

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  
MEGAN SMOLENYAK**

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.

----- X  
STATE OF FLORIDA        )  
                                  ) ss.  
COUNTY OF PINELLAS    )

Megan Smolenyak, being duly sworn, deposes and says:

1. I am a professional genealogist and also serve on the Board of Directors of the  
Petitioner Reclaim the Records (“RTR”).

2. I submit this Affidavit in support of RTR’s Verified Article 78 Petition. Unless  
otherwise stated, the statements made herein are based on my personal knowledge and  
experience.

3. I have been a professional genealogist for 20 years, including serving as the Chief  
Family Historian of Ancestry.com. I have written six books relating to genealogy, including one  
of the first books featuring genetic genealogy, and I have appeared and my research has been  
featured in countless television programs and print media. Among other things, I have

researched the families of many celebrities; my research on First Lady Michelle Obama's family was featured on the front page of *The New York Times*, and my research on President Barack Obama's Irish roots led to his own trip to his ancestral hometown.

4. This Affidavit focuses on one specific aspect of my career, regarding which I wrote to the New York City Board of Health, but which I do not believe they adequately considered. For the past 20 years, I have served as a consultant to the U.S. Army to locate family members of almost 1,400 soldiers that are still unaccounted for from World War I, World War II, Korea and Vietnam. This is part of the country's efforts to "leave no man behind," and it is a privilege to honor the sacrifice of each of these soldiers by trying to find family members and bringing peace to a family.

5. For each of the 1,390 soldiers I have researched for the U.S. Army to date, that soldier left behind family members who have been waiting decades to learn what has happened to him. I therefore work with the U.S. Army by extensively researching their families to assist with identifications and to help bring closure to their loved ones back home.

6. The process to align a missing soldier and his family is not simple. Starting with skimpy information, I must find both his primary and secondary next of kin, three relatives who share his mitochondrial DNA, one relative who shares his Y-DNA, and when possible, one who shares significant autosomal DNA. As a result, I need to search far and wide for relatives of the deceased soldier, and then trace their lines to the present. Each case is no small task.

7. Very frequently, the pursuit of these records lands me in New York City. The U.S. Army and New York City both share a common trait in having large immigrant populations, and therefore, I often have to search for ancestors, descendants and cousins that lived and died in New York City. Even if the soldier who died had not lived in New York, it is often the case that

the family members were living or later moved here. This is true of countless backgrounds, whether the families originated from Ireland, Italy, Puerto Rico, Jamaica or the Philippines.

8. The restrictions put in place by the New York City Department of Health and Mental Hygiene (“DOHMH”) directly affect my work, and in advance of DOHMH’s board meeting to discuss amending the New York City Health Code, I submitted a letter addressing my concerns, specifically as it related to my involvement with the Army. It does not appear the Board considered my concerns at all though.

9. For example, the new restrictions on access to records hinder my ability to trace and locate relatives. Because I am dealing with soldiers who fought in wars during the early and mid-twentieth century, I often need to turn to vital records from that same time period to locate relatives. Death certificates are a crucial component of this, as a death certificate often includes a next of kin, address, and parents, including the mother’s maiden name, which is often critical to locating relatives who share a soldier’s mitochondrial DNA. These are key indicators to help locate other family members so that I can help unite the soldier’s remains with his family.

10. The new restrictions, however, impede my ability to do my job. Because I am not a direct descendant or one of the narrow categories of individuals specified by DOHMH, I am unable to receive copies of the records at issue. Further, unlike *countless other states* that permit the public to gain access to uncertified copies of records, DOHMH will not even let me *view* records of deaths for 75 years and of births for 125 years. Therefore, at times, I can be completely blocked from learning the most pertinent information. New York City’s restrictions on access to vital records is overly burdensome, and has real consequences.

11. Further, the ability to view records, even in uncertified form, has significant benefits. From personal experience, I know that New York City immigrants often used varying

names, *i.e.*, both first and last names were changed from European names to Americanized names in the United States. I have also seen many instances where a parent maintained an “old-world” name while the children Americanized their names, or where an individual used an Americanized name on one form of identification but the original name on another document. But there is reluctance on the part of DOHMH to respond to such scenarios because they claim there is no proof that the individuals are the same people. All of this could be eliminated with permitting access to the records to the general public, especially for records that are over 50 years old (which, based on my experience, is more easily accessible in nearly every other state).

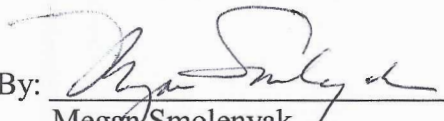
12. While I have expounded here on the damage these severe restrictions do to our nation’s efforts to bring its missing service people home, they also hinder other important work. For example, I founded a volunteer organization of genealogists called Unclaimed Persons to assist coroners and medical examiners with finding the next of kin for people whose identities are known, but whose relatives cannot be found. This is a quiet, national epidemic that continues to grow, and coroners and medical examiners are often overwhelmed and unable to find relatives. As with the Army research, New York City records have been instrumental in resolving many such cases, resulting in decent burials and closure for the families left behind.

13. Historical research is also adversely affected. For instance, a previous endeavor of mine was to research the first ever immigrant through Ellis Island, Annie Moore, and to trace her descendants, and I made heavy use of New York City vital records in my efforts. As with my research on Michelle Obama, the results of the Annie Moore research were deemed important enough to be featured on the front page of *The New York Times*.

14. For all of these reasons, among many more, the DOHMH rules, which have directly affected my business, are overly and unfairly burdensome.

I declare under penalty of perjury under the laws of the state of New York that the foregoing is true and correct.

Executed this 15 day of April, 2019 at St. Petersburg, Florida.

By:   
Megan Smolenyak

**Acknowledgement**

STATE OF FLORIDA        )  
  ) ss.  
COUNTY OF PINELLAS    )

On April 15, 2019, before me, the undersigned, personally appeared Megan Smolenyak, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



  
NOTARY PUBLIC, STATE OF FLORIDA

Printed Name: Daniel Hetherington