respected spouses may do. All of this affected the question of how we should take title to the property now, knowing nothing about the future other than that our marriage is not respected by federal tax laws.

18. Melba and Beatrice: Our experience is that there is so much misinformation and confusion about marriages of same-gender couples. DOMA erases our marriage at the federal level and that can complicate even ordinary transactions. Our federal government sets the tone, and since it does not respect our marriage, it signals to others that they do not have to either.

Signed under the pains and penalties of perjury on this 10th day of November, 2009.

/s/ Melba Abreu

Melba Abreu

/s/ Beatrice Hernandez

Beatrice Hernandez

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