

MARK LEWIS, et al.,  
Plaintiffs-Appellants,  
v.  
GWENDOLYN L. HARRIS, et al.,  
Defendants-Appellees.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 58,389  
CIVIL ACTION

**AFFIDAVIT OF  
MARCYE NICHOLSON-McFADDEN**

State of New Jersey    )  
  : ss.  
County of Monmouth    )

Marcy Nicholson-McFadden, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit, and I provide this affidavit in support of the Plaintiffs' Motion in Aid of Litigants' Rights.
2. I am 46 years old, and I am in a permanent committed relationship of 20 years with Karen Nicholson-McFadden, who has also provided an affidavit.
3. Karen and I entered a civil union in April 2007.
4. As I stated when this case began years ago, our family is the center of our lives, and our two children are an incredible source of joy. Kasey is now 10, and as he has gotten older, he understands more and more about how his family is set apart in a particular and important way. Maya, who is 7, has started to go through the same process.

5. Being a lesbian couple, Karen and I, and our family as a whole, experience certain forms of societal bias. But bias on the part of our government is much harder to deal with.

6. The invention of civil unions has not changed the fact that marriage is still everywhere, and civil unions are rarely understood. For example, we recently received a mailing for secondary insurance from Blue Cross Blue Shield of New Jersey, once again with check-off boxes that did not recognize civil unions.

7. As I noted in my earlier affidavit, when Kasey was younger and visiting homes of friends, family, and neighbors, he frequently saw wedding pictures and asked about them. As with most kids at that age, he spent a lot of mental energy working out how people are related to each other, including the members of all the families in the neighborhood. More and more in the books he read and in the media he viewed, there were issues of falling in love and proposing marriage, and weddings, and husbands or wives. He heard and saw about love leading to weddings in videos and cartoons, and he hears about it in conversation. He understands marriage to mean a lifetime commitment between two adults, and knows that a marriage between two parents is the center of a family. Maya also knows about weddings and marriage and spends a lot of time fantasizing about images of marriage, like pretty dresses and big weddings.

8. Kasey frames the world in terms of families. Previously, he assumed that in any two-parent family the parents are married to one another. But now he understands that in the eyes of our government there are two classes of people: those who are allowed to marry, and those who are allowed only to enter civil unions.

9. This was particularly driven home for him when we attended legislative hearings on the

Civil Union Act. After civil unions were voted into law, our children wanted to know why the thing we could have was called “civil unions” and not marriage. They were utterly confused about what civil unions mean, and when we explained it, Kasey asked why somebody else could tell us we can’t get married. It crushed me to explain to him, and later to Maya, that the government believes that we are different from married couples and are limited to civil unions.

10. Kasey has repeatedly said that he does not like having to tell other kids we are in a civil union and are not married. The first experience I recall him talking about had to do with his swim team, soon after the Civil Union Act passed. He told some team members his parents were gay, and at first they misunderstood him, and thought he was using “gay” as a pejorative. He corrected them, and he told us later that when he did so, he had wanted to say his parents were like their parents, and in particular that “they’re married like your parents.” But he couldn’t, and it bothered him that he couldn’t.

11. As parents, we try to explain to our children that our relationship is just as valuable as a married relationship, that our family is just as valuable as others, and that they too should believe in committed relationships--but at the same time the government is sending the opposite message.

12. It is disconcerting to us as parents that our children nevertheless perceive that our relationship, and therefore our family, is marked as different. In kindergarten Maya learned about Martin Luther King, Jr. Although there clearly are differences between the experience of racism and the discrimination faced by lesbians and gay men and their families, Maya saw a similarity. On her own, she connected this lesson of his teaching and cause to our current

situation with civil unions, saying to us, “It’s kind of like that. It’s like sitting on the back of the bus.” Along these lines, it’s sometimes been hard to talk with Maya about living in a great country that treats its citizens fairly, and that when, at times, there’s been historical injustice in this country, times we haven’t lived up to our ideals in the moment, we have always come around. But when we talk about our family’s identity, there’s a gap that even a seven-year-old sees, and when she asks why we’re treated differently, it’s hard to answer. Our children understand basic rights, and they just cannot fathom what’s going on.

13. There are a lot of ways that I am reminded that a civil union is separate and unequal to marriage. Karen, Kasey and I testified at the New Jersey Senate Judiciary Committee hearing on December 7, 2009. I described how people react when you tell them you are in a civil union, and they do not understand what that means. This is as true today as it was when we entered our civil union in 2007. I told the legislators that civil unions send a message that we are different from, and second-class to, other people. I also talked about how much I worry that this message is being sent to Kasey and Maya, and how painful it has been – and still is – to see them hurt by it. Kasey also talked about this pain in his testimony, when he said it would make our lives easier and happier if Karen and I could get married. All of us can see that the state is taking great pains to treat us differently. It’s a way to tell us that we’re not good enough.

14. Attached to this affidavit is a true and correct copy of a photograph of my family.

15. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

Marcy Nicholson-McFadden  
Marcye Nicholson-McFadden

Sworn to me this 6th  
day of March 2010.

Ana Paula da Silva  
Notary Public

ANA PAULA DA SILVA  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES DECEMBER 10, 2013