



Michael Ely, Lambda Legal client (left) with his late husband Spider.

## DOUBLE JUSTICE!

Lambda Legal scores two court wins for same-sex partners denied access to Social Security survivor benefits. Will the Biden administration let the victories stand?

**W**hen Arizona aviation mechanic and rock musician James “Spider” Taylor died of cancer in 2015 at age 63, he left behind the love of his life, fellow rocker Michael Ely, with whom he’d lived for 43 years—since they’d met one foggy night in 1971 at a gay bar on the Pacific Coast Highway. In their many years together, recalls Michael, “he was the breadwinner and I was the person who took care of the house. I did the laundry and almost all of the cooking. I used to tease him that he couldn’t boil water.”

Long before Spider was diagnosed with cancer in 2013, the couple desperately wanted to legally wed—but could not until a Lambda Legal court victory made that possible for same-sex couples in Arizona late the following year. They married immediately, Spider frail but both of them joyous.

Spider died six months later—but when Michael applied to receive Spider’s Social Security benefits,

he was denied. Federal law said that couples must be married at least nine months before one person could receive the other’s Social Security benefits after death. Because Spider and Michael had to wait so long until they could marry, they could not qualify—despite being together for more than four decades.

Theirs was the same situation as countless same-sex couples nationwide who were legally married for fewer than nine months before one spouse died, making the survivor generally ineligible to receive their benefits. The same problem existed for couples who, prior to the end of marriage exclusions in their states, were not allowed to marry at all before one partner died. Those discriminatory circumstances added up to untold millions of dollars in Social Security benefits that survivors were denied.

**But last year, Lambda Legal scored a pair of remarkable wins for such survivors. [Read more](#)** >

In May 2020, in Michael Ely's case, a federal district court ruled that the refusal of the Social Security Administration (SSA) to consider benefits claims by the survivors of same-sex couples who were barred by law from being married for nine months was unconstitutional. And in September 2020, in a similar case, another federal district court made the same ruling for long-term same-sex couples who were not able to marry at all before one of the two partners died.



(left to right) Our client Anthony Gonzalez with his late husband Mark Johnson. The late Marge Brown with her partner and our client Helen Thornton.

Both were class action cases, meaning that they will benefit countless couples across the country. Benefit payments have already begun. But the final fate of the cases lies partly with the Biden administration's Department of Justice, which will decide whether to push forward with pending appeals of the victories.

In the meantime, though, both victories are sweet. At the time of his court win, Michael said, "It's gratifying to have the court today recognize the 43 years of love and commitment that my late husband and I shared, rather than looking only at the date on a marriage certificate that we were denied for most of our lives. My husband paid into Social Security with every paycheck, and I know he can rest easier now knowing that I, at last, will start receiving the same benefits as other widowers."

Said Peter Renn, Lambda Legal Counsel, "This is a tremendous victory. Many same-sex couples were in loving, long-term, and committed relationships for

decades—and they shouldn't be treated as strangers in death simply because they were unable to marry for most of that time. The denial of access to these critical benefits can have dire consequences, with some of our class members experiencing homelessness. That is a terrible price to pay simply because of who you loved."

The case decided in September 2020 was led by plaintiff Helen Thornton, a 66-year-old lesbian who'd been denied survivor's benefits based on her relationship with her partner of 27 years, Marge Brown, who died in 2006 before same-sex couples in Washington, their home state, were able to marry. At the time of the win, Thornton, who was semi-retired and caring for animals to make ends meet, said, "I'm gratified that the judge understood that, even though we were barred from marriage, our love and commitment was no different than that between heterosexual couples who had the freedom to marry. It's an enormous relief to know I'm entitled to the same financial protections that are available to surviving spouses."

Said Senior Counsel Tara Borelli of the win: "This victory helps to dismantle the legacy of discriminatory marriage bans, which were still being used to rob surviving same-sex partners of their earned benefits."

In the Ely case, one affected community member is actually Jim Obergefell, lead plaintiff in the 2015 Supreme Court case that made marriage equality the law of the land. Obergefell's husband, John Arthur, died in 2013 of ALS, three months after they were finally able to wed. And in the Thornton case, one of the class members is Keith Bradkowski, whose partner of eleven years, Jeff Colman, was one of the flight attendants who died on American Airlines Flight 11 on 9/11—years before same-sex couples could legally marry anywhere in the country.

Both cases are the latest examples of Lambda Legal's power to bring suits that deliver justice and equality not just for LGBTQ individuals, but entire classes of people in our community—and without leaving anyone behind in the march toward progress. Now, says Senior Counsel and Seniors Strategist Karen Loewy, "What happens next in these cases presents a pivotal test for the Biden administration. We hope that it will uphold its commitment to equality, rather than defend a legacy of discrimination that will otherwise continue to wreak havoc for our seniors. The LGBTQ community plays an indispensable role in holding our public officials accountable for their actions on our civil rights."

We'll keep you up-to-date on what the administration does. Meantime, we're delighted to see Michael, Helen, and so many others getting the benefits they've long deserved. **LL**



# I N M E M O R I A M

## **Like a Bird:** Robina Asti (1921-2021)

The WWII veteran, aviator and transgender rights advocate died on March 12, a month shy of her century mark.

The entire Lambda Legal community mourns the death—and celebrates the remarkable life—of Robina Asti, who died in March in San Diego at age 99. In addition to being a WWII veteran and a lifelong pilot and flight instructor, Asti in 2013 with Lambda Legal fought back against the Social Security Administration (SSA) for denying her spousal survivor benefits because she was transgender. She not only won her claim, but the SSA changed its approach to benefits claims by transgender survivors.

Asti was born in 1921 in New York City to a boxer father and homemaker mother. She dropped out of Brooklyn Tech at 17 to join the Navy, installing aircraft radios and serving throughout WWII, discharged as a lieutenant commander after the war. She undertook her gender transition in the 1970s, at a time when transgender people were poorly understood and trans rights were virtually nonexistent. In 1980, she met artist Norwood Patton, marrying him in 2004.

After his death in 2012, when she applied for SSA survivor benefits, the agency denied her on the grounds that she was not legally a woman at the time of her marriage. The agency reached this conclusion despite Robina having been consistently recognized as a woman for over thirty years and having changed her name and gender designation on every possible form of state and federal identification - including her Social Security record. Infuriated, Asti reached out to Lambda Legal. She



won her claim in 2014, finding a large deposit of back-benefits in her bank account on Valentine's Day, which she considered a lovely Valentine's gift from Norwood. "I'm glad that Social Security finally came to its senses," she said at the time. "I hope this means that other people won't have to experience this."

She got her wish. That same year, SSA announced they would stop giving most transgender spousal survivors special scrutiny regarding benefits and would instead generally presume the validity of the marriage.

In 2019, Asti founded the Cloud Dancers Foundation to provide assistance and awareness for older transgender people. She took her last flight, with a student, in July 2020, which led to The Guinness Book of World Records naming her the world's oldest active pilot and flight instructor. In "Flying Solo," a short 2018 documentary about her produced by Lambda Legal, she wanted to send a message to young trans people who had lost their families, encouraging them to hold on, to "rely on the basis of the fact that they loved you once, and it will start shining through again."



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# ONE LAMBDA LEGAL™

Lambda Legal is proud to present a month of Pride programming to celebrate the history, strength, and progress of the LGBTQ+ community. Join us as we bring the community together to honor our diversity while recognizing our shared identity.

Check out the full schedule at  
[www.onelambdalegal.com/WithPride](http://www.onelambdalegal.com/WithPride)



**ONE TEAM.  
ONE CAMPAIGN.  
ONE GOAL.**

This year, while we take precautions and pause our annual schedule of in-person fundraising events, our volunteers from coast to coast will work together, uniting as ONE Lambda Legal to help raise support toward an overall \$5M goal. These funds represent one-third of Lambda Legal's overall operating budget.

**\$100,000 CHALLENGE.  
DOUBLE YOUR DONATION.  
DOUBLE THE JUSTICE.**

You can be part of this grassroots fundraising effort by supporting your local community, contributing to the personal fundraising pages of friends and family, or by creating your own fundraising page! **Just go to [www.onelambdalegal.com/Fundraising](http://www.onelambdalegal.com/Fundraising) to get started!**

This June, in honor of Pride, all donations will be matched dollar for dollar up to \$100,000. This match, offered by long-time Lambda Legal supporter Gary Knapp, challenges us to raise the critical funds Lambda Legal needs to stay in the courtroom, fighting for our rights.

**Donate any amount through June 30th and your gift will be doubled!**

[www.lambdalegal.org/PrideMatch21](http://www.lambdalegal.org/PrideMatch21)