

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION
NO. 3:10 CV 1750 (VLB)

JOANNE PEDERSEN & ANN MEITZEN,)
GERALD V. PASSARO II,)
LYNDA DEFORGE & RAQUEL ARDIN,)
JANET GELLER & JOANNE MARQUIS,)
SUZANNE & GERALDINE ARTIS,)
BRADLEY KLEINERMAN & JAMES GEHRE, and)
DAMON SAVOY & JOHN WEISS,)

Plaintiffs,)

v.)

OFFICE OF PERSONNEL MANAGEMENT,)
TIMOTHY F. GEITHNER, in his official capacity)
as the Secretary of the Treasury, and)
HILDA L. SOLIS, in her official capacity as the)
Secretary of Labor,)
MICHAEL J. ASTRUE, in his official capacity)
as the Commissioner of the Social Security)
Administration,)
UNITED STATES POSTAL SERVICE,)
JOHN E. POTTER, in his official capacity as)
The Postmaster General of the United States of)
America,)
DOUGLAS H. SHULMAN, in his official)
capacity as the Commissioner of Internal)
Revenue,)
ERIC H. HOLDER, JR., in his official capacity)
as the United States Attorney General,)
JOHN WALSH, in his official capacity as Acting)
Comptroller of the Currency, and)
THE UNITED STATES OF AMERICA,)

Defendants.)
_____)

PLAINTIFFS' LOCAL RULE 56(a)1 STATEMENT
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby submit the following Statement of Undisputed Facts with references to supporting evidence.

1. Connecticut, New Hampshire, and Vermont have one class of marriages; they do not distinguish between marriages between couples of different sexes and between couples of the same sex. Conn. Gen. Stat. § 46b-20 (codifying *Kerrigan v. Commissioner of Public Health*, 289 Conn. 235 (2008) (holding that any statute, regulation, or common law rule that prevented otherwise qualified individuals of the same sex from marrying violated the Connecticut constitution)). N.H. Rev. Stat. Ann. § 457:1-a (2011) (“Any person who otherwise meets the eligibility requirements . . . may marry any other eligible person regardless of gender.”); Vt. Stat. Ann. tit. 15 § 8 (“Marriage is the legally recognized union of two people.”).

2. Plaintiffs have a right to be married and are or were until the deaths of their spouses validly married pursuant to Connecticut, New Hampshire, or Vermont law to a person of the same sex. *Pedersen & Meitzen Aff.* ¶ 1; *Passaro Aff.* ¶ 11; *Ardin & DeForge Aff.* ¶ 2; *Geller & Marquis Aff.* ¶ 3; *Artis Aff.* ¶¶ 3-4; *Kleinerman & Gehre Aff.* ¶ 2; *Savoy & Weiss Aff.* ¶ 1.

3. Plaintiffs have all applied for and been denied federal marital benefits, or sought to file federal income tax returns based on their married status, which have been denied or are deemed denied because of DOMA, 1 U.S.C. § 7. *Pedersen & Meitzen Aff.* ¶ 6; *Passaro Aff.* ¶¶ 15-17, 28-31; *Ardin & DeForge Aff.* ¶¶ 19, 21, 33-36; *Geller & Marquis Aff.* ¶ 9; *Artis Aff.* ¶ 20; *Kleinerman & Gehre Aff.* ¶¶ 11-15; *Savoy & Weiss Aff.* ¶ 13-17.

A. Joanne Pedersen & Ann Meitzen

4. Plaintiffs Joanne Pedersen (“Joanne”) and Ann Meitzen (“Ann”) have been validly married under Connecticut law since December 22, 2008 and a committed couple for over twelve years. Pedersen & Meitzen Aff. ¶ 1.

5. Joanne is a retired civilian employee of the Department of the Navy, Office of Naval Intelligence, and is enrolled in the Federal Employees Health Benefits Program (“FEHB”). Pedersen & Meitzen Aff. ¶¶ 4, 6.

6. Within 60 days of their marriage, Joanne contacted her insurer to find out how to add Ann to her insurance plan and was informed that Ann could not be added to Joanne’s insurance. Pedersen & Meitzen Aff. ¶ 7; see also *id.* at ¶ 8.

7. On November 8, 2010, during the open enrollment period, when Joanne used the online option to change her health insurance from “Self-Only” to “Self and Family,” a screen appeared stating that the computer was “unable to process [the] request” and to “call us” “[i]f you think the family member you wish to enroll is eligible.” Pedersen & Meitzen Aff. ¶ 9.

8. Joanne called the number provided, was told that her spouse, Ann, was eligible, was then placed on hold, and was finally told that Ann was *not* eligible as her spouse because she is of the same sex. Pedersen & Meitzen Aff. ¶ 10.

9. Joanne was and is denied the opportunity to enroll herself and her spouse in a “Self and Family” plan because of DOMA, 1 U.S.C. § 7.

10. Ann struggles with chronic lung conditions affecting her ability to work and would therefore prefer to retire from full-time employment. Pedersen & Meitzen Aff. ¶ 13.

11. Because Ann was not added to Joanne's "Self and Family" plan, Ann is unable to retire from full-time employment without facing increased health insurance costs totaling between \$300 and \$500 more per month, or more, than what she and Joanne would pay if Joanne could add Ann to her FEHB health insurance. Pedersen & Meitzen Aff. ¶ 12.

12. Plaintiffs Pedersen and Meitzen believe they have been injured by DOMA, both with respect to the decreased quality of life Ann faces in managing a full-time job with chronic health issues, and because Joanne worked for the federal government for thirty years but is being treated differently from other retirees. Pedersen & Meitzen Aff. ¶¶ 14-16.

B. Gerald V. Passaro II

13. Plaintiff Gerald V. Passaro II ("Jerry") and Thomas Buckholz ("Tom") were validly married under Connecticut law from November 26, 2008 until Tom's death on January 7, 2009, at which point they had been a committed couple for over 13 years. Passaro Aff. ¶¶ 11-12.

14. Thomas Buckholz was a chemist at the Bayer Corporation ("Bayer") for more than 20 years and was fully vested in Bayer's defined benefit pension plan under which he named Jerry as his beneficiary. Passaro Aff. ¶¶ 3, 6, 13, 15.

15. As the designated beneficiary of Tom's pension, after Tom's death, Jerry requested that Bayer provide him with benefits. Passaro Aff. ¶¶ 15-16.

16. Bayer denied Jerry's request to receive benefits under Tom's pension because of DOMA, 1 U.S.C. § 7. Passaro Aff. ¶¶ 16-17; see also ¶¶ 18-24.

17. Jerry believes that his late spouse Tom would be upset to know that DOMA has interfered with his wish to provide for Jerry in any way that he could after his premature death. Passaro Aff. ¶¶ 25-26.

18. After Tom's death, Jerry applied for the Social Security lump-sum death benefit available to surviving spouses. Passaro Aff. ¶ 28; <http://www.ssa.gov/pubs/deathbenefits.htm> (stating, "A one-time payment of \$255 is payable to the surviving spouse if he or she was living with the beneficiary at the time of death, OR if living apart, was eligible for Social Security benefits on the beneficiary's earnings record for the month of death.").

19. The Social Security Administration ("SSA") denied Jerry's claim for the Social Security lump-sum death benefit available to surviving spouses "because [Jerry's] marriage does not meet the requirements under Federal law for payment of Social Security Lump Sum Death benefits." Passaro Aff. ¶ 31.

C. Raquel Ardin & Lynda DeForge

20. Plaintiffs Raquel Ardin and Lynda DeForge have been married under Vermont law since September 7, 2009, and have been a committed couple for over 30 years. Ardin & DeForge Aff. ¶¶ 1, 2.

21. Lynda has been an employee of the U.S. Postal Service for 26 years and is an eligible employee under the terms of Title I of the Family Medical Leave Act ("FMLA"). Ardin & DeForge Aff. ¶¶ 3, 11, 17.

22. Raquel worked for the U.S. Postal Service for 25 years before taking disability retirement in 2005. Ardin & DeForge Aff. ¶¶ 4, 14.

23. Raquel's disability is a result of a serious injury during service abroad in the U.S. Navy, which injury required two neck fusion surgeries and left her with degenerative arthritis in her neck. Ardin & DeForge Aff. ¶¶ 5, 14.

24. Since 2005, Raquel has had to travel to a Veterans Administration facility in Connecticut for quarterly treatments consisting of multiple injections into her neck to address immobility, spasms, and pain caused by the degenerative arthritis and scar tissue from her surgeries. Ardin & DeForge Aff. ¶¶ 14-16.

25. Because of Raquel's serious medical condition, and her inability to move her neck before or after her injections, Lynda is required to be with her one day every three months for those injection treatments. Ardin & DeForge Aff. ¶¶ 15-16.

26. After Plaintiffs married, Lynda applied for FMLA leave "one day every three months" to transport Raquel to and from her injection appointments in Connecticut. Ardin & DeForge Aff. ¶ 19.

27. The U.S. Postal Service denied Lynda's request for FMLA leave to care for Raquel because of DOMA, 1 U.S.C. § 7. Ardin & DeForge Aff. ¶ 21.

28. Because Lynda was denied FMLA leave, she has had to take vacation time to care for Raquel rather than having the choice of using unpaid leave, accrued sick leave, or annual leave/vacation days. Ardin & DeForge Aff. ¶¶ 23, 25.

29. Beyond the injection appointments, and after the denial of FMLA leave, Lynda has also taken an additional 64 hours of vacation time to care for Raquel in the aftermath of two surgeries, whereas she would have preferred to take some days unpaid as authorized under FMLA. Ardin & DeForge Aff. ¶¶ 22-25.

30. Denial of FMLA leave to care for Raquel has caused Lynda a great deal of stress and worry about how to do what is best for their family. Ardin & DeForge Aff. ¶¶ 26-27.

31. The denial of FMLA leave and the necessary use of vacation time in order for Lynda to care for Raquel has caused Lynda to postpone her own knee surgery until she has accrued enough paid vacation time to enable her to be paid for the bulk of the several weeks she will be out of work convalescing from knee surgery. Ardin & DeForge Aff. ¶¶ 26.

32. As an employee of the U.S. Postal Service, Lynda is enrolled in the FEHB Program under a “Self-Only” plan. Ardin & DeForge Aff. ¶¶ 29, 31.

33. Raquel is an annuitant enrolled in the FEHB Program under a “Self-Only” plan. Ardin & DeForge Aff. ¶¶ 4, 30-31.

34. After Plaintiffs DeForge and Ardin married, and during the open enrollment in 2010, Lynda applied to have Raquel added to her “Self and Family” health plan under the FEHB Program. Ardin & DeForge Aff. ¶¶ 33.

35. When Lynda applied to have Raquel added to her “Self and Family” health plan under the FEHB Program using the PostaleASE system for open

enrollment, Lynda was informed that “[s]ame sex spouses are not considered eligible family members under FEHB.” Ardin & DeForge Aff. ¶ 34.

36. Raquel and Lynda would prefer to have one “Self and Family” plan that would cover both of them together, and they would also enjoy the cost savings of a single plan. Ardin & DeForge Aff. ¶32.

37. Raquel and Lynda believe DOMA labels them as “not married” and “not a family,” and it makes them scared for their future since DOMA would preclude Lynda from obtaining a survivor annuity on Raquel’s federal pension, and could prevent them from being buried together in a veterans cemetery. Ardin & DeForge Aff. ¶¶39-40.

D. Janet Geller & Joanna Marquis

38. Plaintiffs Janet Geller (“Jan”) and Joanna Marquis (“Jo”) have been validly married under New Hampshire law since May 3, 2010 and a committed couple for over 30 years. Geller & Marquis Aff. ¶¶ 1, 3.

39. Jo, age 71, is a retired New Hampshire employee, having worked as a school teacher in public schools for over 30 years. Geller & Marquis Aff. ¶ 5.

40. Jan, age 64, is a retired New Hampshire employee, having worked as a school teacher in public and private schools for over 25 years. Geller & Marquis Aff. ¶ 4.

41. As qualified state retirees, Plaintiffs Geller and Marquis both receive a pension through the New Hampshire Retirement System (“NHRS”). Geller & Marquis Aff. ¶ 6.

42. Because Jo had over 30 years of service (which Jan does not), her NHRS benefits include a medical cost supplement that helps pay for her Medicare Part B supplemental insurance and which also provides a supplement for her spouse. Geller & Marquis Aff. ¶¶ 7-8.

43. After Plaintiffs Geller and Marquis married, Jo applied for the medical cost supplement spousal benefit for Jan. Geller & Marquis Aff. ¶ 9.

44. NHRS denied Jo's application for the medical cost supplement spousal benefit for Jan because of DOMA, 1 U.S.C. § 7. Geller & Marquis Aff. ¶¶ 9-10.

45. NHRS's denial of the spousal benefit requires Plaintiffs Geller and Marquis to incur an additional \$375.56 per month (\$4,506.72 per year) in healthcare costs for Jan. Geller & Marquis Aff. ¶¶ 9, 11.

46. Plaintiffs Geller and Marquis believe DOMA is taking away the recognition of their family that marriage brought to them after 30 years as a committed couple, depriving them of an important part of their monthly retirement income, and treating them as second class citizens. Geller & Marquis Aff. ¶¶ 12-14.

E. Suzanne & Geraldine Artis

47. Plaintiffs Suzanne and Geraldine Artis ("Suzanne" or "Geraldine") have been validly married under Connecticut law since July 11, 2009, and have been a committed couple for 17 years. Artis Aff. ¶¶ 3-4.

48. Suzanne and Geraldine are parents to three children, ages 13, 11, and 11. Artis Aff. ¶ 8.

49. For the year 2009, Suzanne filed a federal income tax return as Head of Household and Geraldine filed a federal income tax return as Single. Artis Aff. ¶ 13.

50. Suzanne and Geraldine each submitted a first amended federal income tax return for the year 2009 on IRS Form 1040X. Artis Aff. ¶ 15.

51. Suzanne and Geraldine submitted a second amended federal income tax return for the year 2009 on IRS Form 1040X requesting a refund of the difference between what they each paid as a Head of Household filer and as a Single filer, respectively, and what they would have paid if they had been permitted to file with the status of Married Filing Jointly. Artis Aff. ¶¶ 16-17.

52. The IRS denied the Artis's 2009 refund request because "for federal tax purposes, a marriage means only a legal union between a man and a woman as husband and wife." Artis Aff. ¶ 20.

53. Because DOMA bars Suzanne and Geraldine from filing federal income tax returns as Married Filing Jointly, they have paid \$1,465 more in federal income taxes than they would have paid had they not been barred by DOMA from filing as Married Filing Jointly. Artis Aff. ¶ 17.

54. Suzanne and Geraldine believe DOMA hurts them by requiring them to disregard their own marital status on their federal income tax forms, and by artificially dividing their family rather than recognizing that they are one entire and complete family. Artis Aff. ¶¶ 23-24.

F. Bradley Kleinerman & James Gehre

55. Plaintiffs Bradley Kleinerman (“Brad”) and James Gehre (“Flint”) have been validly married under Connecticut law since March 6, 2009.

Kleinerman & Gehre Aff. ¶ 2.

56. Brad and Flint have three children they jointly adopted, now ages 20, 19, and 10. Kleinerman & Gehre Aff. ¶¶ 1, 5.

57. For the year 2009, Brad filed a federal income tax return and paid federal income taxes as Head of Household. Flint, a stay-at-home parent, does not work outside the home and did not have sufficient income to have to file a federal income tax return. Kleinerman & Gehre Aff. ¶¶ 9-10.

58. For the 2009 tax year, Brad subsequently submitted a first amended return. Kleinerman & Gehre Aff. ¶ 9.

59. For the year 2009, Brad and Flint submitted a second amended federal income tax return on IRS Form 1040X requesting a refund of the difference between what Brad paid as a Head of Household filer and what he and Flint would have paid if they had been allowed to file under the status of Married Filing Jointly. Kleinerman & Gehre Aff. ¶¶ 11-12.

60. The IRS received the second amended return on December 1, 2010. Given the IRS’s failure to act in 6 months, the request is deemed denied. Kleinerman & Gehre Aff. ¶¶13, 15; see also 26 U.S.C. § 7422.

61. Because DOMA bars Brad and Flint from filing their federal income tax return as Married Filing Jointly, they have paid \$2,085 more in federal income

taxes than they would have paid had they not been barred by DOMA from filing under the status of Married Filing Jointly. *Kleinerman & Gehre Aff.* ¶¶ 11-12.

62. When Brad and Flint were returning from a family trip to Canada in 2002, a U.S. Customs agent told them in front of their children that they should have filled out two customs forms rather than one because the United States does not recognize them as a family. *Kleinerman & Gehre Aff.* ¶ 17.

63. Brad and Flint believe DOMA is hurtful to their family because it forces them to lie on federal income tax returns and claim that they are not married, stands in the way of having their family fully recognized, and diminishes the meaning of their marriage. *Kleinerman & Gehre Aff.* ¶¶ 8, 18.

G. Damon Savoy & John Weiss

64. Plaintiffs Damon Savoy (“Jerry”) and John Weiss (“John”) have been validly married under Connecticut law since October 9, 2010, and have been in a committed relationship for 12 years. *Savoy & Weiss Aff.* ¶ 1.

65. Jerry has been a government attorney for the Office of the Comptroller of the Currency (“OCC”) since 1992 and is enrolled in the FEHB Program. *Savoy & Weiss Aff.* ¶¶ 3, 9.

66. John gave up his career to focus full-time on raising his and Jerry’s three children adopted through the State of Connecticut, now ages 12, 10, and 2. *Savoy & Weiss Aff.* ¶¶ 2, 4.

67. After John’s COBRA coverage terminated, he had to apply for and purchase health care coverage on the private insurance market. *Savoy & Weiss Aff.* ¶¶ 6, 8.

68. John suffers from Type II Diabetes so health insurance is very important for him and his children's well being and security. Savoy & Weiss Aff. ¶¶ 5, 7.

69. After Plaintiffs Savoy and Weiss married, Jerry applied to have John added to Jerry's existing "Self and Family" health plan under the FEHB Program that covers Jerry and the three children. Savoy & Weiss Aff. ¶¶ 13-14.

70. The OCC denied Jerry's application to add John to his "Self and Family" plan under the FEHB Program because of DOMA, 1 U.S.C. § 7. Savoy & Weiss Aff. ¶ 15.

71. Because John was not added to Jerry's "Self and Family" plan, John has been forced to maintain private health insurance at an additional cost of \$217 per month. Savoy & Weiss Aff. ¶¶ 8, 19-20.

72. Plaintiffs Savoy and Weiss believe DOMA singles out their family for disrespect by not even allowing John to join in the "Self and Family" plan that already covers the rest of their family. Savoy & Weiss Aff. ¶ 18.

Respectfully submitted,

Joanne Pedersen & Ann Meitzen
Gerald V. Passaro, II
Raquel Ardin & Lynda Deforge
Janet Geller & Joanne Marquis
Suzanne & Geraldine Artis
Bradley Kleinerman & James Gehre And
Damon Savoy & John Weiss

By their attorneys,

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DATED: July 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2011, a copy of the foregoing Plaintiffs' Local Rule 56(a)1 Statement in Support of Plaintiffs' Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

**/s/ Gary D. Buseck
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