

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

DEC - 2 2010

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

KELLY D. GLOSSIP,)
)
 Plaintiff,)
)
 v.)
)
 MISSOURI DEPARTMENT OF)
 TRANSPORTATION AND HIGHWAY)
 PATROL EMPLOYEES' RETIREMENT)
 SYSTEM,)
)
 Serve: Susie Dahl, Executive Director)
 MoDOT & Patrol Employees')
 Retirement System)
 1913 William Street)
 Jefferson City, MO 65109)
)
 Defendant.)

Case No. _____

**PETITION FOR INJUNCTIVE RELIEF
AND DECLARATORY RELIEF**

Plaintiff Kelly Glossip brings this action against Defendant Missouri Department of Transportation and Highway Patrol Employees' Retirement System, and alleges as follows:

INTRODUCTION

1. The Missouri State Highway Patrol ("MSHP") provides valuable survivor benefits to the surviving spouses of state troopers who are killed in the line of duty, but Missouri statutes categorically exclude committed same-sex couples from receiving these survivor benefits by preventing same-sex couples from marrying while limiting those benefits to spouses of state troopers.

2. Kelly Glossip shared a long-term, loving, intimate, and committed relationship with Dennis Engelhard, a Missouri State Trooper and employee of the MSHP. On Christmas

Day 2009, Mr. Engelhard was killed in the line of duty when he was struck by a vehicle while responding to an accident on I-44, east of Eureka, Missouri.

3. Pursuant to R.S. Mo. Section 104.140.3, if an MSHP employee dies in the line of duty, then the employee's surviving spouse is awarded an annuity payment of 50 percent of the employee's final average salary. The survivor benefits are administered through Defendant, the Missouri Department of Transportation and Highway Patrol Employees' Retirement System ("MPERS"), pursuant to Mo. Rev. Stat. Chapters 104 *et seq.* and 105 *et seq.*

4. After Mr. Engelhard's death, Mr. Glossip applied for the survivor benefits provided by Section 104.140.3. But MPERS denied Mr. Glossip's application solely because he and Mr. Engelhard were of the same sex.

5. In denying Mr. Glossip's application for survivor benefits, MPERS relied upon R.S. Mo. Section 104.012, which provides that for purposes of the public retirement systems administered pursuant to the statute, any reference to the term "spouse" recognizes only a marriage between a man and a woman.

6. As construed and applied by MPERS, R.S. Mo. Sections 104.012 and 104.140.3 violate the Missouri Constitution. Committed couples of the opposite sex are able to receive valuable survivor benefits by marrying, but similarly situated same-sex couples are unable to receive those benefits because Missouri does not provide those benefits to same-sex domestic partners and does not recognize marriages between members of the same-sex. *See* R.S. Mo. Sections 104.012, 451.022; Mo. Const. Art. I, Section 33 (the "Marriage Amendment"). R.S. Mo. Sections 104.012 and 104.140.3, as interpreted and applied by MPERS, thus exclude same-sex couples from the significant protections of survivor benefits automatically provided to similarly-situated different-sex couples who marry.

7. Mr. Glossip does not challenge the legality of Missouri's ban on marriage between persons of the same sex. Plaintiff simply seeks the same survivor benefit that the State has chosen to offer only different-sex, surviving partners of MSHP employees.

8. Although the Marriage Amendment provides that "to be valid and recognized in this state, a marriage shall exist only between a man and a woman," *see* Mo. Const. Art. I, Section 33, the Marriage Amendment does not abrogate other constitutional protections shared by all Missourians, including Mr. Glossip, of equal protection and due process under Article I, Sections 2 and 10 of the Missouri Constitution and governance by general, rather than special, laws, under Article I, Section 40 of the Missouri Constitution.

9. Mr. Glossip seeks a declaration that the categorical exclusion of same-sex, domestic couples from the survivor benefits provided by R.S. Mo. Section 104.140.3 violates the Missouri Constitution and an injunction prohibiting the Defendants from continuing to deny him the survivor benefits available to different-sex, heterosexual, surviving partners.

PARTIES

Plaintiff

10. Plaintiff Kelly Glossip is a 44-year-old Missourian who lived in a long-term, loving, committed, interdependent, and intimate relationship for nearly 15 years with Dennis Engelhard, a Missouri State Trooper, until Mr. Engelhard's tragic death on December 25, 2009.

Defendant

11. Defendant MPERS is a body corporate and instrumentality of the State with the power to administer the retirement benefits for certain state employees, including state troopers like Mr. Engelhard, pursuant to R.S. Mo. Section 104.020.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to the Missouri Declaratory Judgment Act. R.S. Mo. Section 527.010 *et seq.*

13. Venue is proper in this Court under R.S. Mo. Section 104.240.

14. On August 5, 2010, Mr. Glossip submitted an application for survivor benefits provided by R.S. Mo. Section 104.140.3.

15. On August 12, 2010, Mr. Glossip supplemented his application with a copy of Mr. Engelhard's death certificate.

16. On August 17, 2010, MPERS denied Mr. Glossip's application. As the sole bases for its decision, MPERS relied on R.S. Mo. Sections 104.012, 451.022.

17. On October 15, 2010, pursuant to Rule 1-3(1) of the MPERS procedural rules, Mr. Glossip submitted to the MPERS' Board of Trustees a request for review of the MPERS' decision denying him survivor benefits.

18. On November 18, 2010, the MPERS' Board of Trustees affirmed the decision denying him survivor benefits.

19. Without contesting that Messrs. Glossip and Engelhard shared the functional equivalent of a spousal relationship, MPERS concluded that R.S. Mo. Sections 104.012 and 451.022 categorically prohibit Mr. Glossip from receiving the survivor benefits that R.S. Mo. Section 104.140.3 provides to similarly situated opposite-sex couples.

GENERAL ALLEGATIONS

Messrs. Glossip and Engelhard's Committed Relationship

20. Messrs. Glossip and Engelhard met in April 1995. For the next 15 years, Messrs. Engelhard and Glossip intertwined their lives together emotionally, spiritually, and financially,

and cared for each other in sickness and in health. The loving, committed relationship between Messrs. Engelhard and Glossip was, in all relevant respects, the functional equivalent of a spousal relationship.

21. Starting in October 1995, Messrs. Glossip and Engelhard lived together, with the exception of temporary, work-related periods of separation, in an intimate, loving, and committed relationship for nearly 15 years until Mr. Engelhard's untimely death.

22. Mr. Glossip is bisexual; Mr. Engelhard was gay. Neither believed that they could change their sexual orientation to avoid forming an intimate, loving and committed relationship with someone of the same sex.

23. Messrs. Engelhard and Glossip exchanged rings on Christmas Day in 1997 and held themselves out to their families and their community as a couple in a committed, marital relationship.

24. Mr. Engelhard joined the MSHP in March 2000. From March 2000 through December 2009, Mr. Engelhard was employed as a state trooper for the MSHP.

25. On May 4, 2000, Mr. Engelhard named Mr. Glossip as the sole beneficiary of his deferred compensation plan at the MSHP and noted on the beneficiary form that Mr. Glossip was his "fiancé." Mr. Engelhard also designated Mr. Glossip as a 50-percent beneficiary of a life insurance policy issued by the Hartford Life and Accident Insurance Company that Mr. Engelhard obtained through his employment with the MSHP.

26. Before Mr. Engelhard joined the MSHP, Messrs. Engelhard and Glossip lived in Springfield, Missouri, in a home they jointly owned. When Mr. Engelhard was assigned to Troop C of the MSHP, Messrs. Glossip and Engelhard sold their home and moved together to Washington, Missouri. In May 2004, Messrs. Glossip and Engelhard purchased a home in

Robertsville, Missouri. Messrs. Glossip and Engelhard owned the house jointly and were both responsible for the mortgage and insurance on the property.

27. Messrs. Engelhard and Glossip had joint checking and savings accounts and were financially interdependent. During the course of their 15-year relationship, which ended solely due to Mr. Engelhard's death, Messrs. Glossip and Engelhard jointly owned five cars and two trucks and shared responsibility for the car loans and insurance on all of them.

28. Mr. Engelhard also acted as a step-father for Mr. Glossip's son from a previous marriage. Since he was two years old, Mr. Glossip's son grew up knowing Mr. Engelhard as his step-father. In addition to providing him with emotional support, Mr. Engelhard also shared the responsibility for making child-support payments.

29. Mr. Engelhard and Mr. Glossip were members of the parish of Christ Church Cathedral and jointly attended weekly services. Their anniversary date was published in the church bulletin and directory, and their names were read during prayers in recognition of their anniversary.

30. Messrs. Engelhard and Glossip would have entered into a civil marriage if it were legal to do so in Missouri. After the State of Iowa legalized same-sex marriage, Messrs. Engelhard and Glossip considered solemnizing their marriage in Iowa but decided to wait until their marriage would be legally recognized in Missouri.

Mr. Engelhard's Death in the Line of Duty

31. Mr. Engelhard made the ultimate sacrifice while serving and protecting the citizens of Missouri. On December 25, 2009, Mr. Engelhard was killed in the line of duty when he was struck by a vehicle while responding to an accident on I-44, east of Eureka, Missouri.

32. Mr. Glossip was the only person from Mr. Engelhard's family who went to the hospital to be with him when he died. Mr. Engelhard had already passed away by the time Mr. Glossip arrived at the hospital, but Mr. Glossip sat with him for hours holding his hand.

33. On December 25, 2009, Governor Jay Nixon issued a statement regarding Mr. Engelhard's death in which he stated that "our state has lost one of its most dedicated law-enforcement officers." Governor Nixon further proclaimed that "Corporal Engelhard served the people of Missouri honorably, and he made the ultimate sacrifice in fulfilling his duty."

34. On December 28, 2009, "to honor the bravery and sacrifice" of Mr. Engelhard, Governor Nixon ordered that the U.S. and Missouri flags at state buildings in all 114 counties and the City of St. Louis be flown at half-staff.

35. After Mr. Engelhard's death, Mr. Glossip attended a ceremony in Jefferson City on May 1, 2010, commemorating the police officers who were killed in the line of duty during 2009, and, as Mr. Engelhard's surviving partner, Mr. Glossip placed a flower in a memorial wreath.

36. Mr. Glossip also attended a ceremony in Washington, D.C. on May 15, 2010, commemorating the loss of police officers nationwide and was recognized with a medallion as Mr. Engelhard's surviving partner.

Missouri's Discriminatory Denial of Survivor Benefits

37. Article I, Section 33 of the Missouri Constitution prevents gay, lesbian, and bisexual individuals from entering into a civil marriage in the State. Nothing in Article I, Section 33 prevents the State from providing survivor benefits to same-sex domestic partners of deceased MSHP employees. Nor does Article I, Section 33 authorize the government to discriminate on

the basis of sexual orientation or a person's sex, to burden a person's fundamental right to intimate association, or to pass special laws instead of generally applicable ones.

38. Although not authorized by Article I, Section 33, or any other provision of the Missouri Constitution, Missouri has adopted a discriminatory pension-benefit scheme that categorically excludes same-sex domestic partners from valuable benefits provided to similarly situated heterosexual couples.

39. Specifically, pursuant to R.S. Mo. Section 104.140.3, the State provides survivor benefits to the surviving spouse of MSHP employees who are killed in the line of duty. If the employee's death "was a natural and proximate result of a personal injury or disease arising out of and in the course of the member's actual performance of duty as an employee," then the surviving spouse shall be awarded an annuity payment equal to 50 percent of the employee's final average salary. R.S. Mo. Section 104.140.3.

40. Missouri has chosen to categorically exclude same-sex couples from these valuable survivor benefits by limiting survivor benefits to spouses and denying them to unmarried same-sex domestic partners. R.S. Mo. Section 104.012 provides: "[f]or the purposes of public retirement systems administered pursuant to this chapter, any reference to the term 'spouse' only recognizes marriage between a man and a woman."

41. When read in combination with Missouri's constitutional and statutory ban on same-sex marriage, R.S. Mo. Sections 104.012 and 104.140.3 categorically exclude same-sex couples from obtaining survivor benefits. Committed heterosexual couples are able to marry in Missouri and thereby obtain the survivor benefits provided by R.S. Mo. Section 104.140.3. But because same-sex couples are not permitted to marry in Missouri, those couples are barred from obtaining the same benefits made available to similarly situated heterosexual couples.

42. In all relevant respects, Messrs. Glossip and Engelhard are similarly situated to heterosexual couples who are able to obtain the survivor benefits provided by R.S. Mo. Section 104.140.3. Mr. Glossip has nevertheless been denied survivor benefits solely because he and Mr. Engelhard were of the same sex.

43. A result of the discriminatory benefit system, Mr. Glossip faces increased financial burdens including paying debts and obligations that were once shared jointly by Messrs. Glossip and Engelhard. Further, Mr. Glossip suffers the anxiety and stress which accompanies the increased financial burden imposed by MPERS' denial of his claim for benefits.

No Adequate Governmental Interest

44. Missouri's discriminatory exclusion of same-sex couples from survivor benefits is not supported by an adequate governmental interest.

45. Other local governmental bodies in Missouri provide domestic partner benefits to their employees, including law enforcement personnel.

46. The cost of providing survivor benefits to the same-sex surviving partners of deceased MSHP employees is small relative to the overall cost of providing these benefits.

47. Although the government may have a valid interest in cost containment, it may not pursue that interest by making invidiously discriminatory distinctions among its citizens and offering valuable benefits to some, while selectively withholding those benefits from others, such as Mr. Glossip, without adequate justification for that differential treatment.

48. Excluding same-sex couples from survivor benefits does not encourage heterosexual couples to marry.

49. To the extent that the State seeks to deny benefits to same-sex couples in order to express moral disapproval of same-sex relationships, such moral disapproval is not a legitimate state interest that can justify the discriminatory treatment of same-sex couples.

50. There is no legitimate, let alone compelling, governmental interest served by denying survivor benefits to same-sex domestic partners of deceased gay, lesbian, and bisexual MSHP employees.

COUNT I

Denial of Equal Protection Based on Sexual Orientation Pursuant to Article I, Section 2 of the Missouri Constitution

51. Plaintiff incorporates herein by reference and realleges the allegations made in Paragraphs 1 through 50 of this Petition.

52. Article I, Section 2 of the Missouri Constitution provides that “all persons are created equal and are entitled to equal rights and opportunity under the law. . . .”

53. Although the marriage amendment, Article I, Section 33 of the Missouri Constitution, precludes Plaintiff from marrying, it does not abrogate his right to equal protection of the laws under Article I, Section 2 of the Missouri Constitution.

54. As described above, although the State offers to different-sex, surviving partners the opportunity to obtain survivor benefits through the legal status of marriage, the State denies access to survivor benefits to similarly situated, surviving same-sex partners of MSHP employees.

55. Mr. Glossip is similarly situated in every material respect to the different-sex, surviving partners of deceased MSHP employees who are afforded the opportunity to access significant survivor benefits granted exclusively on the basis of marriage.

56. By conditioning the receipt of survivor benefits on the legal relationship of "spouse," from which lesbian, gay, and bisexual individuals, including Mr. Glossip, are categorically excluded, Mo. Rev. Sections 104.012 and 104.140.3 -- and Defendant's actions to implement these statutes -- discriminate against lesbian, gay, and bisexual individuals, including Mr. Glossip, both facially and as applied, based on sexual orientation.

57. As such, Plaintiff has been subjected to unequal treatment based solely on his sexual orientation.

58. All of Defendant's acts, omissions, policies, and practices alleged herein were and, if not enjoined, will continue to be committed intentionally and purposefully because of Mr. Glossip's sexual orientation.

59. Such discrimination on account of sexual orientation is suspect and demands a heightened level of scrutiny under the Missouri Constitution, which Defendant cannot withstand. Defendant's actions purposefully single out a minority group that historically has suffered unjust and discriminatory treatment in law and society and been relegated to a position of political powerlessness solely on the basis of their sexual orientation -- a characteristic that bears no relation to their ability to perform in or contribute to society.

60. The discriminatory denial of survivor benefits on account of sexual orientation is not even rationally related to the furtherance of any legitimate state interest, let alone narrowly tailored to further a compelling government interest. Accordingly -- under any standard of scrutiny -- the categorical exclusion of survivor benefits to committed same-sex couples violates the right to equal protection under the law as guaranteed by the Missouri Constitution.

COUNT II

Denial of Equal Protection Based on Sex Pursuant to Article I, Section 2 of the Missouri Constitution

61. Plaintiff incorporates herein by reference and realleges the allegations made in Paragraphs 1 through 60 of this Petition.

62. By conditioning the receipt of survivor benefits on the legal relationship of “spouse,” from which lesbian, gay, and bisexual individuals, including Mr. Glossip, are categorically excluded, Mo. Rev. Sections 104.012 and 104.140.3 -- and Defendant’s actions to implement these statutes -- discriminate against lesbian, gay, and bisexual individuals, including Mr. Glossip, both facially and as applied, based on sex.

63. As such, Plaintiff has been subjected to unequal treatment based solely on his sex in relation to the sex of his domestic partner.

64. All of Defendant’s acts, omissions, policies, and practices alleged herein were and, if not enjoined, will continue to be committed intentionally and purposefully because of Mr. Glossip’s sex in relation to the sex of his committed domestic partner.

65. Such discrimination on account of sex is suspect and demands a heightened level of scrutiny under the Missouri Constitution, which Defendant cannot withstand.

66. The discriminatory denial of survivor benefits on account of sex is not even rationally related to the furtherance of any legitimate state interest, let alone narrowly tailored to further a compelling government interest. Accordingly -- under any standard of scrutiny -- the categorical exclusion of survivor benefits to committed same-sex couples violates the right to equal protection under the law as guaranteed by the Missouri Constitution.

COUNT III

Denial of Right to Due Process Pursuant to Article I, Section 10 of the Missouri Constitution

67. Plaintiff incorporates herein by reference and realleges the allegations made in Paragraphs 1 through 66 of this Petition.

68. Article I, Section 10 of the Missouri Constitution provides “no person shall be deprived of life, liberty or property without due process of law.”

69. Mr. Glossip has a protected, fundamental right to intimate association and pursuit of happiness, which are protected by principles of substantive due process.

70. Mr. Glossip has a liberty interest in his private intimate conduct and family relationship with his committed same-sex domestic partner, which are protected by principles of substantive due process.

71. Although the Marriage Amendment, Article I, Section 33 of the Missouri Constitution, precluded Mr. Glossip and Mr. Engelhard from marrying, it does not abrogate Mr. Glossip’s right to due process of law under Article I, Section 10 of the Missouri Constitution.

72. The categorical prohibition of survivor benefits for same-sex, surviving domestic partners and Defendant’s conduct and omissions, and policies and practices in connection therewith, impermissibly infringe upon, intrude upon, and subject Mr. Glossip to punishment and penalty based upon Mr. Glossip’s and Mr. Engelhard’s exercise of their fundamental right and protected liberty interest without compelling, substantial or otherwise sufficient reason, or adequate tailoring, in violation of Plaintiff’s rights under Article I, Section 10 of the Missouri Constitution.

73. The categorical prohibition of survivor benefits for same-sex, surviving domestic partners and Defendant’s conduct, omissions, policies and practices in connection therewith,

select for disfavored treatment same-sex, domestic partners who exercise their fundamental right and liberty interest with a same-sex domestic partner, impermissibly burdening and infringing upon Mr. Glossip and Mr. Engelhard's exercise of their protected rights.

74. There is no compelling, important, legitimate or otherwise adequate state interest to justify this intrusion by Defendant into the personal and private lives of Mr. Glossip and Mr. Engelhard. This burdening of their exercise of fundamental rights and enjoyment of protected liberty interests is arbitrary, irrational, and unconstitutional.

75. The Defendant's exclusion of Mr. Glossip from the opportunity to obtain survivor benefits afforded to different-sex couples who marry -- based solely on his having entered into an intimate and committed relationship with a same-sex partner -- is not rationally related to the furtherance of any state interest, let alone narrowly tailored to further a compelling government interest. Accordingly, under any standard of scrutiny, the categorical exclusion of survivor benefits to committed same-sex couples violates Plaintiff's right to due process under the law as guaranteed by the Missouri Constitution.

COUNT IV

Unconstitutional Special Law Pursuant to Article III, Section 40 of the Missouri Constitution

76. Plaintiff incorporates herein by reference and realleges the allegations made in Paragraphs 1 through 75 of this Petition.

77. Article III, Section 40 of the Missouri Constitution provides, in pertinent part, "[t]he general assembly shall not pass any local or special law: . . . where a general law can be made applicable and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject."

78. R.S. Mo. Sections 104.012 and 104.140.3 serve to categorically prohibit same-sex, surviving domestic partners, like Mr. Glossip, from receipt of survivor benefits.

79. R.S. Mo. Sections 104.012 and 104.140.3 are based on the immutable characteristics of sexual orientation and sex.

80. There is no substantial or reasonable justification for categorically excluding lesbian, gay, and bisexual individuals, including Mr. Glossip, from receiving the survivor benefits provided by R.S. Mo. Section 104.140.3.

81. As such, R.S. Mo. Sections 104.012 and 104.140.3 are a special law in violation of Article III, Section 40.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

(1) A declaration that Defendant's failure to provide same-sex, surviving, domestic partners of deceased gay, lesbian, and bisexual MSHP employees the opportunity to obtain survivor benefits that are available to different-sex couples through the legal status of marriage violates Mr. Glossip's right to equal protection under Article I, Section 2 of the Missouri Constitution.

(2) A declaration that the Defendant's exclusion of same-sex, surviving, domestic partners of deceased gay, lesbian, and bisexual MSHP employees from the survivor benefits that are available to different-sex couples who marry violates Plaintiff's right to due process under Article I, Section 10 of the Missouri Constitution.

(3) A declaration that R.S. Mo. Sections 104.012 and 104.140.3 are a special law and, therefore, violate Article III, Section 40 of the Missouri Constitution.

(4) An order enjoining Defendant from continuing to deny Mr. Glossip access to survivor benefits.

(5) An order requiring Defendant to offer MHSP employees and their same-sex domestic partners a regulatory structure that confers to the surviving domestic partners the survivor benefits that Defendant provides to different-sex couples who marry, but not the status or designation of marriage itself.

(6) An order awarding Mr. Glossip his costs and reasonable attorneys' fees.

(7) An order awarding such other and further relief as the Court deems just and proper.

Dated: December 2, 2010

Respectfully submitted,

By:



Roger K. Heidenreich, # 40898
SNR Denton US LLP
One Metropolitan Square, #3000
St. Louis, MO 63102
roger.heidenreich@snrdenton.com
(314) 259-5805
(314) 259-5959 - Facsimile

Anthony E. Rothert, # 44827
Legal Director
Grant R. Doty, # 60788
Staff Attorney
ACLU of Eastern Missouri
454 Whittier Street
St. Louis, MO 63108
tony@aclu-em.org
grant@aclu-em.org
(314) 652-3114
(314) 652-3112 - Facsimile

Stephen Douglas Bonney, # 36164
Chief Counsel & Legal Director
ACLU of Kansas & Western Missouri
3601 Main Street
Kansas City, MO 64111
dbonney@aclukswmo.org
(816) 994-3311
(816) 756-0136 - Facsimile

John Knight (*Pro Hac Vice* Motion to be filed)
Senior Staff Attorney
LGBT & AIDS Project
ACLU Foundation
180 North Michigan, Suite 2300
Chicago, IL 60601
jknight@aclu-il.org
(312) 201-9740, ext. 335
(312) 288-5225 - Facsimile

Joshua Block (*Pro Hac Vice* Motion to be filed)
Staff Attorney
LGBT & AIDS Project
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004
jblock@aclu.org
(212) 549-2593
(212) 549-2650 - Facsimile

Attorneys for Plaintiff Kelly D. Glossip