

**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 ELLEN W. GERBER

ELLEN W. GERBER, 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 almost forty-five years—more than half my life.

3. I submit this affidavit to show the imminent harm to my spouse, Pearl Berlin, and me because North Carolina does not recognize our marriage. Pearl is 89 years old and suffers from multiple medical conditions that increase the risk that she could die in the very near future. If she dies before our marriage is recognized, we never will be compensated for the injuries sustained over the 47 years we have been in a committed relationship that is not recognized under the laws of our state.

4. Because Pearl and I have been together for 47 years, much of the information about our life together as well as the harms she describes in her own affidavit apply to us both. For the convenience of the Court and in order to avoid presenting identical information, I incorporate portions of the Affidavit of Pearl Berlin.¹ I agree with the characterizations and assessments of our shared problems and harms.

Marriage to Pearl Berlin

5. Pearl Berlin and I met in 1964, and began our relationship committed to each other in 1966. As Pearl explains in paragraphs 4 through 6 of her affidavit, which I incorporate here, we are in a strongly loving, supportive relationship, and I consider Pearl my spouse.

6. We were both born and raised in Brooklyn in Jewish families. One of my aunts even dated one of Pearl's uncles. We both attended Boston University as undergraduates, had some of the same professors, and were both academics in the field of physical education, but we had never met or even heard of each other until the early 1960s.

7. We met in 1964 when I was on my way to California to do my doctorate degree. One year later Pearl was in LA for a conference. After spending time together I knew that I wanted to work with her when I finished my degree. During the several days that I was in

¹ In order to avoid duplicative statements of fact, I refer to Pearl Berlin's affidavit where I have reviewed and agree with her assessment of the factual situation.

Detroit for the job interview, in January, 1966, I fell deeply in love. I knew that Pearl was the person I wanted to spend the rest of my life with. Fortunately, Pearl felt the same way. In the spring of 1966, we finally began our romantic relationship and on June 2nd of that year we committed to living our lives together.

8. For over 47 years we have enjoyed a wonderful life together including successful professional careers (I first was as an associate professor and became an attorney and then managing attorney of the Legal Aid Society of Northwest North Carolina where I represented poor people and guided the attorney staff in their representations); fighting for civil rights for African Americans, women (I served on the statewide committee working to enact the ERA in our NC legislature) and lesbians and gays; and enjoying the richness of a community of friends and supportive families.

9. In addition to our day to day life, we have shared the rich experiences of travel all over the world. We enjoyed the wonders of nature in places such as the Galapagos, the Antarctic, the Arctic, Botswana and the Masai Mara in Kenya. We loved touring the world's great cities such as Paris, London, Jerusalem, St. Petersburg, Beijing—and our own Washington, DC. And we stood in awe before the ancient monuments such as the Pyramids and the Great Sphinx, the Parthenon and the ruins at Delphi, the Great Wall of China and the warriors at Xian. We spent much time exploring the southern hemisphere in New Zealand and Australia.

10. My dream was always to be married before our family, friends and community in a Jewish ceremony, and last year that dream came true. We had a wedding ceremony under a traditional Jewish chuppah at Beth David Synagogue in Greensboro on June 2, 2013, our 47th anniversary. We were also legally married in Maine in a small ceremony at the Jewish Museum of Portland on September 10, 2013. However, the wedding was bittersweet for me because

while our marriage is valid under Jewish and Maine law, North Carolina does not recognize it. This causes constant and continuing emotional and other detriments outlined in this statement.

The Imminent Harms from North Carolina's Denial of Our Marriage

11. Pearl is 89 years old. As Pearl describes in paragraphs 7 through 10 of her affidavit, which I incorporate here, she is frail and has a number of serious medical conditions, including complex partial seizure and blood clots. Because of these she has been hospitalized three times in the past two years for pneumonia, blood clots and most recently because of a fall where she hit her head and suffered internal bleeding and also broke three ribs.

12. For almost 48 years Pearl and I have supported each other in every way possible. As her spouse, I want and need to be by her side the whole time in any medical emergency. The idea of Pearl having to go through any sort of emergency alone, or have another person make decisions for her is devastating to me.

13. Because of Pearl's age and medical issues, we are in a constant state of uncertainty and fear about whether I will be allowed to exercise my proper role as Pearl's medical proxy, or allowed access to her in a medical emergency. We have tried to protect ourselves from this kind of a situation, but the risk is always with us and on our minds that Pearl will be forced to seek emergency treatment, and my rights as her spouse could be denied.

14. In light of Pearl's age and recent medical problems, both Pearl and I worry that she will die before our marriage is recognized under North Carolina law. This causes constant distress; we both want our home state to afford us the dignity and respect that other married couples have but that North Carolina denies to us because we are a same-sex couple. If Pearl dies without the state recognizing our marriage, I will not be able to recover protections or benefits that we would have been entitled to if the recognition had happened during Pearl's

lifetime, as Pearl explains in paragraphs 14 through 16 of her affidavit, which I incorporate here. More importantly, if she died before our marriage is recognized, we never will have the dignity and respect in our community that comes with marriage.

15. Pearl's death would be devastating for me. It would only make things worse at a time of tremendous grief and loss if I were not listed on her death certificate as her spouse. This would demean the relationship that we have built over the past 48 years and be an insult to her memory.

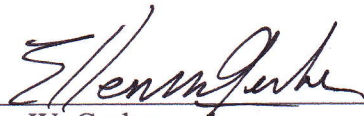
16. If our marriage is not recognized before Pearl dies, we can never be made whole for these harms.

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 the dignity and status of marriage as set out in further detail below. That the state does not recognize us as a couple, creates an atmosphere in the community that discrimination based on sexual orientation is acceptable because we are, in the eyes of the State, inferior to different-sex couples. It allows state officials and individuals to devalue our relationship and disrespect us based on our moral and sexual choices.

18. The harms that result from Pearl's age and medical conditions are only some of the harms we face from North Carolina's refusal to recognize our marriage. 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.

Furthermore, the affiant saith not.

This the 8th day of April, 2014.



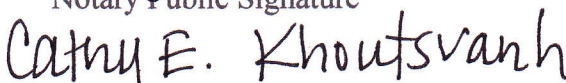
Ellen W. Gerber

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

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



Notary Public Signature



Notary Public Name

My Commission Expires: 02/14/2017

