

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 1:09-cv-10309 JLT

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.)

AFFIDAVIT OF DEAN T. HARA



I, Dean T. Hara, hereby depose and say, as follows:

1. My name is Dean T. Hara, and I reside at 505 Tremont Street, Unit 602, Boston, Massachusetts. I am a citizen of the Commonwealth of Massachusetts.
2. In January 1991, I met Congressman Gerry E. Studds (Gerry) in Washington, D.C.; and we began dating. We fell in love; Gerry proposed on Labor Day; I accepted; and we became a committed couple for life from that time in 1991 forward.
3. For the next 5-plus years, until Gerry retired from the United States House of Representatives in January, 1997, I shared in Gerry's Congressional life as his recognized spouse, attending countless public, Congressional and political events.
4. I became a member of the Democratic Spouses organization in 1992 and remained a member until this year – 12 years after Gerry retired from Congress.
5. When Gerry retired, we moved back to Massachusetts, splitting our time between Boston and Provincetown.
6. We registered as domestic partners in Provincetown in 1998 in order to declare our commitment and obtain some legal recognition of our relationship. Gerry's brother and sister-in-law attended the ceremony at Provincetown's Town Hall as our witnesses.

Although a bare minimum, it was the only government-sanctioned action we could use to formalize our relationship. It was the natural thing to do.

7. In 2002, Boston became our sole residence. Gerry had settled into a quiet, largely non-public life with a series of consulting jobs. I worked, and still do, as a financial advisor with a financial services company.

8. Gerry certainly never thought that same-sex couples would be able to marry in his lifetime. However, with the Goodridge decision from the Massachusetts Supreme Judicial Court in November, 2003, the world for us looked very different. And, as the May 17, 2004 effective date of Goodridge drew near and it became evident that marriage equality was going to be a reality, Gerry and I knew that we would marry as soon as legally possible.

9. We had been a committed couple for 13 years; it was time to be able to take our formal vows at last. So, we decided on a private wedding ceremony with our close friends David Simpson and Thomas Green in the living room of their home. We also decide to marry on May 24, 2004, the same date as my parents' wedding.

10. We were married for nearly two and a half years when, on October 3, 2006, Gerry never returned home from walking our dog, Bonnie, having collapsed from a blood clot. He died at the Boston Medical Center on October 14, 2006.

11. The family bonds I established with Gerry's brother, sister and their families have only grown stronger. Our Christmas holiday tradition continues, and I attended the weddings of two of Gerry's nephews in 2009.

12. Gerry was always concerned about me and how I would be provided for should he die before me. He did everything he could to satisfy himself that I was protected, including by preparing an estate plan.

13. At the same time, it always bothered Gerry tremendously that he could not provide his federal pension and his federal health insurance benefits to me as other congressional representatives can do for their spouses. Part of his concern was simply wanting to provide for me but part of it was also his sense that it was fundamentally unfair that our relationship – no different from the relationships of his colleagues – was treated differently and discriminated against.

14. Gerry was in Congress when the Defense of Marriage Act (“DOMA”) was debated and passed in 1996, and he spoke passionately and personally about it on the floor of the House as I watched from the gallery. He said, “I have paid every single penny as much as every Member of this House has for that pension, but my partner, should he survive me, is not entitled to one penny. I do not think that is fair, Mr. Speaker.” He also said, “The spouse of every Member of this House is entitled to that Member’s health insurance, even after that Member dies, if he or she should predecease his or her spouse. That is not true of my partner.”

15. In 2005, on the first anniversary of the Goodridge decision, Gerry and I did a television appearance on “Greater Boston with Emily Rooney” where he and I both talked about the fact that Gerry’s pension benefits and health insurance were unavailable to me.

16. In that same interview, we also discussed how it felt dishonest to file our federal income tax returns as “single” when we were, in fact, married. But, of course, because of

DOMA, that is what our accountant told us we were required to do. Gerry told the interviewer that it made him uncomfortable because it required him to attest to something that he knew was not true. It's hard to compress into words what it's like to receive letters from the United States government telling me that my marriage and 16 years together with Gerry had no value. The unfairness and inequity that Gerry feared and spoke against ten years earlier during the DOMA debate had become my personal reality.

17. As Gerry's surviving spouse, I took a number of steps to exercise rights available generally under federal law to surviving spouses.

18. I applied for the one-time Social Security lump sum death benefit. The Social Security Administration denied my application, citing DOMA.

19. I also applied for a monthly survivor annuity as the surviving spouse of a former Congressman who had been receiving a federal pension. The Office of Personnel Management (OPM) denied my application, ultimately relying on Gerry's asserted failure to elect survivor benefits for me and on DOMA.

20. That matter was litigated at the Merit Systems Protection Board. The Judge rejected OPM's failure-to-elect defense and entered a finding to the contrary that Gerry effectively elected a survivor annuity for me. I was still denied receipt of the annuity because of DOMA. A true and correct copy of that Initial Decision is attached as Exhibit A.

21. Finally, with the MSPB ruling in place, and knowing that OPM could not rely on any failure of election, I applied to OPM for the federal health insurance benefits available to a surviving spouse. I was denied, and OPM's final decision rested on the proposition that Gerry was covered in a "Self-Only" plan at the time of his death. A true

and correct copy of OPM's final decision, by letter dated June 18, 2009, is attached as Exhibit B.

22. Since I have been denied participation in the federal health insurance program, I purchase my own health insurance in the marketplace. I am an independent contractor and do not have employer provided coverage. Currently, I am paying more than \$8,000 per year for my individual health insurance. I calculate that, in the three years since Gerry's death, my inability to participate in the federal employee health insurance program because of DOMA Section 3 has cost me approximately \$15,000.

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

/s/ Dean T. Hara

Dean T. Hara

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