

## War Over Sexual Orientation And Title VII Rages On

September 22, 2016 | [Employment Discrimination](#), [Labor And Employment](#)



**Douglas M.  
Oldham**  
Of Counsel

Advocates for a federal ban on sexual orientation discrimination are waging a war on multiple fronts, fighting their battles in courts across the country and seeking rulings that Title VII prohibits discrimination based on sexual orientation, even if the statute does not specifically reference it as a protected class.

Last week in a high-profile Second Circuit case, *Christiansen v. Omnicom Group, Inc.*, No. 16-748, defendant-appellee ad agency DDB Worldwide filed its brief claiming the court's precedent that Title VII does not cover sexual orientation as a protected class is still good law. Although in March 2016, the district court judge agreed and ruled for DDB Worldwide, she also noted that Supreme Court decisions such as *Obergefell v. Hodges* signaled "a shift in the perception, both of society and of the courts," giving hope to the plaintiff and his supporters at the appellate level. The EEOC, ACLU, more than 100 congressional Democrats, and several civil rights advocacy groups have filed amicus briefs asking the Second Circuit to overturn its precedent and rule that Title VII prohibits sexual orientation discrimination.

The case bears strong similarities to the [Hively case in the Seventh Circuit](#) and the [Burrows case in the Eleventh Circuit](#), among several others, as the EEOC and other advocacy groups have used comparable arguments to claim that standing precedents excluding sexual orientation discrimination from Title VII protection are no longer good law. No circuit court has ruled that Title VII covers sexual orientation discrimination, but the issue should be regularly monitored, as a shift in thinking from even one circuit court could set up a showdown before the U.S. Supreme Court.

### RELATED PRACTICE AREAS

Arbitration and Grievances  
EEO Compliance  
Labor and Employment  
Workplace Culture 2.0

### RELATED TOPICS

Sexual Orientation  
Title VII