

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
DAVID BUSHMAN

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.

STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

David Bushman, being duly sworn, deposes and says:

1. I am a retired attorney and an amateur genealogist.

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 submit this Affidavit to highlight the negative health-related consequences of the
decision by the New York City Department of Health and Mental Hygiene ("DOHMH") to
restrict public access to New York City death certificates for a period of 75 years and to instead
only permit access to a small category of individuals.

4. During DOHMH's Health Code amendment process, I appeared at a public hearing on April 23, 2018 to highlight for DOHMH the negative health-related consequences of its proposal to restrict access, but I do not believe DOHMH adequately considered these at all.

5. My family immigrated to New York City from Eastern Europe in the late 1890s and early 1900s. They settled in New York City, raised their families here and died here, as did many of their descendants and relatives.

6. My mother died of breast cancer and ovarian cancer at the age of 42. She had a sister who died of breast cancer at 34 and another sister who died of ovarian cancer at 35. Despite the similar circumstances of their passing, it was not until 2010 that I learned that cancer in my family is actually hereditary and is carried through our DNA. Specifically, I learned that I carry the BRCA1 genetic mutation, which greatly increases the risk of developing various forms of cancer, especially for those including myself who are of Ashkenazi Jewish/Eastern European descent.

7. After learning that I carried this mutation, I spoke with a genetic counselor, who urged me to learn as much information as possible about my family, including everyone's medical history. Since that time, I have availed myself of the records at the New York City Municipal Archives. With the information I was able to obtain there, I was able to inform some relatives of the health risks they too faced.

8. I would like to be able to warn *any* relative who I can locate that may carry the same genetic mutation as me. However, death records are only publicly accessible through 1948, and I can only order more recent records through DOHMH upon specific proof of relationship. DOHMH's new regulation, however, despite immense public opposition, excluded very important categories of individuals from accessing records. One of the most evident, which

I urged the Department to adopt, was the inclusion of access to cousins. There are many times when I or others may be seeking to uncover a new branch of our family, but there is no one living who *qualifies* to gain access (or even if so, lacks sufficient proof for DOHMH). Therefore, a living cousin may be the key person who is capable of ordering a record. Yet, while the key to uncovering a branch of a family tree may be a cousin, cousins are excluded (for no reason) by DOHMH from being able to access records.

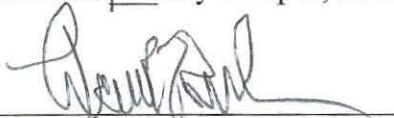
9. Further, I highlighted to DOHMH that it should permit records to be ordered in uncertified form and stamped that they are for genealogical purposes only. Family researchers who are seeking to expand their trees for health reasons do not need records to be certified by anyone. We are simply seeking access so that we can inform as many relatives as possible of the potential health risks that they unknowingly inherited.

10. DOHMH's policies to restrict the public's access to vital records has had tangible negative *health-related* consequences. By preventing me and others from being able to view death certificates to assess cause of death, and to build a family tree to locate living descendants and relatives, DOHMH is preventing these individuals from becoming aware of their own family health histories.

11. Therefore, I support the Petition of Reclaim the Records to invalidate the newly-enacted DOHMH access rules.

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

Executed this 16th day of April, 2019 at Fort Lee, New Jersey.

By: 
David Bushman

Acknowledgement

STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

On April 16, 2019, before me, the undersigned, personally appeared David Bushman, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lorraine Thompson
NOTARY PUBLIC, STATE OF NEW JERSEY

Printed Name: LORRAINE Thompson

LORRAINE THOMPSON
NOTARY PUBLIC OF NEW JERSEY
Commission No. 2263466
My Commission Expires Sept. 21, 2020