

## Seventh Circuit Judges Grill State Attorneys On Gay Marriage

August 28, 2014 | [Employment Discrimination, Currents - Employment Law](#)



**Douglas M.  
Oldham**  
Of Counsel

On August 26, state officials from Wisconsin and Indiana faced blistering scrutiny from a panel of Seventh Circuit judges as they argued in favor of reinstating laws in each state banning gay marriage. Judges Posner, Hamilton and Williams pushed them to their limits and asked a number of pointed questions regarding their arguments. Judge Posner took the attorneys to task regarding the interests of children, quickly interrupting Indiana's Solicitor General Thomas Fisher and asking if children wouldn't want their parents to be married and prompting Fisher to recall what it was like to be a child and to confront the reality of being different than classmates. Attorneys from both states argued that the gay marriage ban should stand because marriage was designed primarily to promote responsible child rearing and to avoid unintended pregnancies – pregnancies that do not occur in homosexual marriages, pointed out Fisher. Judge Hamilton retorted, "I assume you're familiar with how that's been working out in practice over the past 20 to 30 years." Judge Hamilton continued that the concept of marriage as a function of curbing out-of-wedlock pregnancies was a "very narrow, artificial rationale" for preventing homosexuals from marrying and pointed out that births to single women had risen 53 percent in Wisconsin and 68 percent in Indiana between 1990 and 2009. When Wisconsin Assistant Attorney General Timothy Samuelson used tradition as a rationale for banning gay marriage, he too was met with sharp questioning. Judge Posner reminded Samuelson that "it was a tradition to not allow blacks and whites to marry" at one time, and that prohibition of homosexual marriage was rooted in a "tradition of hate." The judges' sharp lines of questioning are not wholly indicative of how the Court will rule, as appellate judges frequently interrogate attorneys with little mercy. However, the judges' tough questions may give hope to those seeking to uphold the legalization of gay marriage. Employers should pay special attention to the Court's eventual ruling, as well as rulings steadily arising out of other states, and consult their attorneys to ensure that they are providing appropriate benefits and complying with the rights of employees and their spouses as defined by the quickly-changing law.

### RELATED PRACTICE AREAS

Arbitration and Grievances  
EEO Compliance  
Labor and Employment  
Workplace Culture 2.0

### RELATED TOPICS

Gay Marriage  
Indiana  
Wisconsin