



Alex Berg ([00:02](#)):

Hi, and welcome to Making the Case with Lambda Legal, a podcast from Lambda Legal highlighting impactful cases and policy work. I'm Alex Berg, a journalist and host, and I cover all things LGBTQ+ and the issues that impact us. On today's episode, we're discussing how unjust discrimination in marriage law prevented an untold thousands of Americans from receiving their Social Security benefits. I'm joined by Peter Renn, senior counsel for Lambda legal to discuss two class action cases where he represented the surviving members of same-sex couples who were denied social security benefits as a result of unconstitutional marriage laws. Stick around to learn more on accessing survivors' benefits and how to help those who may be eligible on my conversation with senior counsel, Peter Renn. Welcome, Peter. Thank you for joining me.

Peter Renn ([00:53](#)):

Thank you for having me, Alex.

Alex Berg ([00:54](#)):

To start us off briefly tell us about these two cases, Ely v. Saul and Thornton v. Saul.

Peter Renn ([01:00](#)):

Sure. At the outset, I want to say, I am really excited to talk about these cases because quite frankly, thousands of people who stand to benefit still are not aware of what has changed, and the more people who learn about these victories, the bigger they become, so we are literally expanding their scope and doling out some extra justice and equality just by sitting here, talking about these cases and having more people hear about them. But to answer your question, Ely and Thornton are the two nationwide class actions that Lambda Legal filed and won on behalf of surviving same-sex partners and spouses who were wrongly denied Social Security survivors benefits as a result of having been excluded from marriage in the past.

Now, that's a mouthful, so let me take one step back and explain how survivors benefits have always worked for different-sex couples. Say you're a 60-year-old woman whose husband of 30 years passes away. As a widow, you can collect monthly benefits based on his earning record, and that can be worth thousands of additional dollars over your lifetime compared to only collecting benefits on any work history of your own. However, the general requirement is that you must have been married and married for at least nine months. The problem, of course, is that same-sex couples haven't always had the freedom to marry across time. The surviving members of couples who weren't able to satisfy this nine-month requirement, because of discriminatory marriage laws, were then denied survivors benefits from Social Security, and that's the problem that these two cases set out to solve.

Now, you might also wonder, Alex, why we had two cases rather than one. One case, Thornton, was on behalf of people who were wholly prevented from marrying because of discriminatory laws. For example, if you lived in Texas and your partner died in 2014, that was before same-sex couples could marry there at all. The other case, Ely, was on behalf of people who were married, but prevented from being married for at least nine months. For example, one of our class members, Anthony Gonzalez, married on literally the first day when it was allowed in Albuquerque, New Mexico in 2013, but his husband died less than nine months later, so the common denominator in both of these cases is that people in our community were being denied benefits as a direct result of marriage discrimination.

Alex Berg ([03:15](#)):

Now, the stories of these plaintiffs are just incredibly, incredibly moving. Let's break down what this discrimination meant in practice. As you talked a little bit about, a surviving partner or spouse is already navigating the loss of the loved one, and then the financial disruption that comes with it. Was that the case for these plaintiffs?

Peter Renn ([03:35](#)):

Yes, absolutely. The denial of these benefits really added insult to injury at one of the most vulnerable moments of people's life, where they were simultaneously dealing with the loss of their loved one, and the loss of household income as well. I think it is easiest to understand these cases in the context of our two named plaintiffs and the thousands of people like them whom they represented. I'll start first with Michael Ely and then talk about Helen Thornton.

Michael Ely is a 69-year-old man living in Tucson, Arizona, and he was in a loving and committed relationship for 43-plus years with his partner who went by the nickname of Spider. He got that nickname as a kid because his dad saw him crawling up the walls all the time. A couple were together from 1971 until 2015, when Spider ultimately passed away from cancer. Michael was the stay-at-home partner. He used to tease Spider that he couldn't even boil water while Spider was a jet mechanic who was the primary breadwinner for the family and they were barred for marriage for the vast majority of their relationship. But as soon as marriage equality was available in Arizona in 2014, following Lambda Legal's marriage equality victory there, they got married less than a month later, but Spider then died approximately six months thereafter. When Michael turned 60, he applied for benefits, but he was denied on the grounds they weren't married for nine months, even though it was legally impossible in the state where they lived the Arizona. To make that concrete, that denial for Michael was worth more than \$300,000 over an average life expectancy.

Our other client, Helen Thornton, faced a very similar predicament. She was with her partner, Marge, for more than 27 years from 1978, until 2006, when Marge passed away from cancer. Helen worked for many years at a food co-op and Marge was an instructor at a state college. The two of them raised a son together and were a family in every sense of the word, but they lived in Washington State, which didn't allow same-sex couples to marry throughout the entirety of their relationship. In fact, it wasn't until 2012, six years after Marge's death that same-sex couples were finally permitted to marry. Just like Michael, when Helen turned 60, she applied for her Social Security survivors benefits based on Marge's work history, but she was denied because they weren't married for at least nine months. In fact, they weren't able to married at all, and that denial was also worth a significant amount of money, a six-figure difference over the course of Helen's lifetime, so absolutely, these financial impacts that people were dealing with were enormous.

Alex Berg ([06:12](#)):

Yeah, I think you use the word "vulnerable" and it's just so clear that these people were so impacted at this incredibly vulnerable moment in their lives. Why did you and the Lambda Legal team decide to take on these cases?

Peter Renn ([06:24](#)):

A couple of different reasons. First of all, we had unfinished business. As a movement and as a community, marriage equality fixed a lot of things for a lot of people, but it didn't automatically fix this. For a lot of people, marriage equality frankly came too late. Some couples, like Helen and Marge, never got to experience a single date of what it felt like to be a lawfully wedded couple, whereas other couples, like Michael and Spider, only got the briefest sliver of time to experience married life, which was a tiny fraction of their lives together, and the surviving members of those relationships were still suffering harm years after the achievement of nationwide marriage equality in 2015.

Second, as I have already alluded to a huge amount of money was at stake. Here, we are talking about millions upon millions of dollars in the aggregate, and people are being robbed of their own money because from every paycheck that we earn, a percentage goes to Social Security, and how much you receive in your retirement years turns on how much you put in, so same-sex couples were being forced to pay into the system like everyone else, but they weren't getting an equal return on their contributions.

Now, survivors benefits are important to everyone in their older years, but that's especially true for seniors in our community. Something that I find striking is that 75% of LGBT seniors live alone, compared to 33% of seniors in the general population, which means having the resources to take care of yourself is all the more important for our community, and if you are of limited financial resources already, these benefits can literally make the difference between whether you can afford the very basic necessities of life. For example, one of our class members experienced homelessness because he was denied these benefits. Another class member couldn't afford to pay for dentures because he had been denied these benefits.

The third reason why we took on this work is because there were thousands of people who had been denied access to these benefits. Over the years, our help desk received a steady and significant stream of calls about this issue. That was really only the tip of the iceberg. Particularly, if you were never able to marry at all, it just may never have crossed your mind that you could be entitled to this benefit of marriage.

Alex Berg ([08:29](#)):

Yeah, that's a really fascinating way of thinking about it. You said, of course, this was the unfinished business that followed marriage equality. We like to dig into strategy during these conversations, so what case law or precedent did you call on when arguing these cases? Obviously, Obergefell and Windsor impacted this work, but was there a unique approach to the strategy here?

Peter Renn ([08:50](#)):

We had a two-pronged legal argument in the case, and we argued that either prong required ruling our favor. One prong relied upon the marriage equality cases themselves, to argue that the government cannot continue to rely on unconstitutional laws. Now, we know that excluding same-sex couples from marriage is unconstitutional. That's Obergefell. But here, the government was continuing to rely on those laws in the present day to deny people benefits. For example, by denying how important benefits in the year 2020, based on whether or not she was married in the year 2005, when that was illegal where she lived, the government was essentially breathing life back into unconstitutional marriage laws.

At its essence, we were basically arguing something very simple, which is two wrongs don't make a right. It was also very helpful that in Obergefell, the Supreme Court made clear that same-sex couples are entitled to the full constellation of the rights and responsibilities of marriage, but yet this very important right was still being deprived, so same-sex couples were being consigned at best to skim milk marriage, as Justice Ginsburg once referred to it.

The second prong of our argument actually borrowed a page from a very old playbook that preceded marriage equality. In the years leading up to Obergefell, we had racked up a number of court wins achieving spousal benefits for same-sex couples. These were narrower, more targeted cases where the relief sought wasn't marriage itself, but instead a particular benefit associated with marriage. For example, there were cases seeking spousal health insurance coverage for the same-sex partners of employees in states where marriage was not available.

These cases were really important building blocks toward marriage equality itself. The principle that they established was that, at the very least, you're entitled to the benefits of marriage, regardless of whether you're also entitled to the status. That was really powerful support in this Social Security litigation because earlier, the defendants in this case had said, "We don't discriminate against same-sex couples. We just require you to be married to get this particular benefit," and the courts roundly rejected that argument. Here as well, the Social Security Administration had argued initially they don't discriminate against same-sex couples, they just require you to be married for nine months, but of course, those two things are actually intertwined. Ultimately, the victories that we secured in these cases were based principally upon that first prong, the idea that you can't rely on yesterday's unconstitutional laws as a basis for inflicting harm today.

Alex Berg ([11:17](#)):

Now, there are countless Americans who were in same-sex relationships that weren't legally recognized, and as such, weren't granted the same benefits heterosexual couples were. How will cases like these right the wrongs of past discrimination? I think you touched on this a little bit, but let's get into it a little bit more.

Peter Renn ([11:34](#)):

These cases right the wrongs in the past in two ways, one of which is financial and one of which is dignitary. First, this was a particularly egregious wrong because the harms didn't only exist in the past, it was continuing to happen every single month in the present, and then stretching on into the future because we're talking about benefits that you get each month for the rest of your life, so you either get a full-sized Social Security check, or you don't get a full-sized Security Check. A number of our class members were also able to get past due benefits as well, depending on their individual circumstances.

The second way in which we've been able to right the wrongs of the past is to give people some solace and some measure of dignity long after they were having to experience this type of discrimination. The government today is essentially recognizing the legal relationship that this person had with their loved one. Now, we can't create time machines and go back and give people married certificates and weddings that they deserve, but the government can give people this measure of dignity, confirming the existence of a legal relationship, even for someone that you lost decades ago. These are heart-wrenching stories involving people who cared for their loved ones up until they took their very last breath, and it was so hurtful to be initially told that they were just legal strangers, no different than roommates, but these victories now change that landscape entirely.

Alex Berg ([12:56](#)):

One of the things that you mentioned at the beginning of our conversation is that having this conversation is really important in and of itself in terms of these issues, so if someone is listening and they're a surviving partner or spouse who is protected by these legal victories, how do they actually go about accessing survivors benefits?

Peter Renn ([13:15](#)):

It's such an important question. People need to understand that these victories are not self-executing. The vast majority of people won't get some postcard in the mail letting them know that they're a class member. They need to take affirmative action because these victories essentially open the door to survivors benefits, but we need people to walk through that door.

How you do that is through applying for these benefits with the Social Security Administration. We've drafted frequently-asked-questions documents for each one of these cases, which are available on our website that provide detailed information for people to understand what they need to do, so I would highly recommend that people read those first. The task that they will have in front of them is to essentially show that but for marriage discrimination, they would have satisfied the nine-month marriage requirements. This is really a common-sense inquiry where you can point to anything to show that you were in a loving, committed relationship, including the length of your relationship, any sort of joint financial interdependence you may have had, even sending in photographs, pictures are worth a thousand words, is totally permissible in proving that you were in this loving and committed relationship. We would really encourage people to act quickly because there is some time sensitivity towards getting the benefits that you're owed and reading through that document first to help understand what the process will be like.

Alex Berg ([14:35](#)):

Now, for those in the community who aren't directly affected by this issue, is there something that we can still do to help those who are directly affected?

Peter Renn ([14:43](#)):

Yes, absolutely. So many people are still unaware about this game-changing development, so please help to spread the word. Tell a friend, tell two friends, post about it on Facebook because the population of people who need to hear this message, frankly, may not be listening to us right now, although I hope they are, but someone connected to them very well may be. One of the things that we always try to keep in mind in our work is the difference between formal equality and lived equality. A victory that only exists on a piece of paper that no one knows about isn't worth very much. We have to put in the work to make it real for real people, and that is not a job just for Lambda Legal, but instead for all of us as a community.

Alex Berg ([15:23](#)):

Now, there's been quite a bit of speculation about the Supreme Court and what may happen in the future with regards to same-sex marriage. What impact do these cases have on same-sex couples in the future?

Peter Renn ([15:37](#)):

I think especially after the Supreme Court's overturning of Roe versus Wade in the Dobbs decision, we know what's next on the agenda for our opponents. They are going to be coming after marriage equality, and so it's all the more important that we shore up the rights that we do have. Separately and

apart from the Social Security context, there are some lingering marriage duration requirements that exist. One example is spousal veterans benefits. Even in 2022, there's still work to be done to make sure that no one our community is left behind. The last thing I want to say is that if people want to understand why Lambda Legal exists as an organization, I think the people who have been impacted by these cases are a prime example of why Lambda Legal exists and the good that it does in the world.

Alex Berg ([16:21](#)):

Well, Peter, thank you so much for taking the time to break all of this down. I definitely feel like I'm going to send this information to my friends. This was just incredibly informative.

Peter Renn ([16:30](#)):

Thank you so much, Alex.

Alex Berg ([16:35](#)):

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