

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 PLAINTIFFS NANCY GILL AND MARCELLE LETOURNEAU



Nancy Gill (“Nancy”) and Marcelle Letourneau (“Marcelle”), being duly sworn, hereby depose and say as follows:

1. Nancy and Marcelle: We have been a committed couple for nearly 30 years, since 1980. We legally married as soon as we were able. On May 21, 2004, after 24 years together and with our two children at our side, we were legally married by a justice of the peace in Brockton.

2. Nancy and Marcelle: We live in Bridgewater, Massachusetts, and we have two children. Our daughter is 16 years old and our son is 10 years old. Both of our children attend the local public schools.

3. Nancy: I am a 22-year employee of the United States Postal Service (“Postal Service”). I have worked for the postal service since 1987.

4. Marcelle: I have been employed in administrative capacities by a nursing services provider in Massachusetts for more than 25 years. I also work as an independent medical transcriptionist.

5. Nancy: When the children were younger, I worked the night shift at the Post Office for many years so that I could be available to our children during the day.

6. Nancy and Marcelle: We married to solemnize our longstanding commitment to each other and to our family.

7. Nancy: As an employee of the Postal Service, I am enrolled in the Federal Employees Health Benefits Program (“FEHB”). I have been enrolled in FEHB with a “Self and Family” Plan since the birth of our daughter in January 1993. The plan now covers me and our children. I thought that, once we were married, I would be able to provide this coverage to Marcelle just as I am able to provide it for our children. This would help our family. But Marcelle was unable to be covered because of DOMA.

8. Nancy: Marcelle should have been automatically covered by my Self and Family Plan upon our marriage on May 21, 2004. On the Monday after our wedding, May 24, 2004, I took the additional, permitted step of submitting a standard SF 2809 form to my employer, listing as my family members my children and my spouse. I was very excited about finally getting to add Marcelle to our family health insurance plan.

9. Nancy: On May 25, 2004, I had a conversation with my Human Resources Manager, Ann Mailloux, concerning my rights to benefits coverage for Marcelle.

10. Nancy: By letter dated June 4, 2004, the Postal Service advised me “that the Postal Service is unable to provide you with benefit coverage for your partner [sic].”

11. The June 4, 2004, letter provided the following reasoning:

The Postal Service is bound by rules and regulations issued by the Office of Personnel Management and applicable federal law (as opposed to state law). Same-sex partners are not considered eligible under Federal Employees Health Benefits (FEHB) or Federal Employees Group Life Insurance (FEGLI) in that federal law defines family members (which are covered) as a spouse and an unmarried dependent child under age 22. Public Law 104-199, Defense of Marriage Act, states, that the word

‘marriage’ means a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.

12. Nancy and Marcelle: We were truly shocked that Marcelle was denied benefits under Nancy’s plan. We did not anticipate this, we thought our marriage would be treated the same as the marriages of Nancy’s co-workers.

13. Nancy: On June 7, 2004, I made a request for pre-complaint counseling under the Equal Employment Opportunity Process and was advised to complete and return PS Form 2564-A within 10 days. I completed PS Form 2564-A within 10 days, writing that I had not been treated equally and had been “discriminated against for being a lesbian.” Specifically, I stated: “Anyone who has gotten married while employed by the US Postal Service has the right to put their new spouse on their Health Insurance. That new spouse is entitled by marriage to a host of benefits which my spouse is denied. How can this be called anything but discrimination?” For a resolution to my pre-complaint, I stated: “Allow me to have the same rights as my co-workers who are married.”

14. Nancy: By letter dated June 21, 2004, USPS NEEO Dispute Resolution Specialist Debra A. DeSantis wrote to me to “conclude the pre-complaint stage of the EEO Complaints Process.” The letter told me that: (1) benefits are administered by the Office of Personnel Management, which relies on Public Law 104-199, i.e., DOMA, 1 U.S.C. § 7, to exclude the marriages of same-sex couples from the requested benefit; and (2) as to “the factors of discrimination as depicted [sic] in the Civil Rights Act, Title VII does not include sexual orientation as a protected class.”

15. Nancy: On June 29, 2004, I filed an “EEO Complaint of Discrimination in the Postal Service,” seeking “the same rights and benefits and responsibilities as any one of my co-workers who are also married.”

16. Nancy: In a decision dated July 20, 2004, my complaint was dismissed for failure to state a claim because discrimination based on sexual orientation “is not actionable under EEOC Regulations.”

17. Nancy and Marcelle: We have had to purchase health insurance for Marcelle that would otherwise have cost nothing through the Postal Service, since Nancy already had the “Self and Family” plan. We have had to do this because DOMA does not permit Nancy to cover Marcelle through her family health insurance.

18. Marcelle: Since I cannot be on Nancy’s family plan, I purchase my own health insurance coverage through the Visiting Nurses Association. The annual cost of the plan varies, depending on how many hours I work and the prevailing rates, but, since our marriage, the cost of having a separate health plan for me has been over \$4,000. Also, I wear corrective lenses and, because I cannot get on Nancy’s vision plan, that ends up costing us hundreds of dollars extra each year for my eyeglasses and eye exams.

19. Nancy: Because of the extra expense of health insurance for Marcelle, and the unfairness of that to our family, I again sought to add Marcelle to my FEHB Self and Family Plan, as well as to the vision benefit plan (“FEDVIP”) and to my flexible spending account, during the open enrollment period between November 10, 2008 and December 9, 2008.

20. Nancy: Initially, I tried to enroll Marcelle through the PostalEASE system through our home computer, and then through the PostalEASE Employee Kiosk at my

workplace on Friday, November 21, 2008. When I attempted to add Marcelle to my health and vision plans, I received a variety of system error messages that told me that the gender for me and my spouse could not be the same for enrollment purposes.

21. Nancy: I continued to try, by phone and by mail, to obtain assistance from my local Human Resources officer in adding Marcelle to my health and vision benefit plans and flexible spending account.

22. Nancy: I received a letter dated December 8, 2008, from Michelle Palardy, HR Generalist Principal, USPS – SENE District. That letter said that I was not allowed to get any spousal benefits for Marcelle because of DOMA.

23. Nancy: I followed up by writing a letter to the United States Postal Service HR Shared Services Center in Greensboro, North Carolina to confirm that there were no further steps I could take to enroll Marcelle for spousal benefits. By letter dated January 2, 2009, the HR Shared Services Center wrote back to me and stated: “the information provided to you by Michelle Palardy is correct.”

24. Nancy: I work just as hard as my colleagues at the Post Office. They are able to get benefits for their spouses and I am not. This is upsetting and painful for me and for my family.

25. Nancy and Marcelle: DOMA causes other problems for our family, in addition to the problem of not being able to join Marcelle to our family health insurance and other benefits plans. For example, preparing our federal income taxes is a huge aggravation and burden. We have to spend many extra hours preparing our filings because of being forced to file differently at the federal and state levels. Rather than file a joint income tax return with both the state and federal government like other married

couples, we have to prepare individual income tax returns for federal purposes and a joint return for the state. To prepare the joint state return we have to prepare a “dummy” joint federal return that we do not file.

26. Nancy: It is a slap in the face to not be able to use our correct legal status, and it is a reminder that the very government I work for, the country our taxes help support, does not even recognize us as a couple.

27. Marcelle: In a very real way, DOMA limits our choices about how we run our family life. It changed our life plan. At the time we married, we were planning for me to be a stay-at-home parent for several years – to give all of us, and especially our children, a break from the juggling of balancing their needs with our two jobs. We had no idea that I wouldn’t be covered by Nancy’s health plan. I have had to remain in the workforce in order to have access to health insurance.

28. Marcelle and Nancy: We are very upset that it did not work for Marcelle to leave the workforce for a short while. In that way, DOMA has limited our choices and affected our kids.

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

/s/ Nancy Gill

Nancy Gill

/s/ Marcelle Letourneau

Marcelle Letourneau

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