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The Gay & Lesbian Attorneys Behind 3 Big LGBT Rights Cases

By **Aebra Coe**

Law360 (August 17, 2021, 3:02 PM EDT) -- The LGBT rights movement has seen some major victories and intensely fought cases in the courts over the last year. Giving their time and talent pro bono, three gay and lesbian partners at BigLaw firms worked behind the scenes in some of the most high-profile cases.

Hogan Lovells partner Mitchell Reich wrote an amicus brief that was submitted in *Bostock v. Clayton County*, in which the U.S. Supreme Court last June found that discrimination based on sexual orientation and gender identity is not permitted under the law.

"It's so important to me to try to both be visibly out as a lawyer and also to make it part of my practice to extend to other folks the benefits I've gotten," Reich told Law360. "We've made progress over the last few decades, but I know that progress is tenuous."

Reich also handled the briefing on behalf of the city of Philadelphia in *Fulton et al. v. Philadelphia et al.*, in which the U.S. Supreme Court found that the city of Philadelphia could not refuse to work with a foster care agency that would not place children with gay couples.

Bryan Cave Leighton Paisner LLP partner Katherine Keating helped put together an amicus brief that was submitted in that case as well. The decision, while a blow to the city of Philadelphia and LGBT rights advocates, was decided on narrow grounds, and in doing so, the justices declined to overturn a previous decision that protects LGBT rights.

"It's the most important thing I've ever done as a lawyer," Keating said of her LGBT rights work. "To be able to come full circle and do this work I always wanted to do, to find a way to use my skills to serve this community, was amazing."

Morgan Lewis & Bockius LLP partner Susan Baker Manning worked on a set of cases in which a Maryland federal court last June ruled that the U.S. State Department had unlawfully refused to recognize the citizenship of children whose married parents were male couples, though the children had been conceived and carried by surrogate mothers abroad.

"As an LGBTQ person I'm keenly aware that the community has experienced a lot of legal discrimination and that the law has been rapidly evolving around LGBTQ peoples' rights in recent years," Manning said of her decision to take on the cases. "It's been very meaningful to be a part of that."

Here, Manning, Reich and Keating chat about their work on the cases and what it means to them to contribute their legal talents to the LGBT rights movement.

MITCHELL REICH

Hogan Lovells

The case: *Bostock v. Clayton County*

Reich, an experienced Supreme Court practitioner, was tapped to write an amicus brief for the *Bostock* case after doing work on LGBT rights cases in lower courts. The high court was considering whether Title VII of the Civil Rights Act covers employment discrimination against gay and transgender people.

In the brief, which Reich wrote with a Hogan Lovells colleague on behalf of a group of legal scholars, the amici argue that "discrimination against lesbian, gay, bisexual, and transgender ('LGBT') persons punishes men and women for failing to adhere to core stereotypes of masculine and feminine behavior."

"Gay, lesbian and transgender employees don't conform to stereotypes, notions about how men and women should order their lives, who they should love, how they should act," Reich said. "In a very deep way, any time there's discrimination against LGBT people it's because of a failure to follow certain notions of what it means to be a man or woman."

Reich said it's his goal to help people who are less fortunate than he is from his "position of privilege" as an attorney.

"*Bostock* was about not just gay and lesbian folks, but also transgender employees who had not had a win at the courts and who, I think, are much more targeted right now," he said. "That was important to me in that case."

The lawyer says that when he was a kid in the 1990s he didn't feel as if he had many role models to look to who had come out as gay in professional careers.

"It wasn't clear you could be out and have a full career and fulfill all of your dreams," Reich said. "Fortunately I have done that. I think being publicly out and participating in gay rights cases is a good way to pay that forward and help set an example for kids who aren't as lucky as I am."



KATHERINE KEATING

Bryan Cave Leighton Paisner LLP

The case: *Sharonell Fulton et al. v. Philadelphia et al.*

Keating, a partner in BCLP's intellectual property group, has worked pro bono on a number of LGBT rights cases over the years, most recently helping write



an amicus brief on behalf of two nonprofit organizations, Family Equality and Parents and Friends of Lesbians and Gays, in the Fulton case before the Supreme Court.

She and BCLP also represented Family Equality in an amicus brief in the landmark 2015 gay marriage case, Obergefell v. Hodges.

One of the issues Keating raised in the Fulton brief was the perspective that children in the foster care system, including LGBT children, who she says are overrepresented in the system, would benefit from ensuring gay couples are included in the pool of prospective foster parents.

"Kids in foster care need all the help they can get," Keating said. "You have these people willing and able to take care of these kids who desperately need care."

The brief presented success stories of gay couples who had fostered a child, as well as stories about couples who were unable to foster or adopt a child because of restrictive agency policies.

"So much of the anti-marriage-equality rhetoric was about protecting kids," Keating said. "As a personal matter for us that rang so false. How could you say that when these policies are really hurting kids?"

Keating says that she knew she wanted to take on cases like this helping LGBT families and parents when she went to law school 20 years ago, at a time when people were at risk of losing their children because they were gay.

She remembers a summer job in law school that introduced her to a woman who had had kids in a heterosexual relationship but was at risk of losing custody of her children because she had subsequently entered into a relationship with a woman.

"I was so moved by the courage of people living in these situations, it really stayed with me," Keating said.

SUSAN BAKER MANNING

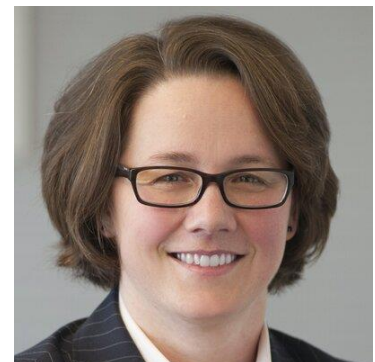
[Morgan Lewis & Bockius LLP](#)

The cases: Kiviti v. Pompeo and Mize v. Pompeo

This spring, after Manning helped secure a victory for same-sex married parents in *Kiviti v. Pompeo* and *Mize v. Pompeo*, the U.S. State Department reversed its policy on granting citizenship to the children of same-sex couples when those children were conceived by an overseas surrogate mother.

Manning's co-counsel on the case included nonprofit groups Lambda Legal and Immigration Equality.

"The State Department had taken the position that it wasn't going to analyze the citizenship of the baby based on the rules of the children of married couples," Manning said. "Unlike every other area of law, the only parent-child relationships that mattered were biological parent-child relationships."



That meant that her clients' children were not granted U.S. citizenship even though their married parents were both U.S. citizens. It also means that nearly all same-sex couples were excluded under the policy and the policy failed to recognize same-sex marriages, she said.

Formerly a patent lawyer, Manning is Morgan Lewis' senior pro bono trial attorney, and all of the cases she takes on now are pro bono.

"The reason I'm in this role is that it allows us to take on some of the larger matters, in particular the impact matters that require a very deep commitment of time and resources," she said.

The Mize and Kiviti cases are only the most recent in a number of LGBT rights cases she has worked on over the years.

It's "extremely gratifying" to work with clients such as the parents in those cases and to see the way that changes in the law can make a huge difference in their lives, and can also stretch beyond the individual clients to benefit others in a similar situation, she said.

"It's a good day when you can see your work is not just helping your individual clients — that's incredibly valuable — but you have helped head off discrimination so people don't have to face these problems," Manning said.

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