

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 MARLIN NABORS AND JONATHAN KNIGHT



Jonathan Knight (“Jonathan”) and Marlin Nabors (“Marlin”) being duly sworn, hereby depose and say as follows:

1. Marlin and Jonathan: We have been a committed couple for 4 years. We are both from the Midwest and we met in Indiana in 2004. In 2005, we moved together from Indiana to Boston, Massachusetts.

2. Marlin and Jonathan: We moved to Boston so that Marlin could accept a promising job offer in academic administration. We made this decision to relocate together. We knew that it would be a big transition, but we had faith in our commitment to each other and looked forward to our shared future.

3. Marlin and Jonathan: We were legally married at Newton City Hall on October 26, 2006. That evening, we celebrated at our home with approximately 25 people present. We just celebrated our 3rd wedding anniversary.

4. Marlin and Jonathan: We married because we reached a point in our relationship when we knew that we would be together for life, no matter what, and so it made sense to solidify our commitment through marriage. We feel appreciative to be living in a state where marriage is available to us.

5. Marlin: I am a student services administrator at a university in Boston. I have been employed at the same institution since moving to Boston in 2005.

6. Jonathan: After moving to Boston, I registered with a temporary agency and was placed at a local medical school. On February 9, 2009, the medical school hired me for a permanent position dealing with financial operations.

7. Marlin and Jonathan: We purchased a home together in Hyde Park, Massachusetts. This is the first time either of us has been a homeowner.

8. Marlin and Jonathan: Since we bought our home, we have been devoting energy and resources to fixing up and maintaining our new property. Jonathan's father has visited us from Indiana several times in order to assist us with home improvement projects. For example, he helped us to install our new appliances.

9. Marlin and Jonathan: DOMA has increased the amount of federal income taxes we have to pay. Because we cannot file jointly, we lose money each year. In the last three years, we have paid \$2,894 more in federal income taxes because DOMA will not allow us to file our federal income taxes as a married couple. We would like to save that money or put it into home improvements in our new home.

10. Marlin and Jonathan: We just want our marriage to be treated like any other, not to be treated differently. Right now we are losing money because of being treated differently, but even if, down the road, we earn higher incomes and would owe more money as a married couple, then we would want to pay that amount. We want to pay our fair share, and to have our marriage recognized.

11. Marlin and Jonathan: Since marrying in 2006, we have filed our state income tax returns with the Commonwealth of Massachusetts as Married Filing Jointly. We each file separate federal income tax returns using the "single" status, because DOMA forbids us from filing as Married Filing Jointly.

12. Marlin and Jonathan: For the tax years since our marriage, that is from 2006-2008, we paid all our federal income taxes owed in full, and later submitted amended federal income tax returns, on IRS Form 1040X, changing our filing status from two individual taxpayers each filing as a Single filer to a married couple filing together as Married Filing Jointly.

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

- In 2006: \$1,286
- In 2007: \$1,234
- In 2008: \$374

14. Marlin and Jonathan: Each time we filed an amended federal income tax return, we attached to the IRS Form 1040X the Form 8275, Disclosure Statement and 8275-R, Regulation Disclosure Statement, in order to explain our changes to our originally filed federal income tax returns.

15. Marlin and Jonathan: For the 2006 tax year, the Attachment states:

**Attachment To Form 1040X, Part II, Explanation of Changes
Form 8275, Disclosure Statement
Form 8275-R, Regulation Disclosure Statement
2006 Tax Year**

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

The taxpayer, Marlin Nabors [###-##-####], a spouse in a same-sex couple, was married under the laws of the Commonwealth of Massachusetts as of December 31, 2006. For the tax year of this amended return, the taxpayer filed a joint Massachusetts income tax return with his spouse, Jonathan Knight [###-##-####]. 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 he were unmarried. The taxpayer believes that being required to file as though he were unmarried amounts to unequal treatment compared to other married persons in Massachusetts. The taxpayer

believes that his 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 he should be allowed to file this amended joint return with his spouse and receive the refund shown herein.

In particular, if the taxpayer were able to file as married filing jointly, the federal tax decreases from \$7,919 to \$6,613.

As a result of this adjustment (as well as the \$20 difference in federal telephone excise tax credit for married filing jointly taxpayers), the amount of overpayment is \$1,286.

16. Marlin and Jonathan: With each successive amended federal income tax return and refund claim that we 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. Marlin and Jonathan: We received a notice from the IRS, dated May 18, 2009, stating that the agency was changing our 2007 filing status to Married Filing Jointly, and further noting an "Amount to be refunded to you" of \$1,234. Just a few days later, we were surprised to receive a joint refund check for \$1,234 from the IRS.

18. Marlin and Jonathan: Because we believe that this 2007 refund check was issued in error and in violation of DOMA, § 3, we set the refund check aside and did not cash it.

19. Marlin and Jonathan: Our lawyer contacted the IRS Customer Service Office by telephone on May 18, 2009 to ask about the refund check. He spoke with two IRS representatives who confirmed that both the 2007 and 2006 amended federal income tax returns and refund claims had been approved, but the representatives reported that

they could not re-open the returns or mark them to be re-examined for error. They suggested to our lawyer that he write a letter.

20. Marlin and Jonathan: Then, on May 20, 2009, our lawyer sent a letter to the IRS on our behalf. He notified the IRS of the 2007 refund check already received and the expected 2006 refund check and stated that “[i]t is our understanding that the Taxpayers’ claim for a filing status change and refund should have been denied pursuant to DOMA, and we can arrange for the Taxpayers to return the refund check they have received.”

21. Marlin and Jonathan: Then, in a second IRS notice of refund dated May 25, 2009, the IRS issued to us a joint refund check for \$1,286 relating to our 2006 amended federal income tax return and refund claim. This time, the letter and the check came together.

22. Marlin and Jonathan: Because we believed that this 2006 refund check was issued in error and in violation of DOMA, § 3, just like the 2007 refund check, we set the check aside and did not cash it.

23. Marlin and Jonathan: In a letter dated October 29, 2009, the IRS reversed its earlier decisions, stating that “[t]he federal government does not recognize same sex marriage and does not allow a filing status of joint for partners of the same sex.” The IRS asked us to return the refund checks, which we have done.

24. Marlin and Jonathan: The situation that resulted in us erroneously receiving two refund checks shows why DOMA is confusing. We often have to explain to people that, even though we are married, our marriage is not recognized in some places

including not by the federal government. We are playing by the rules and doing what we are told to do, but it is not really sensible or fair.

25. Marlin and Jonathan: We have not heard anything yet about our 2008 amended federal income tax return and request for refund, because we just filed that amended return recently.

Signed under the pains and penalties of perjury on this 12th day of November, 2009.

/s/ Marlin Nabors

Marlin Nabors

/s/ Jonathan Knight

Jonathan Knight

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