



Pro Bono Firm of 2015: KIRKLAND & ELLIS

Kirkland & Ellis LLP scored wins in multiple high-impact cases across the country over the past year, including a Tenth Circuit reversal in favor of challengers to state-imposed voting requirements and a key decision backing same-sex marriage in the Seventh Circuit, earning the firm a place among *Law360's* Pro Bono Firms of 2015.

The attorneys in Kirkland's U.S. offices donated nearly 110,000 hours to pro bono work, or about 85 hours per attorney, in cases covering LGBT rights, housing rights, immigration law, disability rights, civil rights, prisoner rights, death penalty cases, guardianship and veterans' benefits.

Jordan Mitchell Heinz, a member of the firmwide pro bono management committee who led the Kirkland team in the Seventh Circuit suit, said that the firm looks to balance attention-attracting types of cases with lower-profile work for individual clients in structuring its pro bono program.

"You do have those impact pro bono cases, like the marriage equality work, where one case is creating broader change beyond the parties involved," Heinz said. "But the great need for pro bono counsel are those cases that do only affect the parties involved, where it's not going to generate publicity, but it's going to create an enormous impact in that person's or that family's life."

The firm's Seventh Circuit win in collaboration with Lambda Legal Defense & Education Fund Inc. was one of many cases in the buildup to the landmark U.S. Supreme Court decision in June that struck down state-level bans on same-sex marriage.

Kirkland and Lambda represented five couples who argued that the state of Indiana's ban on same-sex

marriage was unconstitutional. In a resounding win for their clients in September, U.S. Circuit Judge Richard A. Posner, writing for a unanimous Seventh Circuit panel, affirmed a district court decision eliminating such bans in Indiana and Wisconsin, ruling that they couldn't survive a rational basis review, much less heightened scrutiny.

The win was especially meaningful to Heinz, who began working with Lambda years ago as a junior associate on name-change cases for transgender individuals.

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"I'm an openly gay attorney and always have been at Kirkland," Heinz said. "Not only was it professionally an incredible opinion to read and very satisfying to see that result, but personally it was emotional. I felt vindicated in many ways, and I felt validated in many ways."

In its same-sex marriage ruling in June, the Supreme Court included an appendix with the Posner decision and others dealing with same-sex marriage rights, Heinz said.

"I think the court was acknowledging that all of those cases contributed towards the issue being brought

ultimately to the Supreme Court and to the decision the Supreme Court made," Heinz said. "In that way, I felt like our work in Indiana and Judge Posner's decision was part of this near-judicial consensus that state marriage bans were unconstitutional under the federal Constitution."

Kirkland also showed its long-standing commitment to LGBT rights by fighting in the Third Circuit to preserve New Jersey's law preventing licensed therapists in the state from trying to change the sexual orientation of their minor patients through so-called gay conversion therapy.

However, the issues at stake in the suit, brought by two therapists and organizations that provided the treatment, and a similar suit brought by the parents of a male teen who claimed to have benefited from the therapy, are quite different from those in the marriage equality cases, according to David Flugman, who led Kirkland's team on the cases.

"They're substantively gay rights cases, but it's a different constitutional doctrine we're talking about here," Flugman said. "It's not substantive due process or equal protection like the marriage cases. These cases are litigated in the First Amendment speech context."

Kirkland represented civil rights organization Garden State Equality, which was the primary sponsor of the law, as an intervenor in the cases, rapidly putting together a pro bono team over the Labor Day weekend and the Jewish high holidays to seek involvement in the suit.

In September 2014, a Third Circuit panel unanimously upheld a district court's dismissal of the case, ruling that New Jersey had a compelling interest in "protecting its citizens from ineffective or harmful professional services" like those advocated by the plaintiffs. The Supreme Court denied the therapists' petition for certiorari in May, while the parents' petition to the high court is still pending.

The conversion therapy issue is an important one for LGBT rights because it centers on the key issue of whether sexual orientation can be changed, Flugman said.

"The overwhelming consensus of the scientific and medical community is it cannot, and these so-called therapies are really nothing but quackery, and have the

potential to cause a tremendous amount of harm to the people who are undergoing them," Flugman said.

Additionally, Kirkland teamed up with the Brennan Center for Justice at the New York University School of Law to represent the League of Women Voters as an intervenor in litigation brought by Arizona and Kansas, seeking to force the U.S. Election Assistance Commission to require paperwork to prove citizenship by those using the national mail voter registration form.

"The new issue in this case was which law governs when voters wish to register using the federal form: Is it the state law or federal law, and can a situation exist where states have voter registration requirements particular to state elections that do not apply to registrants for federal elections?" said Jonathan D. Janow, a partner in Kirkland's Washington, D.C., office.

"Some of the cases get media attention because they're interesting or have broad implications, but that's not why people are doing the work," Janow said. "They're doing it because they believe in the cause."

In November, a Tenth Circuit panel agreed with the League of Women Voters' legal team in overturning a district court ruling against the EAC, saying that the commission had properly determined that documentary proof of citizenship wasn't needed in order for states to enforce their voter qualifications. The Supreme Court denied certiorari in the case following the states' petition in March.

Janow has also taken on smaller-scale pro bono work through Kirkland's partnership with Kids in Need of Defense, a national organization that pairs pro bono attorneys with needy children going through the immigration process.

"The difference in the outcomes for those children that have attorneys and those that don't is pretty stark," Janow said.

While some matters may garner broader interest than others, it's the result that counts, he added.

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