

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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RECLAIM THE RECORDS,

Petitioner,

Index No. \_\_\_\_\_

- against -

**AFFIDAVIT OF  
ROGER D. JOSLYN**

NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, NEW YORK CITY :  
BUREAU OF VITAL STATISTICS, NEW YORK :  
CITY BOARD OF HEALTH, OXIRIS BARBOT, :  
in her official capacity as New York City  
Commissioner of Health, GRETCHEN VAN WYE, :  
in her official capacity as New York City Registrar,  
and STEVEN P. SCHWARTZ, in his official :  
capacity as former New York City Registrar,

Respondents.

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STATE OF NEW YORK     )  
  ) ss.  
COUNTY OF NEW YORK    )

Roger D. Joslyn, being duly sworn, deposes and says:

1. I am a professional genealogist, focusing mostly on due diligence and kinship proceedings in Surrogate's and probate courts.
2. I submit this Affidavit in support of the Verified Article 78 Petition of Reclaim the Records. Unless otherwise stated, the statements made herein are based on my personal knowledge and experience.
3. I have been working as a full-time professional genealogist since 1978. In 1981, I was certified as a Certified Genealogist by the Board for Certification of Genealogists, and I renew my certification as required every five years. I am a past President of the Association of

Professional Genealogists and a member of a number of several genealogical and historical associations. I have contributed—as an author, editor, and indexer—to numerous scholarly journals, books, and other publications relating to the genealogical field, and I have lectured and taught at national, regional, and local conferences and seminars. In 1982, I was elected a Fellow of the American Society of Genealogists (ASG), the highest honor in the field and limited to fifty lifetime members based on their published scholarly work, and I am a past President of the ASG. I have also been honored as a Fellow of The New York Genealogical and Biographical Society and the Utah Genealogical Association.

4. Since 1982, my work has concentrated in the New York City metropolitan and surrounding area throughout much of New York State, New Jersey, Pennsylvania, and elsewhere in the Northeast, including New England, where I lived the previous ten years. Over the course of my forty-one years of genealogical work, I have developed professional and personal relationships with New York’s archivists, State and City Board of Health members, innumerable historians and researchers, and others connected with the genealogical field.

5. I write to provide the Court regarding a certain aspect of how the New York City Department of Health and Mental Hygiene’s (“DOHMH”) rules are adversely affecting New Yorkers, including myself. As a forensic genealogist, I research individuals and families for kinship and other intestacy proceedings, as well as “due diligence” cases in New York involving testators who die without a surviving spouse and issue. These cases all involve locating and documenting missing and unknown heirs, as well as connecting the links that tie families and relatives together. I have testified in New York Surrogate’s Courts numerous times, and in these appearances, I typically provide testimony in court and/or by affidavit about the research I have conducted to establish familial relationships and to explain the paper-trail and the evidentiary

documentation to support the conclusions I have drawn. My work obviously requires identifying, obtaining, and analyzing the court-required and expected documents that are key to my profession.

6. As part of the DOHMH's proceedings to institute new and more restrictive access rules, I testified against its proposal at the public hearing held October 24, 2017, and I find that DOHMH's second rule, putting in place burdensome relationships for seventy-five years after a death, was poorly conceived and did not adequately consider the public's comments.

7. One of the most glaring problems with the new DOHMH rules is the very narrow accessibility to New York City death certificates. First, the city's new rule is preventing me from accessing records that New York State permits. Specifically, New York State discloses to genealogists death certificates in uncertified form that are over 50 years old; but New York City is saying no to records from that same time period (i.e. death records that are between 50 to 75 years old). An additional twenty-five year bar on access to New York City records creates many hurdles for myself and my clients. For instance, if an individual died in Westchester County in 1960, I can order that person's death certificate from New York State; yet if that same person died in the Bronx in the same year, I am blocked by New York City from accessing the person's death certificate for another *sixteen years*. This heightened burden for New York City therefore creates significant additional challenges to my work that could be insurmountable if other primary sources are not available. Even so, a death certificate may include important details not found in other primary sources.

8. Meanwhile, countless of our neighboring states have created *increased* access to vital records. For instance, Pennsylvania's death certificates were digitally scanned and are available to view online into the 1960s. Additionally, many of our neighboring states permit

access long before New York City, such as Massachusetts, which is an “open records” state that allows anyone to order copies of death records until the present, and New Jersey, which has only a forty-year limitation on access to death records.

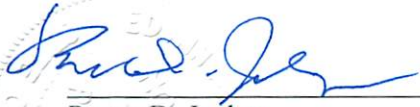
9. Additionally, the DOHMH has implemented a rule under which only a limited number of family members might be able to obtain records, but it omits other evident relationships, such as cousins. Many of my kinship and due diligence cases involve cousins of a decedent who need to obtain copies of death certificates as part of the documentary evidence that is submitted to and discussed in court hearings and affidavits. Therefore, if a cousin seeks to establish kinship with another cousin who died decades ago, that person is now required to obtain a court order just to receive a death certificate in order to establish and document the relationship. From my personal experience, this causes a great deal of headache for the individuals involved, including additional legal expenses and delay and a significant burden on those who must come to Surrogate’s Court, or at least have legal representation there, to prove kinship and obtain an inheritance. Further, as is often the case in these proceedings, a whole branch of a family may be seeking documentation, but the relatives that were close enough by relation to “qualify” to order a death certificate are no longer living.

10. Separately, I would like to address a few comments made by Dr. Steven Schwartz regarding access to records. First, I understand that Dr. Schwartz informed the Board of Health that vital records are very easy to acquire through the DOHMH. Based on my personal experience and the anecdotes told to me by attorneys, clients, family members and others, that is not accurate. Even when a person might be related to a decedent in a way that fits within the new rules, individuals often do not have documentation to establish proof of relationship that is required by DOHMH when requesting a death certificate. Often—especially for records that are

more than 50 years old—the best and only proof for a descendant to establish that person is related to an ancestor *is a vital record*, the same records that the DOHMH is restricting. For instance, if there is no obituary or estate file for a person who died in the 1950s or '60s, the only way I may be able to provide court-acceptable documentation of that person's kinship link with family is through details on his or her death certificate. Yet, DOHMH is requesting very specific proof of relationship to receive the death certificates (and refusing access to genealogists like me). This further prevents me and others from gaining information that we need.

11. I believe these limitations were not necessarily based on the public's interest, but instead on the personal beliefs of Dr. Schwartz. As mentioned above, throughout my career I have interacted with nearly all of the relevant individuals in the state who deal with vital records. One time a few years ago, I attended a meeting at the New York City Municipal Archives. Dr. Schwartz was present, and I heard him say in essence that if it were up to him, he would restrict access to even more records that dated further back in time.

12. For these reasons, I support the Petition of Reclaim the Records, as the DOHMH's rules have created significant burdens that are not in line with other states, or even with New York State.

  
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Roger D. Joslyn

Sworn before me this 12 day of April, 2019.

  
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NOTARY PUBLIC

**EDWIN A. RIVERA JR.**  
Notary Public, State of New York  
No. 01R16375951  
Qualified in Richmond County  
Commission Expires May 29, 2022