

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI
CIVIL DIVISION**

**BROOKE SCHREIER GANZ, both indi-)
vidually and as an authorized representa-)
tive of RECLAIM THE RECORDS, a non-)
profit, unincorporated association,)**

Plaintiffs,)

Case No.16AC-CC00503

vs.)

**MISSOURI DEPARTMENT OF)
HEALTH AND SENIOR SERVICES,)**

Defendant.)

AFFIDAVIT OF BROOKE SCHREIER GANZ

STATE OF CALIFORNIA)
) ss
COUNTY OF MARIN)

I, Brooke Schreier Ganz, having first been duly sworn on my oath, state as follows:

My background

- 1. I am a computer programmer and web developer with a strong interest in genealogy.
- 2. I have created and programmed several genealogical non-profit organizations' websites, including creating customized search engines that now contain more than 1.9 million freely accessible historical records.
- 3. An early version of the search engine code I wrote for one organization won second place in an international genealogical "Developer Challenge" and includes advanced features such as a multilingual search interface and the option to limit searches by their radius from known geographical points of interest.

4. I have also been involved in serious genealogical research for more than twenty years.

5. For example, I conceived and led a genealogical project in the regional archives of northwestern Romania which led to the first-ever digital photography, transcription, and free publication of more than 50,000 historical records from the mid to late nineteenth century.

My first lawsuit

6. In early 2015, as part of my genealogical research, I attempted to obtain copies of the indices to early twentieth-century marriage licenses from the New York City Municipal Archives, using the New York State Freedom of Information Law (“FOIL”).

7. At that time, these indices were only available to the public on microfilm reels, which could only be accessed in person inside the Archives building in Manhattan, meaning that the information contained in these important historical records was functionally unavailable to researchers located outside of New York, despite legally being public documents.

8. I obtained an Advisory Opinion from the state’s Committee on Open Government, which was created and funded by the state legislature to provide assistance in interpreting FOIL (both for members of the general public and for government agencies who might be bound by the law), that FOIL required the Archives to provide copies of the indices.

9. When the Archives still refused to release a copy of the materials, I finally sued.

10. At that point, the Archives capitulated, and provided copies of the microfilm reels, which I digitally scanned and converted into millions of digital images that I then posted online for free public use.

11. To my knowledge, I was the first genealogist to successfully sue a government archive in the United States for the return of records to the public using a state open records law.

Reclaim the Records

12. That 2015 lawsuit against the New York City Municipal Archives was the beginning of what is today Reclaim the Records, an association of genealogists, historians, researchers, journalists, and open government advocates committed to making genealogical data readily available to the public for free.

13. Reclaim the Records maintains a website for sharing information on our work, and we publish an e-mail newsletter, to which more than 6,200 people have subscribed.

14. Since 2015, Reclaim the Records and I have repeatedly used state and federal open records laws to obtain copies of important genealogical data sets and post those records online for free, working with agencies as small as a local city clerk's office and as large as the National Archives and Records Administration.

15. Many times, the agency provides the records upon receipt of our request.

16. However, if the agency does not provide documents in response to our open records requests, we sometimes have to sue the agency under the applicable state or federal open records law.

17. Among our many successes are:

- We used the New Jersey Open Public Records Act to successfully obtain and publish the New Jersey Death Index from 1904 through 2017;
- We recently used the Washington State Freedom of Information Act to acquire copies of state and county level marriage index databases, which for some areas contain data as far back as 1847 and for other areas continue up through 2010; and
- We are currently in the process of negotiating a lawsuit settlement with the United States Department of Veterans Affairs, which we sued in 2018 under the Freedom of Information Act for the first free public release of a database of deceased veterans of the United States military, going back to the Civil War era.

18. Once we obtain the records, we make them available for free on the Internet, clearly marking them as being public domain materials.

19. Once on the Internet, the records are readily accessible to the public, who uses them to find family members, trace family lineages, and much more.

20. Unlike commercial genealogy websites, we do not charge any fees for access, nor do we erect any paywalls between the public and taxpayer-funded historical data.

21. Since Reclaim the Records' founding in 2015, the group has reclaimed more than 28 million records for the public's benefit, some of these records had never been available to the public in any physical format or any location before, and almost none of them had ever been freely accessible on the Internet before.

Reclaim the Records' current status

22. After two years as an unincorporated association, Reclaim the Records was formally incorporated in December 2016, and became a 501(c)(3) non-profit organization in February 2017.

23. In addition to myself, the group's current board of directors are:

- Barbara Mathews, CG – Board-certified genealogist and a Fellow of the American Society of Genealogists (ASG), whose membership is limited to only fifty living fellows, so a fellow must die before a new fellow can be installed. She is also ASG's representative to the Records Preservation and Access Committee of the international genealogical organization the Federation of Genealogical Societies.
- Dallan Quass – Former Chief Technology Officer of FamilySearch, the largest genealogy non-profit organization in the world, which is operated by The Church of Jesus Christ of Latter-day Saints. He also created WeRelate.org, one of the first genealogy wikis, GenGophers.com, a website like Google Books but for genealogy, and RootsFinder.com, a free family-tree website. Dallan is currently the Senior Vice President of Family History Technology at FindMyPast.com, a major commercial genealogy website focused on British and Irish records.
- Megan Smolenyak – Former Chief Family Historian for Ancestry.com, the largest for-profit genealogy company in the world, and the author of six books. Her prior work includes tracing the ancestry of Annie Moore, the first immigrant through Ellis Island, and her genealogical research about

the roots of public figures and politicians has twice been featured on the front page of the *New York Times*. In addition, she is a forensic consultant to the U.S. Army, for whom she conducts genealogical research to identify potential family members of unaccounted soldiers from World War I, World War II, Korea and Vietnam for possible DNA matches with soldiers' remains recovered from the battlefield. Her work has enabled thousands of American soldiers to finally be conclusively identified, repatriated, and laid to rest on United States soil, including at Arlington National Cemetery.

- Jonathan Webb Deiss – Independent U.S. military history researcher named as the first Citizen Archivist by the official Archivist of the United States. He is a former researcher for the National Society of the Daughters of American Revolution (the D.A.R.), and is currently the Staff Genealogist of the National Society Colonial Dames of the 17th Century. His historical work has been cited in numerous books, television shows, and most recently was cited in the pending United States Supreme Court case, *American Humanist Ass'n v. The American Legion*, concerning Maryland's 'Peace Cross.'
- Tammy Hepps – Founder of Treelines.com, a collaborative online family tree creation website used to curate and share family histories. She is the past winner of the Developer Challenge at RootsTech, a global family history event held annually in Salt Lake City and hosted by FamilySearch. She has given genealogical lectures at venues ranging from the

Library of Congress to Ellis Island, along with every major national genealogical conference and several universities. She is also the creator of a groundbreaking digital project looking at the history of Homestead, Pennsylvania.

- Jason Gersh, PhD – Amateur genealogist who has successfully used many state and federal open records requests to obtain historical records. He has obtained previously unavailable material from agencies ranging in size from a local public school district to the U.S. Department of State.
- Alec Ferretti – Current master’s degree candidate at New York University’s Dual Degree Master’s Program for Archives and Library Science. He is the president of the New York Genealogy and Technology Group, and a winner of the Association for Professional Genealogists 2018 Young Professional Scholarship.

24. In addition to being a member of the board, I am also the President of Reclaim the Records.

Our recognition in the genealogical field

25. As an organization, we have won numerous awards for our work, including the Federation of Genealogical Societies’ 2017 Director’s Award, presented in recognition of both exceptional contributions to the field of genealogy and family history, and extra-mile efforts to promote good will and improve services.

26. I too have received recognition for my work, including being awarded the first annual Shirley M. Barnes Records Access Award by the Massachusetts Genealogical Council.

27. In addition, I have been invited to be a speaker at several regional and national genealogical conferences over the last eight years.

The right to sue remains with the unincorporated association

28. The legal right to the records at issue in this lawsuit, which was filed in November 2016 (before Reclaim the Records was incorporated), remains with the original unincorporated association, which continues for the purpose of prosecuting this lawsuit.

29. As founder and President of Reclaim the Records, I will fairly and adequately represent the interests of the group's members.

My Sunshine Law requests

30. On February 13, 2016, on behalf of Reclaim the Records, I e-mailed two Missouri Sunshine Law requests to the Missouri Department of Health and Senior Services.

31. One request was for Missouri birth listings for the period January 1, 1910, through December 31, 2015, while the second request was for Missouri death listings for the same period.

32. Copies of the e-mails I sent requesting the birth/death listings are attached here as **Exhibit A**.

33. On February 17, 2016, I received two e-mails from Emily Hollis, who identified herself as being with the "Office of General Counsel, Dept. of Health & Senior Services."

34. The two e-mails were identical, except that one e-mail was in response to my request for birth listings and the other e-mail was in response to my request for death listings.

35. The text of Ms. Hollis' e-mails is set forth in Paragraph 18, 19, and 82 of the accompanying Statement of Uncontroverted Facts and attached here as **Exhibit B**.

My efforts to get a response from DHSS

36. By April 18, 2016, I had not received the birth or death listings, nor had I received a cost estimate for the listings—even though Ms. Hollis had said I would receive a response around March 31, 2016—so I sent a follow up email to DHSS.

37. On April 26, 2016, I received an e-mail from Dr. Loise Wambuguh, a copy of which is attached as **Exhibit C**, who is in DHSS' Division of Community and Public Health, asking me to contact her about my requests.

38. On April 27, 2019, I spoke by telephone with Dr. Loise Wambuguh.

39. During our call, Dr. Wambuguh told me that DHSS' birth listings only went back to 1920, and that DHSS' death listings only went back to 1968 (death records prior to 1968 had previously been transferred to the Missouri State Archives and were available online).

40. Dr. Wambuguh also told me that DHSS would provide names and the date of birth or death, but would not provide either the gender of the person or a birth/death certificate number, which I had mentioned in my original e-mail would be helpful information to add.

41. Considering this information, I agreed to limit my request for birth listings to an index of names and dates of birth for the period January 1, 1920 through December 31, 2015.

42. I also agreed to limit my request for birth listings to an index of names and dates of birth for the period January 1, 1968 through December 31, 2015.

43. At no time during my call with Dr. Wambuguh did she ever state that DHSS had denied my requests, or was even considering denying my requests.

44. Quite the contrary, she told me that DHSS regularly provides such listings to persons and groups, including epidemiologists and public health researchers.

45. As we were ending the call, Dr. Wambuguh told me someone would be getting back to me with a cost estimate.

The DHSS General Counsel calls me

46. On May 23, 2016, after I had still not received a cost estimate, I called Dr. Wambuguh and left her a voicemail stating that I was still waiting for a cost estimate.

47. On May 27, 2016, I received a call from Nikki Loethen, who identified herself as DHSS' General Counsel.

48. During our call, we discussed my Sunshine Law requests and Ms. Loethen told me DHSS was still working to provide a cost estimate for my requests.

49. At no time during the call did Ms. Loethen ever tell me that DHSS had denied my requests, or was even considering denying my requests.

50. On May 27, 2016, Ms. Loethen wrote an e-mail confirming our phone conversation.

51. The text of Ms. Loethen's e-mail is set forth in Paragraphs 39 and 83 of the accompanying Statement of Uncontroverted Facts and attached as **Exhibit D**.

52. On June 22, after I had still not received a cost estimate, I sent an e-mail to Ms. Loethen asking for an estimate.

53. On June 24, 2016, I received an e-mail from Ms. Hollis in which she provided a cost estimate of \$1.49 million, based on 35,064 hours of DHSS staff time.

54. The text of Ms. Hollis' e-mail is set forth in Paragraphs 44 and 84 of the accompanying Statement of Uncontroverted Facts and attached as **Exhibit E**.

55. On June 28, 2016, I received an e-mail from Ms. Loethen revising the hourly rate by 72¢ an hour, but maintaining it would still take 35,064 hours of DHSS staff time to provide the listings.

56. The text of Ms. Hollis' e-mail is set forth in Paragraph 46 of the accompanying Statement of Uncontroverted Facts and attached as **Exhibit F**.

I retained counsel

57. I was growing increasingly frustrated with DHSS' repeated delays, and then utterly shocked by its \$1.49 million cost estimate, so I retained attorney Bernard Rhodes of Lathrop & Gage to assist me in obtaining the birth and death listings.

58. As a result, I had no further direct dealing with anyone at DHSS.

I retained counsel

57. I was growing increasingly frustrated with DHSS' repeated delays, and then utterly shocked by its \$1.49 million cost estimate, so I retained attorney Bernard Rhodes of Lathrop & Gage to assist me in obtaining the birth and death listings.

58. As a result, I had no further direct dealing with anyone at DHSS.

Brooke Schreier Ganz
Brooke Schreier Ganz

SUBSCRIBED AND SWORN to before me on this 21st day of May, 2019.

MA
Notary Public

My Commission Expires: *April 15, 2022*

