



# ISSUE ANALYSIS

## The EEOC's Ever-Expanding Definition of "Sex Discrimination"

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### INTRODUCTION

The Civil Rights Act of 1964 was enacted to stop discrimination, specifically discrimination based on race. While the law was passed primarily to deal with this area, it also prohibited discrimination based on sex, religion, and national origin. Title VII of the Civil Rights Act specifically governs employment, and stipulates that no employer may "fail or refuse to hire or to discharge any individual...because of such individual's race, color, religion, sex, or national origin."<sup>1</sup>

Title VII also established the Equal Employment Opportunity Commission (EEOC), an executive agency tasked with enforcing Title VII, including assisting in lawsuits.

For nearly the entire history of Title VII, the EEOC has interpreted the prohibition against "sex" discrimination to bar discrimination based on the biological sex of an individual. For example, Title VII prohibits a company from refusing to hire women and only employing men. Since 1964, Congress has amended Title VII several times, but has always declined to amend the law to include "sexual orientation" or "gender identity." In that time, Congress passed other laws that explicitly prohibit discrimination based on sexual orientation and gender identity, but never adjusted the language of Title VII.

Perhaps realizing it could not legislatively accomplish its policy goals, the EEOC under the Obama administration pivoted sharply in 2012, departing from precedent and declaring by agency fiat that it would devote resources to ensuring the Title VII protections based on "sex" would cover "lesbian, gay, bisexual, and transgender individuals."<sup>2</sup> Knowing it was unlikely Congress would amend the law, the EEOC circumvented the legislative process by publishing guidelines that instructed courts to construe discrimination against LGBT individuals to be "sex discrimination" under Title VII. The agency sued several businesses and submitted briefs in others, supporting LGBT plaintiffs against their employers. Over the last six years, several courts have followed the EEOC's unlawful deviation, penalizing private business owners for something the law does not prohibit.

While the DOJ under the Trump administration has reversed this harmful course and is again interpreting the Title VII sex discrimination prohibition according to its plain meaning and long-held understanding – prohibiting discrimination between men and women<sup>3</sup> – the EEOC's damage has in many ways been done.

Below are instances in which the EEOC has used its legal power to pressure courts to reinterpret the meaning of "sex" discrimination, and where the agency has sued private businesses to bring them into

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line with its view. These do not even include instances where the EEOC, while not party to a lawsuit, presided over a settlement process that forced businesses to pay out money.<sup>4</sup>

## CASES WHERE EEOC WAS PARTY TO THE LAWSUIT

### Settled Cases

Money from Settlements	
<i>EEOC v. Bojangles Restaurants, Inc.</i>	\$15,000
<i>EEOC v. Deluxe Financial</i>	\$115,000
<i>EEOC v. Lakeland Eye Clinic</i>	\$150,000
<i>EEOC v. IFCO</i>	\$202,200

### Gender Identity

#### ***EEOC v. Bojangles Restaurants, Inc., No. 5:16-cv-00654-BO (E.D. N.C.) (Settled 2017)***

Johnathan Wolfe, a transgender woman who worked for a Bojangles fast-food restaurant, claims that as he was transitioning from male to female he received discriminatory remarks for his effeminate behavior, was verbally harassed, and was told that he needed to “pray.” The EEOC is suing Bojangles Restaurants, Inc., on behalf of Wolfe, arguing that this violates Title VII of the Civil Rights Act and its prohibition on sex discrimination, since the negative comments were based on sex stereotypes about typically male or female conduct. The EEOC filed suit with the district court and is seeking to penalize “injunctive relief to prohibit Bojangles from engaging in unlawful sex discrimination in the future, as well as back pay, compensatory damages, and punitive damages for Wolfe.”<sup>5</sup> The case settled in December 2017, with Bojangles being ordered to pay \$15,000 to the employee.<sup>6</sup>

#### ***EEOC v. Deluxe Financial Services Corporation, No. 0:15-cv-02646 (D. Minn.) (Settled 2016)***

Britney Austin is a biological male and presented as a male when he was hired by Deluxe Financial Services Corporation. Eventually, he informed his employer that he identified as transgender and began transitioning to present himself as a woman at work. He requested to use the women’s restroom, but Deluxe Financial refused. Austin also alleged that he received hurtful comments and that co-workers intentionally used male pronouns to refer to him. The EEOC sued Deluxe Financial on behalf of Austin, alleging that the company’s conduct violated the “sex discrimination” provision of Title VII. Deluxe Financial settled with the EEOC and in January 2016 agreed to pay \$115,000 in damages, to no longer discriminate based on gender identity, and to cover the healthcare costs of operations “necessary” for transgender status.<sup>7</sup>

#### ***EEOC v. Lakeland Eye Clinic, No. 8:14-cv-02421 (M.D. Fla.) (Settled 2015)***

When the Lakeland Eye Clinic in Florida fired their Director of Hearing Services for presenting as a female at work, they were sued by the EEOC. The EEOC claimed that the clinic had violated Title VII because they fired the employee as he transitioned from male to female based on “gender-based expectations, preferences, or stereotype.” In April 2015, in the face of pressure, the clinic agreed to settle. The clinic was penalized \$150,000 in monetary damages and was required to implement a new non-discrimination policy regarding gender identity and sexual orientation.<sup>8</sup>

Sexual Orientation

**EEOC v. Pallet Companies d/b/a IFCO Sys. North Am., No. 1:16-cv-00595 (D. Md.) (Settled 2016)**

The EEOC sued IFCO Systems for the harassment and termination of employee Yolanda Boone. Boone claimed that her supervisor harassed her and subjected her to crude comments and gestures because she identified as lesbian. A few days after Boone complained to management, IFCO fired her. EEOC argued that the termination was retaliation due to Boone’s “non-conformity with the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII.” Boone and IFCO eventually reached a settlement in June 2016. IFCO agreed to pay \$202,200 in damages, increase efforts to protect LGBT individuals in the workplace, and cease “sex discrimination” in the future.<sup>9</sup>

**Arbitrated Cases**

Money from Arbitration	
<u>Broussard v. First Tower Loan, LLC</u>	<u>\$53,162</u>

Gender Identity

**Broussard v. First Tower Loan, LLC, No. 2:15-cv-01161 (E.D. La.) (Settled 2016)**

The EEOC intervened on behalf of biological female Tristan Broussard and filed a lawsuit against First Tower Loan, LLC, alleging they fired Broussard because she was transgender. Broussard (who presented herself as male) was in management training for First Tower and while filling out paperwork, a manager asked why she was listed as a female on her driver’s license. When Broussard explained that she was transgender, First Tower required her to dress and act like a female if she wanted to work at the company. Broussard filed a complaint with the EEOC and the EEOC brought charges against First Tower, alleging that discrimination based on sex stereotypes like attire and conduct violated Title VII. In December 2015, the U.S. District Court granted a motion to stay the EEOC’s suit pending private arbitration between Broussard and First Tower. In January 2016, the EEOC submitted a motion to reconsider but the motion was denied. In November 2016, an arbitrator awarded Broussard \$43,162 in economic damages and \$10,000 for emotional distress.<sup>10</sup> This court seems to have lifted a stay upon the EEOC’s claims, but the arbitration appears to have effectively ended this case.<sup>11</sup>

**Ongoing Litigation**

Gender Identity

**EEOC v. R.G. & G.R. Harris Funeral Homes, Inc., No. 2:14-cv-13710 (E.D. Mich.)**

The EEOC sued R.G. & G.R. Harris Funeral Homes for firing funeral director Aimee Stephens because he intended to transition to a woman. Stephens had worked at Harris Funeral Homes since 2007, and in 2013 he informed his employer that he was transitioning genders and would begin to wear female business attire. The owner of Harris Funeral Homes is a devout Baptist and he maintains a sex-specific dress code based on the Bible’s teaching about men and women. After receiving Stephens’ letter, he fired him. The EEOC alleged that firing Stephens during his transition from male to female was based on his failure to conform to “gender-based expectations, preferences, or stereotypes,” and thus was a violation of Title VII. However, in August 2016, the District Court dismissed the claim, arguing that even though the EEOC proved that Harris Funeral Homes had engaged in unlawful sex discrimination, the Religious Freedom Restoration Act exempted them from Title VII. After the change in presidential administrations in January 2017, the ACLU took over the suit for the EEOC. They were allowed to intervene before the

6th Circuit, where the case is currently pending, because the Court believed the EEOC may relax its protection of transgender rights.<sup>12</sup>

***EEOC v. Apple Metro, No. 17-cv-4333 (S.D. N.Y.)***

The EEOC has filed a lawsuit against the company that owns the Applebee's in Hawthorne, N.Y., for sex discrimination. A transgender employee claimed that she was subject to harassment and crude remarks and when she complained to management about it she was fired. The EEOC is arguing that harassment based on an employee's transgender status and retaliating against that employee for complaining are both violations of Title VII.<sup>13</sup>

***EEOC v. Rent-A-Center East, No. 16-CV-2222 (C.D. Ill.)***

The EEOC filed suit against a furniture and appliance rental store after an employee claimed he was fired after announcing his intent to transition to being a female.<sup>14</sup> The store claimed the employee violated company rules (and there is evidence the employee exhibited poor performance and judgment based on behavior even after the firing), while the employee claims the announcement to change from male to female was the reason for his termination.<sup>15</sup> The EEOC, after trying to force the company to settle, filed suit.

***EEOC v. IXL Learning, No. 17-cv-02979-VC (N.D. Calif.)***

A transgendered product analyst was fired from a learning technology company after writing an online review saying: "If you're not a family-oriented white or Asian straight or mainstream gay person with 1.7 kids who really likes softball - then you're likely to find yourself on the outside ... Most management do not know what the word 'discrimination' means, nor do they seem to think it matters." The employee also alleged he received inappropriate questions about his gender identity and orientation from co-workers, and claimed the company treated his request to telecommute (which he requested due to post-operative recovery after gender transition surgery) differently from other telecommute requests. He then vented online. The EEOC tried to force his employer to settle, and filed suit when the company refused to do so.<sup>16</sup>

*Sexual Orientation*

***EEOC v. Scott Medical Health Center, No. 2:16-cv-00225 (W.D. Pa.)***

The EEOC filed a lawsuit against Scott Medical Health Center, P.C., a healthcare provider that specialized in pain management and weight loss services. Dale Baxley, an employee who identified as homosexual, was harassed by his manager who made crude and graphic comments to him about his sexuality and assigned him offensive epithets. Even after Baxley complained about the conduct, the manager's behavior was not corrected and Baxley resigned. The EEOC claimed that this was sex-discrimination under Title VII because the harassment about his sexual orientation was due to gender expectations and stereotypes. In November 2016, a federal district court denied the defendant's motion to dismiss, claiming that "discrimination on the basis of sexual orientation is a subset of sexual stereotyping and thus covered by Title VII's prohibitions on discrimination 'because of sex.'" The EEOC sought compensatory and punitive damages,<sup>17</sup> and a federal court awarded the employee more than \$55,000, the maximum amount allowed by statute.<sup>18</sup>

## CASES WHERE EEOC WAS NOT PARTY TO THE LAWSUIT BUT WHERE THE COURT RELIED ON THE AGENCY'S POSITION

### Gender Identity

#### ***Fabian v. Hospital of Central Connecticut*, 172 F. Supp. 3d 509 (D. Conn. 2016)**

A hospital declined to hire Dr. Deborah Fabian, who was applying for a job as an orthopedic surgeon, when he informed them he would be transitioning from male to female before beginning work. Dr. Fabian brought suit under Title VII, and the district court denied the hospital's motion for summary judgment, stating in a March 2016 ruling that the case represented a prima facie case of sex discrimination. To justify its ruling, the court cited past cases and the EEOC's broad interpretation of Title VII from the case *Macy v. Holder*.<sup>19</sup> The case was subsequently settled by January 2017.<sup>20</sup>

### Sexual Orientation

#### ***Zarda v. High Altitude Express*, 855 F.3d 76 (2d Cir. 2017)**

After a male skydiving instructor claimed he was fired from his job after telling a female client he was gay in order to supposedly make her more comfortable because he was strapped tightly to her during the jump, he sued alleging sexual orientation discrimination. The court cited the EEOC's position in *Baldwin* as part of its opinion.<sup>21</sup>

#### ***Christiansen v. Omnicom Group*, 852 F.3d 195 (2d Cir. 2017)**

In another Second Circuit opinion, the court again relied on the EEOC's position in *Baldwin* in finding Title VII covers sexual orientation discrimination. The court cited the EEOC's position near the conclusion of its opinion.<sup>22</sup>

#### ***Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017)**

Kimberly Hively was a teacher at Ivy Tech Community College for 14 years. She sued the school, claiming she was denied promotions and eventually fired because she identified as a lesbian. The district court dismissed Hively's lawsuit on the grounds that she did not state a claim, arguing that Title VII does not cover sexual orientation discrimination. A panel decision of the 7th Circuit Court of Appeals affirmed his ruling. However, the 7th Circuit granted rehearing en banc and on April 4, 2017 ruled that discrimination based on sexual orientation is covered by Title VII. In their written opinion, they cited the EEOC's position on Title VII. Ivy Tech does not plan to appeal the ruling to the Supreme Court but will defend their case on the merits at the District Court.<sup>23</sup>

#### ***Isaacs v. Felder Services*, 143 F. Supp. 3d 1190 (M.D. Ala. 2015)**

Roger Isaacs was employed by Felder Services, which provides healthcare services, and was asked to regularly work at a facility in Alabama. Isaacs identifies as a gay man, and brought his husband with him on these trips but alleged that the man was his brother. Felder Services eventually fired Isaacs for submitting inflated expense reports, but Isaacs claimed he faced discrimination because of his sexual orientation. The district court dismissed the suit on the grounds that Isaacs did not have sufficient evidence to establish a discrimination claim. However, they explicitly sided with the EEOC and affirmed that, in principle, sexual orientation claims are "cognizable under Title VII."<sup>24</sup>

#### ***Videckis v. Pepperdine University*, 150 F. Supp. 3d 1151 (C.D. Calif. 2015)**

A women's basketball coach at Pepperdine University, a Christian school in California that receives federal funds, attempted to dismiss two female players because they were dating. The players sued the school and Pepperdine filed a motion to dismiss, since sexual orientation discrimination was not sex

discrimination covered by Title VII. The district court denied Pepperdine's motion to dismiss, quoting the EEOC's language from its *Baldwin* ruling which claimed sexual orientation discrimination is covered by Title VII because it involves "treatment that would not have occurred but for the individual's sex," is "based on the sex of the person(s) the individual associates with" and/or because it is "premised on the fundamental sex stereotype, norm, or expectation that individuals should be attracted only to those of the opposite sex."<sup>25</sup> The case went to trial in the summer of 2017, and the jury found in favor of Pepperdine University.<sup>26</sup>

## CONCLUSION

The EEOC's actions in the above instances illustrate a pattern of rogue behavior, disregarding its mandate to enforce the law and venturing out in an ideological crusade to change it. The rule of law has suffered and private business owners have born the price, as they are targeted with novel claims of "sex discrimination" they didn't know were viewed as violations of Title VII by the EEOC (indeed, they aren't). The EEOC must be reined in regarding this area, or its disrespect for the law will spread elsewhere, and the rule of law will be harmed for all.

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<sup>1</sup> "Title VII of the Civil Rights Act of 1964," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, <https://www.eeoc.gov/laws/statutes/titlevii.cfm>.

<sup>2</sup> Lauren Sanders, "EEOC Recognition of Discrimination Based on Transgender Identity," *Duke Journal of Gender Law & Policy* 23 (2016): 263-281, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1309&context=djglp>.

<sup>3</sup> Max Greenwood, "Sessions reverses DOJ policy on transgender employee protections," *The Hill*, October 5, 2017, accessed January 9, 2018, <http://thehill.com/blogs/blog-briefing-room/news/354023-sessions-reverses-doj-policy-on-transgender-employee>.

<sup>4</sup> See "Rapid City Market to Pay \$50,000 to Settle EEOC Finding of Discrimination Against Transgender Employee," U.S. Equal Employment Opportunity Commission, Sept. 16, 2013, <https://www.eeoc.gov/eeoc/newsroom/release/9-16-13.cfm>.

<sup>5</sup> "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); Patrick Dorrian, "Bojangles Biased Against Transgender Worker, EEOC Says," *Bloomberg BNA*, July 8, 2016, accessed January 9, 2018, <https://www.bna.com/bojangles-biased-against-n57982076748/>; U.S. Equal Employment Opportunity Commission, "EEOC Sues Bojangles For Sex Harassment and Retaliation," press release, July 6, 2016, <https://www.eeoc.gov/eeoc/newsroom/release/7-6-16b.cfm>.

<sup>6</sup> "Bojangles' To Pay \$15,000 To Settle EEOC Sexual Harassment and Retaliation Lawsuit," EEOC, Dec. 20, 2017, <https://www.eeoc.gov/eeoc/newsroom/release/12-20-17.cfm>.

<sup>7</sup> "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); U.S. Equal Employment Opportunity Commission, "Deluxe Financial to Settle Sex Discrimination Suit on Behalf of Transgender Employee," press release, January 21, 2016, <https://www.eeoc.gov/eeoc/newsroom/release/1-21-16.cfm>.

<sup>8</sup> "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); U.S. Equal Employment Opportunity Commission, "Lakeland Eye Clinic Will Pay \$150,000 to Resolve Transgender / Sex Discrimination Lawsuit," press release, April 13, 2015, <https://www.eeoc.gov/eeoc/newsroom/release/4-13-15.cfm>.

<sup>9</sup> "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018,

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[https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); U.S. Equal Employment Opportunity Commission, "IFCO Systems Will Pay \$202,200 In Landmark Settlement Of One Of EEOC's First Sexual Orientation Discrimination Lawsuits," press release, June 28, 2016, <https://www.eeoc.gov/eeoc/newsroom/release/6-28-16.cfm>.

<sup>10</sup> *Tristan Broussard v. First Tower Loan, LLC*, No. 2:15-cv-01161, 150 F. Supp. 3d 709 (E.D. La. 2015), <https://www.clearinghouse.net/chDocs/public/EE-LA-0118-0002.pdf>; "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); "Broussard v. First Tower Loan (USA)," *Gender Identity Watch*, August 4, 2016, accessed January 9, 2018, <https://genderidentitywatch.com/2016/04/08/broussard-v-first-tower-loan-usa/>; "Award and Opinion of Arbitrator," National Center for Lesbian Rights, accessed January 9, 2018, <http://www.nclrights.org/wp-content/uploads/2016/12/Broussard-Arbitration-Award-2016.pdf>.

<sup>11</sup> PACER federal courts database, accessed September 6, 2017.

<sup>12</sup> "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1); *EEOC v. R.G. & G.R. Harris Funeral Homes*, No. 2:14-cv-13710, 201 F. Supp. 3d 837 (E.D. Mich. 2016), <http://www.mied.uscourts.gov/pdffiles/14-13710opn.pdf>; "EEOC V. R.G. & G.R. HARRIS FUNERAL HOMES," American Civil Liberties Union, accessed January 9, 2018, <https://www.aclu.org/cases/eeoc-v-rg-gr-harris-funeral-homes>; Daniel Wiessner, "6th Circuit says transgender woman can intervene in EEOC case," *Reuters*, March 27, 2017, accessed January 9, 2018, <http://www.reuters.com/article/employment-transgender/6th-circuit-says-transgender-woman-can-intervene-in-eeoc-case-idUSL2N1H41M1>.

<sup>13</sup> U.S. Equal Employment Opportunity Commission, "EEOC Sues Apple Metro Restaurant Chain for Sex Discrimination & Retaliation," press release, June 9, 2017, <https://www1.eeoc.gov/eeoc/newsroom/release/6-9-17.cfm?renderforprint=1>.

<sup>14</sup> U.S. Equal Employment Opportunity Commission, "EEOC Sues Rent-A-Center for Sex Discrimination Against Transgender Employee," press release, July 19, 2016, <https://www.eeoc.gov/eeoc/newsroom/release/7-19-16.cfm>.

<sup>15</sup> *EEOC v. Rent-A-Center East*, 264 F. Supp. 3d 952 (C.D. Ill. 2017).

<sup>16</sup> U.S. Equal Employment Opportunity Commission, "IXL Learning Sued by EEOC for Retaliation," press release, May 24, 2017, <https://www.eeoc.gov/eeoc/newsroom/release/5-24-17.cfm>.

<sup>17</sup> Shar Bahmani, "U.S. District Court Judge Sides With EEOC, Holds Title VII Prohibits Discrimination Based Upon Sexual Orientation," *The National Law Review*, November 8, 2016, accessed January 9, 2018, <http://www.natlawreview.com/article/us-district-court-judge-sides-eeoc-holds-title-vii-prohibits-discrimination-based>; "Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/litigation/selected/lgbt\\_facts.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm?renderforprint=1).

<sup>18</sup> Daniel R. Long, "EEOC Scores Victory in Sexual Orientation Discrimination Lawsuit," *The National Law Review*, November 27, 2017, accessed January 9, 2018, <https://www.natlawreview.com/article/eeoc-scores-victory-sexual-orientation-discrimination-lawsuit>.

<sup>19</sup> *Fabian v. Hosp. of Central Connecticut*, 172 F. Supp. 3d 509, 524 (D. Conn. 2016), <https://genderidentitywatch.files.wordpress.com/2016/04/fabian-v-hosp-of-cent-conn.pdf>; "Connecticut Federal District Court Holds Discrimination on the Basis of Transgender Identity Is Prohibited by Title VII," Barrett McNagney, Attorneys at Law, March 2016, accessed January 9, 2018, <https://www.barrettlaw.com/blog/labor-and-employment-law/connecticut-federal-district-court-holds-discrimination-on-the-basis-of-transgender-identity-is-prohibited-by-title-vii>; "Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII," U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov/eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm?renderforprint=1](https://www1.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm?renderforprint=1).

<sup>20</sup> "Recent and Pending Federal Lawsuits Reflecting Transgender Issues in the Workplace," American Bar Association, accessed January 9, 2018, [https://www.americanbar.org/content/dam/aba/events/labor\\_law/2017/03/err/papers/ecker\\_paper.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2017/03/err/papers/ecker_paper.authcheckdam.pdf).

<sup>21</sup> *Zarda v. Altitude Express*, 855 F.3d 76 (2d Cir. 2017), <https://law.justia.com/cases/federal/appellate-courts/ca2/15-3775/15-3775-2017-04-18.html>.

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<sup>22</sup> *Christiansen v. Omnicom Group*, 852 F.3d 195, 203 (2d Cir. 2017), <http://caselaw.findlaw.com/us-2nd-circuit/1854276.html>.

<sup>23</sup> “Hively v. Ivy Tech Community College,” Lambda Legal, accessed January 9, 2018, [https://www.lambdalegal.org/in-court/cases/in\\_hively-v-ivy-tech](https://www.lambdalegal.org/in-court/cases/in_hively-v-ivy-tech); *Hively v. Ivy Tech Community College*, 853 F.3d 339, 344, 350 (7th Cir. 2017), <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D04-04/C:15-1720:J:Wood:aut:T:fnOp:N:1942256:S:0>; Debra Stegall, “Hively v. Ivy Tech Community College,” *The National Law Review*, June 21, 2017, accessed January 9, 2018, <https://www.natlawreview.com/article/hively-v-ivy-tech-community-college1>.

<sup>24</sup> “Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII,” U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov//eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm?renderforprint=1](https://www1.eeoc.gov//eeoc/newsroom/wysk/lgbt_examples_decisions.cfm?renderforprint=1); *Isaacs v. Felder Services*, 143 F. Supp. 3d 1190, 1193-94 (M.D. Ala. 2015), <https://casetext.com/case/isaacs-v-felder-servs-llc>.

<sup>25</sup> *Videckis v. Pepperdine University*, 150 F. Supp. 3d 1151, 1161 (C.D. Cal. 2015); “Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII,” U.S. Equal Employment Opportunity Commission, accessed January 9, 2018, [https://www1.eeoc.gov//eeoc/newsroom/wysk/lgbt\\_examples\\_decisions.cfm?renderforprint=1](https://www1.eeoc.gov//eeoc/newsroom/wysk/lgbt_examples_decisions.cfm?renderforprint=1); Matt Hamilton, “Judge rules sexual orientation discrimination falls under purview of landmark Title IX law,” *Los Angeles Times*, December 22, 2015, accessed January 9, 2018, <http://www.latimes.com/local/california/la-me-1222-pepperdine-sex-discrimination-20151222-story.html>.

<sup>26</sup> PACER federal courts database, accessed September 6, 2017.