

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

ELLEN W. GERBER; PEARL BERLIN; LYN MCCOY; JANE BLACKBURN; ESMERALDA MEJIA; CHRISTINA GINTER-MEJIA, for herself and as guardian *ad litem* for J.G.-M., a minor;

Plaintiffs,

v.

ROY COOPER, in his official capacity as the Attorney General of North Carolina; JEFF THIGPEN, in his official capacity as the Register of Deeds for Guilford County; DONNA HICKS SPENCER, in her official capacity as the Register of Deeds for Catawba County; JOHN W. SMITH, in his official capacity as the Director of the North Carolina Administrative Office of the Courts; AL JEAN BOGLE, in her official capacity as the Clerk of the Superior Court for Catawba County.

Defendants.

CIVIL ACTION NO. 1:14-cv-299

AFFIDAVIT OF PEARL BERLIN

PEARL BERLIN, being duly sworn, deposes and says:

1. I am over 18 years of age, legally competent to give this affidavit and have personal knowledge of the facts set forth in this affidavit.
2. I am a citizen and resident of High Point, North Carolina where I have lived for more than 40 years.

3. I submit this affidavit to explain to the court that spouse, Ellen W. Gerber, and I are in imminent need of relief. Because our marriage is not legally recognized by North Carolina, we are harmed on a daily basis. I am 89 years old and have substantial medical problems, which increase my risk of death in the near future. If I die without our marriage being recognized, we can never be compensated for the harms caused by this lack of recognition.

Marriage to Ellen W. Gerber

4. Ellen (“Lennie”) and I have been in a loving, supportive relationship for almost 48 years, and I consider Lennie my spouse.

5. We met in 1964 and again a handful of times over the next three years, embarking on our relationship in 1996, which has become almost 50 years of being committed to each other. At the beginning of our friendship, I told a mutual friend that all I wanted from Lennie was a “friendship of the mind.” Forty-eight years into our romantic relationship, when Lennie teases me about this, I tell her, “Yes we do. We have ‘a friendship of the mind that has lasted 48 years!’”

6. We had an event to recognize our relationship on our 47th anniversary at Beth David Synagogue in Greensboro on June 2, 2013. Although this was not a legal ceremony it was so important to both of us to celebrate our 47-year-long relationship in our community with friends and family. The participation of our Rabbi and involvement of so many friends and other community members was very satisfying. Yet, with the joy of this event, came the sadness that the place in which we live somehow considers our relationship less worthy, less dignified, and without value as compared to others. However, because North Carolina does not recognize our marriage, we also were married in Maine on a visit there on September 10, 2013. While our marriage is valid under Jewish and Maine law, North Carolina does not recognize it.

My Serious Medical Conditions

7. I am 89 years old and frail. I have a number of serious medical conditions for which I have been hospitalized.

8. My major medical condition is neurological and is called complex partial seizures. Complex partial seizures are unpredictable and last one to two minutes. I am told they will continue as long as I live. During a seizure I am not in control of my movements, and risk falling and hurting myself. In order to deal with these seizures, I am on daily medications, which weaken me. The major effect of these medications is that they impede my balance. I fall easily and often and am in continuous need of support. One recent fall put me into the hospital for internal bleeding and three broken ribs. Due to my weakened state, I have been hospitalized for pneumonia as well.

9. I also get blood clots, which are associated with increased risk of heart attacks, strokes, lung problems and other serious problems. However, my doctors do not want to put me on blood thinners because they may further affect my balance, which is already severely impaired by my other medication. I have been hospitalized for this condition as well.

Harms Arising Because North Carolina Does Not Respect Our Marriage

10. Because of my age and medical issues, Lennie and I are anxious about whether she will be allowed to exercise her proper role as my medical proxy, or allowed access to me in a medical emergency. We have done what we can to alleviate this uncertainty, including going only to practitioners who accept our status as a couple and signing the appropriate consent forms. Thus far we have been fortunate and not had any difficulty with this. However, we worry about emergency situations in which I could end up with a practitioner that does not know us, where there is always the risk that Lennie's role as my spouse could be ignored.

11. As my spouse and the person who knows me best, I feel that Lennie needs to be the one making medical and other important decisions for me if I am ever in a situation where I cannot make decisions for myself. I constantly worry—and believe this worry adversely affects my health—that Lennie will be denied the role of my spouse. Lennie has been my whole support system for the last 48 years, and the thought of going through any sort of emergency without her scares me immensely. I constantly worry that she will be denied access to me in a medical emergency and I will have to face the situation without her support.

12. As long as our marriage is not valid under North Carolina law there is the constant risk that, if I am ever incapacitated—which is a serious risk, given my age and medical conditions—our relationship will not be respected or recognized and Lennie will be denied what we both want—Lennie to act as my spouse and make decisions on my behalf.

13. In light of my age and my recent medical problems, both Lennie and I are concerned that I will die before our marriage is recognized under North Carolina law. The thought that our relationship will never be legally recognized in the place where we live makes me feel sad. My relationship with Lennie has withstood years and life challenges that most relationships never do. It is not right that the quality of our relationship is demeaned by the State solely because we are a same-sex couple.

14. During our lives together, the State has not recognized our marriage and has denied us many state and federal benefits and protections that are conferred on legally married couples. We are not entitled to each other's social security benefits in the absence of a legal marriage. Since we moved to North Carolina in 1971, we have not been able to file joint tax returns and avail ourselves of the tax benefits that the State of North Carolina confers upon married couples. The amounts lost cannot be recovered and increase each day.

15. If I die before our marriage is legally acknowledged, our rights will never be recognized and we will never be able to retroactively address these denials. The harm we have experienced would become permanent. Given my advanced age and medical condition, there is a serious possibility of this happening in the near future.

16. North Carolina's denial of our rights also affected my dignity in ways that would be irreparable if I die. I would like to know that Lennie will be listed as my spouse on my death certificate. Death certificates are meaningful personal and historical documents. It means a great deal to me to have our lives together memorialized forever. If I die before our marriage is legally recognized, I will always be denied this important comfort.

17. Every day that goes by that our marriage is not recognized as valid by the state, our financial security and ability to achieve life goals as a couple is undermined, and we are deprived of the dignity and status of marriage. We have lived in a committed, stable relationship in our community in North Carolina since 1971. It hurts me every day that the state where we have built our life together does not recognize our commitments to each other. That our marriage is not respected while different-sex marriages are shows me that the state finds same-sex couples inferior to different-sex couples. If I die before our marriage is recognized, there is no way for me to regain the dignity that is currently taken when the state demeans my relationship in this way.

Furthermore, the affiant saith not.

This the 8th day of April, 2014.

Pearl Berlin
Pearl Berlin

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

Sworn to and subscribed before me
this 8 day of April, 2014.

Cathy E. Khoutsvanh
Notary Public Signature

Cathy E. Khoutsvanh
Notary Public Name

My Commission Expires: 02/14/2017

