

**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 LYN MCCOY

LYN MCCOY, 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 Greensboro, North Carolina where I have lived for six years.

3. I submit this affidavit in order to explain the imminent and irreparable harms that my spouse Jane Blackburn and I are suffering, and will suffer, because North Carolina does not recognize our marriage. Jane has Stage IV cancer and could die at any time. If she dies before our marriage is recognized under North Carolina law, we can never be compensated for our harms.

4. Because Jane and I are spouses, 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 avoid presenting identical information, I incorporate portions of the Affidavit of Jane Blackburn.¹ I agree with the characterizations and assessments of our shared problems and harms.

Marriage to Jane Blackburn

5. Jane Blackburn and I met in 1991. As Jane describes in paragraphs 4 through 6 of her affidavit, which I incorporate here, we have supported each other and been completely committed to each other for more than twenty years. During that time we have lived in many places together. When I was employed by the Peace Corps from February 1993 to September 1995, Jane moved with me to the Republic of Moldova, where we spent two and a half years. We then moved back to Virginia together, to the town where Jane grew up. Finally, we settled down in Greensboro, North Carolina in 2008. This has been our home ever since, and is where we plan to live out our lives.

6. We were legally married in Washington D.C. on August 27, 2011. However, our marriage is not recognized under North Carolina law.

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

7. I wasn't sure that getting married in a place where we do not live after being together for 20 years would change anything about our relationship, but to my surprise, it really did. Everything intensified, and we felt so much more "worthy" than we ever had before. This is why it pains me that we cannot experience this joy in the state where we live. Marriage is truly a public statement that ensures that everyone knows how very important Jane is to me. I wish that this public statement would be recognized in our home state. Doing so would grant us the dignity and recognition that our relationship deserves.

How We Are Harmed Because North Carolina Does Not Respect Our Marriage

8. As explained in Jane's affidavit, paragraphs 7 through 9, which I incorporate here, Jane was diagnosed with breast cancer in early 2012, and has been undergoing treatment for it since then, including surgeries and radiation. The cancer has spread to her bones, and she currently has Stage IV cancer.

9. Although we try to stay positive about her prognosis, we realize and have been told by Jane's medical care providers that Stage IV cancer is widely considered to be imminently life-threatening.

10. Because of Jane's illness, Jane and I always worry that I will not be allowed to exercise my proper role as her medical proxy, or allowed access to her if there is an emergency. We have done what we can to alleviate this uncertainty—we go to doctors who accept our status as a couple and we have signed the appropriate consent forms. But without a legal relationship recognized in North Carolina, there is always the risk—and the constant worry—that if Jane is forced to seek emergency treatment, I won't be able to see her, help her and make decisions on her behalf if she is unable to do so. Having seen the intense pain that she has gone through as part of her treatments, I could not imagine being forced to leave her alone when it is my

responsibility as her wife to support her and stay by her side through anything that comes her way. I would also be distraught if I had to wait outside during a treatment or an emergency procedure, not knowing what was happening or how my wife was doing. We have been fortunate enough to have our medical practitioners respect our relationship thus far, but we are in a constant state of worry that my rights as Jane's spouse may be denied if we are traveling or if an emergency situation causes us to end up in a new hospital. We keep the extensive documentation of our relationship and the rights we have bestowed on one another with us in the car at all times, but this cannot fully alleviate the fear and anxiety of anyone refusing to recognize my rights in an emergency.

11. As Jane describes in paragraphs 12 and 13 of her affidavit, which I incorporate here, we are deprived of many financial benefits both state and federal and are harmed by the uncertainty of our status in planning for each other when one of us dies.

12. If Jane were to die before we receive the relief we request in this lawsuit, our relationship would never be legally recognized in North Carolina. If Jane dies without the state recognizing our marriage, I will never have the dignity afforded other married couples, and there is no guarantee that I will be able to recoup the benefits that we would have been entitled to if the recognition had happened during her lifetime.

13. If Jane were to die before our marriage was recognized, she would die knowing that she is not legally my wife in the place we live, and that my name would not appear on her death certificate as her spouse. The prospect of this distresses me greatly; it devalues our relationship by refusing to recognize the commitments we have made to each other and the life we have built together over the last twenty-two years.

14. Equally importantly, if she died before our marriage were recognized, we would never have the chance to gain the emotional and psychological benefits that come with marriage. With state recognition of our marriage would come dignity and respect that we are denied as long as our marriage is ignored under North Carolina law. Because North Carolina refuses to recognize our marriages as valid, it implicitly condones discrimination based on sexual orientation by others in the community.

15. Because Jane and I are not legally married in North Carolina, we are treated differently even in our own families. For example, Jane's family has a reunion every year, at which they bring out and add to a big homemade family tree. Even though Jane and I have been in a loving stable relationship for over twenty years, there is no "M" next to her name, and my name has never been added. I am treated as part of the family in many respects, but without a legally recognized marriage in North Carolina, our relationship is never given the respect that it deserves.

16. Every day that goes by that our marriage is not recognized as valid by the state, we are deprived of our constitutional rights to dignity and respect. If our marriage is not recognized before Jane dies, we can never be made whole for these harms.

Furthermore, the affiant saith not.

This the 8th day of April, 2014.

Lyn McCoy / Carolyn C. McCoy
Lyn McCoy Carolyn C. McCoy

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

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

[Signature]

Notary Public Signature

SONIA TORRES

Notary Public Name

My Commission Expires: June 13, 2015

