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Protective Styles, a Protected Class: Revisiting *EEOC v. Catastrophe Management Solutions*

Staci Campbell*

“My hair doesn’t need to be fixed.

Society’s view of beauty is what’s broken.”

– Unknown

For years, Black people have been forced to place extra thought into their appearance, especially in the workplace. Extra thought and extra effort all to avoid being looked down upon as unkept or unprofessional. Finally, there is a wave of legislation being introduced and passed to rectify this problem. While strides are being made, there is still much work to be done. The amount of work left to be done is illustrated by a slew of unfavorable federal cases brought in the face of discrimination against Black hair and hairstyles. This paper explores one of those cases as well as the significance of protective and natural Black hairstyles to the Black community, and why it is imperative for this significance to not only be respected but also protected.

* I wrote this with all the little Black girls and Black boys in mind. You are beautiful.

TABLE OF CONTENTS

I.	INTRODUCTION	231
II.	EEOC v. CATASTROPHE MGMT. SOLUTIONS	235
	<i>a. Facts and Procedural History of the Case</i>	235
	<i>b. The 11th Circuit Holding and Rationale</i>	236
	<i>c. Unpacking the 11th Circuit's Rationale</i>	238
III.	CREATE A RESPECTFUL AND OPEN WORLD FOR NATURAL HAIR—CROWN ACT.....	241
IV.	CONCLUSION.....	246

I. INTRODUCTION

Imagine deciding to take a break and be free from spending time on (manipulating) your hair, so you pay a hairstylist anywhere between \$200–\$600 for a braided hairstyle such as box braids or faux dreadlocks. You go to your appointment Sunday morning and sit in the stylist’s chair watching corny Netflix movies for about 5–6 hours. The Monday after the hair appointment you receive a call from one of the companies that you sent a job application to. The human resources manager asks to schedule an interview within the next few days. Ecstatic, you set your interview for Thursday morning. In preparation for your interview, you spend the next few hours researching the company and typing up talking points. Then it dawns on you, your hair is braided. Now you are faced with a decision that so many Black women have been faced with before. What do you do with your hair? Should you remove the braids that you just spent hundreds of dollars and five to six hours of your life on? All for a 30-minute job interview with no guarantee that you will even be extended a job offer? Like many Black women before you, you do the only rationale thing. Spend two and a half hours taking down your new braids which you expected to maintain for at least a month or two, wash your hair, and place it in an “acceptable, professional” style.

In 2014, Black women were termed the most educated group of people in the United States according to data collected by the National Center for Education Statistics.¹ The National Center for Education Statistics compared the percentage of Black women enrolled in college to other race-gender groups.² Black women only account for 12.7% of the population but are over 50% of the number of Black students receiving post-secondary degrees.³ Educated Black women are evidently more likely to have careers in professions with work environments where they are subject to expectations of molding to Eurocentric grooming standards.

These work environments often dictate “conservative” appearances.⁴ Duke University Senior Associate Dean of Fuqua School of Business,

¹ Nikki Katz, *Black Women Are the Most Educated Group in the U.S.*, THOUGHTCO. (June 20, 2020), <https://www.thoughtco.com/black-women-most-educated-group-us-4048763>.

² *Id.*

³ *Id.*; see also Maria Guerra, *Fact Sheet: The State of African American Women in the United States*, CENTER FOR AMERICAN PROGRESS (Nov. 7, 2013, 5:51 PM), <https://www.americanprogress.org/issues/race/reports/2013/11/07/79165/fact-sheet-the-state-of-african-american-women-in-the-united-states/> (noting that African American women make up 12.7% of the population).

⁴ While creative industries are less likely to discriminate based on hair due to their less rigid dress code and appearance policies. See Ashley Rosette, *Research Suggests Bias Against Natural Hair Limits Job Opportunities for Black Women*, DUKE FUQUA SCHOOL

Ashley Rosette conducted a study which provided evidence to societal discrimination against natural Black hairstyles.

Across four studies, we demonstrate a bias against Black women with natural hairstyles in job recruitment. In Study 1, participants evaluated profiles of Black and White female job applicants across a variety of hairstyles. We found that Black women with natural hairstyles were perceived to be less professional, less competent, and less likely to be recommended for a job interview than Black women with straightened hairstyles and White women with either curly or straight hairstyles. We replicated these findings in a controlled experiment in Study 2. In Study 3A and 3B, we found Black women with natural hairstyles received more negative evaluations when they applied for a job in an industry with strong dress norms.⁵

The researchers created a pool of non-Black participants and asked them to screen a group of job applicants rating them based on a number of factors including professionalism and competence.⁶ The job candidates consisted of Black women with straight hair, Black women with natural hair, white women with straight hair, and white women with curly hair.⁷ Black women with natural hair were the candidates least recommended for a job interview.⁸ “In many Western societies, whites have historically been the dominant social group and, as a result, the standard for professional appearance is often based on the physical appearance of whites. For women’s hair, that benchmark is having straightened hair.”⁹

One of the most common methods of conforming taken by Black women to align themselves with the Eurocentric grooming standards is the application of chemical relaxers. Chemical relaxers were accidentally created in the early 1900s by Garrett Augustus Morgan, an African American inventor most known for his creation of the three-position traffic light.¹⁰ Morgan discovered that a chemical liquid he was

OF BUSINESS (Aug. 12, 2020), <https://www.fuqua.duke.edu/duke-fuqua-insights/ashleigh-rosette-research-suggests-bias-against-natural-hair-limits-job>.

⁵ Christy Zhou Koval & Ashleigh Shelby Rosette, *The Natural Hair Bias in Job Recruitment*, 12(5) SOCIAL PSYCHOLOGICAL AND PERSONALITY SCIENCE 741, 741 (2020).

⁶ *Id.*

⁷ *Id.* at 743.

⁸ *Id.* at 744.

⁹ Rosette, *supra* note 4.

¹⁰ *Morgan, Garrett A.*, ENCYCLOPEDIA OF CLEVELAND HISTORY, <https://case.edu/ech/articles/m/morgan-garrett> (last visited Mar. 16, 2022).

experimenting with for the purpose of preventing sewing machine needles from burning fabric, could also straighten hair.¹¹ After his discovery, Morgan converted the liquid into a cream and began marketing it under his newly founded company G. A. Morgan Hair Refining Company.¹² Chemical relaxers alter the natural texture of hair by a process of controlled damage to the protein structure¹³

The original chemical makeup of relaxers consisted of “lye,” but became unpopular and abandoned by most women with the discovery of potential health dangers associated with lye.¹⁴ In addition to lye, many other chemicals found in chemical relaxers are not always listed on the packaging labels due to loopholes in FDA requirements.¹⁵ These chemicals have been linked to conditions from hair loss, alopecia, disruption of hormones, and asthma, to conditions as serious as breast cancer, a thin green film on the brain, and fibroids.¹⁶ While not highly profiled and often inconclusive, many studies suggestively link chemical relaxers and other chemical straightening treatments to serious health problems. A 2019 study by the National Institute of Environmental Health found that about 75% of Black women in the study admitted to using chemical straightening agents, making them more likely to develop breast cancer.¹⁷ After decades of placing their health in danger in the name of conforming to Eurocentric standards of hair styling, many women of color are now abandoning these chemical treatments and ignoring these standards while learning to love and embrace their natural hair textures.

¹¹ *Id.*

¹² *Id.*

¹³ U.S. Patent Application No., Publication No. 2012/0114584A1 (published May 10, 2012) (Uyi Woghiren, Antoinette Fitzpatrick, Margarat Stasik, applicants).

¹⁴ Amanda Wilcox, *Femininity, Hair Relaxers, and the Impact of Beauty Standards on Black Women’s Health*, UCLA CENTER FOR THE STUDY OF WOMEN (Oct. 27, 2017), <https://csw.ucla.edu/2017/10/27/femininity-hair-relaxers-impact-beauty-standards-black-womens-health/>.

¹⁵ Nicole Carr, *Study links hair care products for black women to serious health problems*, WSB-TV ATLANTA (Sept. 13, 2018, 7:05 PM), <https://www.wsbtv.com/news/2-investigates/chemicals-in-hair-products-used-by-black-women-linked-to-serious-health-problems/832767180/>.

¹⁶ *Id.*

¹⁷ Carolyn Eberle, Dale Sandler, Kyla Taylor & Alexandra White, *Hair dye and chemical straightener use and breast cancer risk in a large US population of black and white women*, 147 INT. J. CANCER 383, 384 (2019), <https://doi.org/10.1002/ijc.32738> (noting that nearly three-quarters of black women reported use of hair straightener in the past year).

The sale of chemical relaxers has been on a steady decline since the 1990s but between 2009 and 2015, there was a steep 34% drop.¹⁸

With the decline of chemical relaxers, Black women are wearing their hair in styles considered “natural.” Some examples of natural styles are wash–n–go’s: essentially wearing one’s natural hair “out” in its natural state and twist/braid outs: braids or twists are applied to the hair and then removed creating an altered curl pattern. Natural styles also include what are known as protective styles. Protective styles serve the purpose of limiting the exposure of natural hair to environmental elements (i.e., severe humidity or cold weather) as well as limiting the manipulation to hair strands which often leads to breakage. Examples of protective styles are corn rows (or the culturally appropriated term created by Kim Kardashian, “boxer braids” or “KKW Signature braids”¹⁹), braids with one’s natural hair similar to French braids, box braids which are achieved by attaching “braiding hair” to one’s natural hair resulting in longer braids than one would attain with only their natural hair, and faux locks (similar to box braids but instead of braids, the hair is used to create the look of a dreadlock, wigs, etc.). Essentially, a protective style is anything that protects the hair shafts, especially the ends.

This note will discuss the scrutiny placed on natural hair styles, especially protective hair styles by society and employers. Section II of this note explores the 11th Circuit’s decision in *EEOC v. Catastrophe Mgmt. Solutions*²⁰ and why this case highlights the importance of legislation against hair discrimination. Section III of this note will illustrate current events and situations of hair discrimination that continuously occur throughout the country, and then delve into legislation both implemented and pending that governs hair discrimination.

¹⁸ Nana Sidibe, *This hair trend is shaking up the beauty biz*, CNBC (July 1, 2015, 2:45PM), <https://www.cnbc.com/2015/07/01/african-americans-changing-hair-care-needs.html>.

¹⁹ Britni Danielle, *This Hairstyle Is Not Called “Boxer Braids” and Kim Kardashian Didn’t Make It Popular*, TEEN VOGUE (Mar. 17, 2016), <https://www.teenvogue.com/story/boxer-braids-hairstyle-history>.

²⁰ 852 F.3d 1018 (11th Cir. 2016).

II. EEOC v. CATASTROPHE MGMT. SOLUTIONS

a. *Facts and Procedural History of the Case*

Catastrophe Management Solutions is an insurance claims processing company in Mobile, Alabama.²¹ In 2010, Chastity Jones applied to a position posted by Catastrophe Management Solutions seeking candidates with basic telephone and computer skills to work as customer service representatives in a call center.²² Jones made it through the interview process and was offered a job.²³ During an individual meeting with the Catastrophe Management Solutions human resources manager, Jeannie Wilson, Wilson informed Jones that she would be unable to hire her pursuant to a grooming policy in place by Catastrophe Management Solutions, unless Jones cut her dreadlocks because “they tend to get messy.”²⁴ When Jones refused, Wilson rescinded the job offer.²⁵

The Equal Employment Opportunity Commission filed suit against Catastrophe Management Solutions alleging that the rescinding of Jones’s job offer based on her decision not to cut her hair was discriminatory.²⁶ CMS filed a motion to dismiss the case on the grounds that the facts alleged in the complaint did not support a claim for intentional discrimination.²⁷ The district court determined “[i]t has long been settled that employers’ grooming policies are outside the purview of Title VII.”²⁸ The district court goes on to support this claim by quoting a 5th Circuit decision:

Equal employment opportunity may be secured only when employers are barred from discriminating against employees on the basis of immutable characteristics, such as race and national origin [A] hiring policy that distinguishes on some . . . ground [other than sex], such as grooming codes or length of hair, is related more closely to the employer’s choice of how to run his business than to equality of employment opportunity Hair length is not immutable and in the situation of employer vis a vis employee enjoys no constitutional protection. If the employee objects to the

²¹ *Id.* at 1021.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 1022.

²⁶ *Id.*

²⁷ *EEOC v. Catastrophe Mgmt. Solutions*, 11 F. Supp. 3d 1139, 1141 (S.D. Ala. 2014).

²⁸ *Id.* at 1142.

grooming code he has the right to reject it by looking elsewhere for employment, or alternatively he may choose to subordinate his preference by accepting the code along with the job.²⁹

The district court dismissed the case holding that Jones was not protected under Title VII because “[a] hairstyle, even one more closely associated with a particular ethnic group, is a mutable characteristic”³⁰ while “[t]itle VII prohibits discrimination on the basis of immutable characteristics, such as race, color, or natural origin.”³¹ Upon appeal, the 11th Circuit affirmed the district court’s decision holding that there was no discrimination on the basis of race.³²

b. The 11th Circuit Holding and Rationale

The 11th Circuit began its analysis by first saying the EEOC was pursuing under a disparate treatment theory and not a disparate impact theory.³³ In short, disparate treatment applies to an individual person, while disparate impact applies where a group of people are affected based on a shared protected class. In order to prevail under a disparate treatment claim, the plaintiff must prove that an employer intentionally discriminated against a protected characteristic.³⁴ In this case, it was necessary for the EEOC to establish Wilson had full intention to discriminate against Jones, as an individual, based on her race.

In 1973, the Supreme Court set forth a framework now referred to as the *McDonnell Douglas* test or framework.³⁵ The *McDonnell Douglas* framework is used to answer the question of whether there was intentional discrimination by an employer on “impermissible basis.”³⁶ Under the *McDonnell Douglas* framework, the burden is placed on the employer to show a valid reason for taking an adverse employment action after an

²⁹ *Id.* (quoting *Willingham v. Macon Tel. Publ’g Co.*, 507 F.2d 1084, 1091 (5th Cir. 1975)).

³⁰ *Id.* at 1143.

³¹ *Id.*

³² *See EEOC v. Catastrophe Mgmt. Solutions*, 852 F.3d 1018, 1035 (11th Cir. 2016).

³³ *See id.* at 1024.

³⁴ *Id.*

³⁵ *See generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

³⁶ *Catastrophe Mgmt.*, 852 F.3d at 1026.

employee has established a *prima facie* case.³⁷ To establish a *prima facie* case, one must show that they are a member of a protected class (in this case race), that they were qualified for the job (evident by Ms. Jones's job offer), and that they suffered an adverse action based on their membership of the protective class.³⁸ Once the *prima facie* case is established, the employer must satisfy their burden by proving the action taken was legitimate and did not have discriminatory reasons behind it.³⁹ If satisfied, the burden shifts once again to the plaintiff to show that the reasons provided by the employer were merely pretextual.⁴⁰ In this case, the dispositive factor, and ultimately the main issue in the case, was whether Ms. Jones's claim of discrimination based on the grooming policy requiring her to cut her dreadlocks fell within the protective class of race.⁴¹

The 11th Circuit addresses the fact that because Title VII does not explicitly define the word "race," what constitutes as race is a question for the court under the guise of statutory interpretation.⁴² The 11th Circuit relied on dictionary definition of the word "race" during the time Title VII was enacted (the 1960s) and determined that most dictionaries set forth that "race" was dependent on "common physical characteristics or traits existing through ancestry, descent, or heredity."⁴³ The 11th Circuit determined that though these definitions did not specifically state race was based on immutable factors, it could be reasonably assumed as "such characteristics are a matter of birth, and not culture."⁴⁴

The majority of the opinion focuses on whether race is considered solely based on immutable factors or *arguendo* as a social construct—eventually landing on the assessment that Title VII protects against race discrimination based on immutable characteristics, not cultural practices.⁴⁵

We recognize that the distinction between immutable and mutable characteristics of race can sometimes be a fine (and difficult) one, but it is a line that courts have drawn. So, for example, discrimination on the basis of black hair texture (an immutable characteristic) is prohibited by Title VII, while adverse action on the basis of black hairstyle (a mutable choice) is not. [. . .] [B]lack persons choose to wear dreadlocks because that hairstyle is historically, physiologically, and culturally associated with

³⁷ See *McDonnell Douglas*, 411 U.S. at 802.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 804.

⁴¹ See generally *Catastrophe Mgmt.*, 852 F.3d.

⁴² *Id.* at 1026.

⁴³ *Id.* at 1027.

⁴⁴ *Id.*

⁴⁵ *Id.* at 1030.

their race. That dreadlocks are a “natural outgrowth” of the texture of black hair does not make them an immutable characteristic of race.⁴⁶

c. Unpacking the 11th Circuit’s Rationale

Even though the 11th Circuit discusses “black hair” multiple times throughout the opinion, it should be noted that the court thoroughly harps on the fact that hair, hair texture, and hair styles are not protected under Title VII’s definition of “race.”⁴⁷ Regardless of the 11th Circuit’s holding that hairstyles are not protected under the class of race pursuant to Title VII, it is alarming that the 11th Circuit does not reason something admittedly “culturally associated with race”⁴⁸ is substantial enough to qualify for some type of protection against discrimination in the workplace. Now more than ever, hairstyles, especially those associated with black hair, need to be protected from discrimination. As previously addressed, over the past decade there has been a movement of Black women pushing against constraints placed by society on what is considered beautiful, neat, and professional hair and embracing their hair as it naturally grows. Black women should not be continuously placed in positions where they have to choose between having a job and wearing their hair in a style most convenient or comfortable for them.

The court’s differentiation of black hair texture and black hair styles⁴⁹ is tremendously tone deaf and an illustration of the importance of diversity on the federal bench. There is currently only one Black male that sits in the 11th Circuit, and he likely grew up in the days where a Black woman would never imagine walking into work wearing a natural hair style. Times are changing, Black women are the most educated group which means more Black women are working in corporate America and are now wearing natural hairstyles in these settings. Unbeknownst to the 11th Circuit, the texture of black hair dictates the types of styles Black women and men are able to wear. The court refers to certain black hairstyles as being the “product of artifice,”⁵⁰ while this may be a proper identification, these styles are often referred to and relied on as ‘protective.’ Protective styles ensure that black hair is not overly manipulated—which in many

⁴⁶ *Id.*

⁴⁷ *See e.g., id.* at 1024.

⁴⁸ *Id.* at 1021.

⁴⁹ *Id.* at 1030.

⁵⁰ *Id.*

cases causes extensive damage. Banning these styles in the workplace effectively harms the health and quality of black hair.⁵¹ Thus Black people, Black women in particular, are in a position where they have to make a difficult decision: healthy hair or a job.

Both the district court and the 11th Circuit found that Catastrophe Management Solutions' grooming policy was "racially neutral."⁵² This notion is contradictory because the court itself acknowledges dreadlocks to be "culturally associated" with "black hair."⁵³ Catastrophe Management Solutions determined these culturally-associated-with-black-hair-dreadlocks to be "messy" and "unprofessional."⁵⁴ The facts provided in the opinion did not state the race of the other Catastrophe Management Solutions employee who was asked to cut his dreads,⁵⁵ but it is an innocuous assumption that like Jones, he was also black. "Disparate treatment liability attaches only when an employer intentionally harms members of a protected group"⁵⁶—the intention is undoubtedly there—unfortunately following the 11th Circuit's rationale that the commonality of the hairstyles do not amount to racial discrimination, the protection is not. Further, the dictionary definition of "neutral" is "not decided or pronounced as to characteristics."⁵⁷ Therefore, "race neutral" grooming policies, as alarmingly subjective as they are, at best should be considered hyperboles. The Catastrophe Management Solutions grooming policy required employees to maintain their hair in a "business professional" manner and prohibited "excessive hairstyles."⁵⁸ Who is to be entitled to determine whether a hairstyle is "business professional" or "excessive?" Where is the line drawn? According to what standard are dreadlocks "messy" or "unprofessional?" Considering how one's hair naturally grows out of their scalp or a style culturally associated with their race to be messy

⁵¹ In 2014, the Congressional Black Caucus, chaired by U.S. Rep. Marcia Fudge revised an Army regulation that was found to be offensive and racially bias against black hair. Other branches of the military followed suit. "These changes recognize that traditional hairstyles worn by women of color are often necessary to meet our unique needs and acknowledges that these hairstyles do not result in or reflect less professionalism or commitment to the high standards required to serve within our Armed Forces." Stephen Koff, *U.S. military changes rules on women's hairstyles after Rep. Marcia Fudge and Congressional Black Caucus say they show racial bias*, CLEVELAND (Aug. 13, 2014), https://www.cleveland.com/open/2014/08/us_military_changes_rules_on_w.html.

⁵² *Catastrophe Mgmt.*, 852 F.3d at 1020.

⁵³ *Id.* at 1022.

⁵⁴ *Id.* at 1021.

⁵⁵ *Id.* at 1021-22.

⁵⁶ *Id.* at 1025.

⁵⁷ *Neutral*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/neutral> (last visited Mar. 16, 2022).

⁵⁸ *Catastrophe Mgmt.*, 852 F.3d at 1022.

or unprofessional in comparison to a Eurocentric aligned hairstyle being accepted as appropriate, seems quite far from neutrality.

This lack of neutrality is further illustrated by the 11th Circuit's citations to equally, if not more, flawed rationale of the Southern District of New York in *Eatman v. United Parcel Serv.*⁵⁹ The district court held that "an employer's policy prohibiting 'unconventional' hairstyles, including dreadlocks, braids, and cornrows, was not racially discriminatory in violation of Title VII."⁶⁰ While adding beads to the end of these styles may be distracting and inappropriate for the workplace,⁶¹ the 11th Circuit itself repeatedly acknowledges that these styles are culturally associated with Black people.⁶² With this being said, it is unsettling and a bit confusing that policies prohibiting styles mostly worn by Black people are not discriminatory. However, it is to be begrudgingly admitted that while these styles are *mostly* worn by Black people they are not *only* worn by Black people. Therefore, even though these policies may in fact have a discriminatory impact on Black people who wear these natural and protective styles, the 11th Circuit's rationale, (as tone deaf as it is) concluding the policies do not appropriately fall under the guise of racial discrimination (as currently interpreted), is considered suitable. Suitable does not mean correct, as shown by the 130 different occasions where Supreme Court dissent opinions have eventually transformed into binding legislation.⁶³

The 11th Circuit's "respect"⁶⁴ for Ms. Jones's decision to turn down the job offer instead of cutting her dreadlocks in accordance with Catastrophe Management Solutions' grooming policy is impertinent and insufficient as this should not even be a decision that remains to be considered 21 years into the 21st century.

⁵⁹ *Eatman v. United Parcel Serv.*, 194 F.Supp.2d 256, 259-67 (S.D.N.Y. 2002).

⁶⁰ *Catastrophe Mgmt.*, 852 F.3d at 1032; see also *Eatman*, 194 F. Supp. 2d at 259-67.

⁶¹ *Catastrophe Mgmt.*, 852 F.3d at 1032.

⁶² See generally *id.*

⁶³ Kermit Lipez, *Some Reflections on Dissenting*, 57 ME. L. REV. 313, 325 (2005).

⁶⁴ *Catastrophe Mgmt.*, 852 F.3d at 1035.

III. CREATE A RESPECTFUL AND OPEN WORLD FOR NATURAL HAIR—CROWN ACT

In 2019, Dove, partnered with the National Urban League, Color of Change, and Western Center on Law & Poverty, founded the CROWN Coalition.⁶⁵ This development was a product of shock worthy, high profile instances of hair discrimination. Most notable was Andrew Johnson, an Afro-Latino 16-year-old wrestler who was given an ultimatum right before a match by a white referee to cut his dreadlocks or forfeit.⁶⁶ Johnson was given “90 seconds to shatter either a pillar of his identity or his bond with his teammates and his home.”⁶⁷ If Andrew forfeited the match it would mean his team could lose not only the meet, but the division title.⁶⁸ New Jersey’s rules prohibit a wrestler’s hair from falling past their earlobes, shirt collar, or elbow.⁶⁹ This was not applicable to Johnson, as the referee cited a rule that the hair must be in its “natural state.”⁷⁰ After agreeing to cut his dreadlocks, a tearful Johnson walked onto the mat after being deemed acceptable when only half of his dreadlocks were hacked off with a pair of tape scissors.⁷¹

Johnson, like so many other Black people, had to make the ever so belittling decision of choosing between maintaining his hair in a natural style that he chose for himself based on his own personal preference or giving up something he worked so hard for. The impact of hairstyles on Black people may seem asinine to non-Black people but “it’s a serious consideration and may contribute to the lack of representation for Blacks in some organizational settings.”⁷²

White people may think their rules are neutral, but they come from a mindset that, consciously or not, defines white hair as normal and black hair as deviant. Black hair must be controlled, conform or cut down. Its mere existence is often seen as illegal, from a North Carolina pool banning

⁶⁵ *The CROWN Act: Working to eradicate race-based hair discrimination*, DOVE, https://www.dove.com/us/en/stories/campaigns/the-crown-act.html?gclid=Cj0KCQiAs5eCBhCBARIsAEhk4r42p_3A7yYFkRZRuqcQ_ixUf2YpaoiCWJgPgD-eB2mnPp-K25lQnKsaAu6zEALw_wcB&gclidsrc=aw.ds (last visited Mar. 16, 2022).

⁶⁶ Jesse Washington, *The untold story of wrestler Andrew Johnson’s dreadlocks*, THE UNDEFEATED (Sept. 18, 2019), <https://theundefeated.com/features/the-untold-story-of-wrestler-andrew-johnsons-dreadlocks/>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Rosette, *supra* note 4.

swimmers with locs, to a Texas junior high school coloring in a boy's part with a Sharpie.⁷³

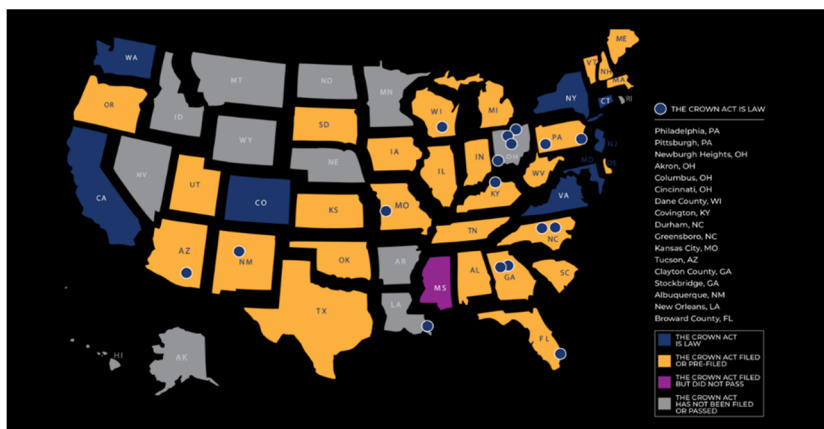
Dove has conducted research studies to support their movement, the findings have been groundbreaking⁷⁴:

- Out of 2000 women (1000 Black and 1000 White women), Black women were 30% more likely to be made aware of a formal workplace appearance policy.
- Black women are 1.5x more likely to be sent home from the workplace because of their hair
- Black women are 83% more likely to report being judged more harshly on their looks than other women
- Black women are 80% more likely to agree with the statement “I have to change my hair from its natural state to fit in at the office”

The Dove CROWN Coalition has made waves and inspired legislation throughout the country.

⁷³ Washington, *supra* note 67; see also Jasmin Persch, *School that barred 7-year-old's dreadlocks changes dress-code policy*, TODAY (Sept. 10, 2013, 2:44 PM), <https://www.today.com/parents/school-barred-7-year-olds-dreadlocks-changes-dress-code-policy-8C11122821>; Martha Quillin, *Pool rules say no dreadlocks or baggy pants. Just business or veiled discrimination?*, THE NEWS & OBSERVER (June 19, 2019, 2:12 PM), <https://www.newsobserver.com/news/local/article231696138.html#storylink=cpy>; Elisha Fieldstadt, *Texas school staffers colored in black teen's haircut with a Sharpie, lawsuit claims*, NBC NEWS (Aug. 19, 2019, 2:58 PM), <https://www.nbcnews.com/news/us-news/texas-school-staffers-colored-black-teen-s-haircut-sharpie-lawsuit-n1043956>.

⁷⁴ *The CROWN Research Study*, DOVE, https://static1.squarespace.com/static/5edc69fd622c36173f56651f/t/5edeaaa09a3c4b1e68d153af/1591650978262/DOVE_2019HAIR_reseach.pdf (last visited Mar. 16, 2022).



75

When signing into law amendments to New York’s Human Rights Law and Dignity for All Students Act, Governor Andrew Cuomo decorously said:

For much of our nation’s history, people of color—particularly women—have been marginalized and discriminated against simply because of their hair style or texture. By signing this bill into law, we are taking an important step toward correcting that history and ensuring people of color are protected from **all forms of discrimination**.⁷⁶

Governor Cuomo’s statement is directly aligned with the problem presented in the 11th Circuit’s decision in *EEOC v. Catastrophe Mgmt. Solutions*; protections are lacking for certain forms of discrimination and it is utterly unacceptable. Ms. Jones situation is not isolated. Across the country Black people of all ages are incessantly subjected to discrimination centered on their hair.

The amendment to New York’s Human Rights Law and Dignity for All Students Act expands the definition of race to include “traits historically associated with race, including but not limited to hair texture and protective hairstyles.”⁷⁷ A few legislators made extremely powerful statements in support of the bill being passed:

⁷⁵ THE CROWN ACT, <https://www.thecrownact.com/about> (last visited Mar. 16, 2022).

⁷⁶ Press Release, New York State, *Governor Cuomo Signs S6209A/A7797A To Make Clear Civil Rights Laws Ban Discrimination Against Hair Styles or Textures Associated with Race* (July 12, 2019), <https://www.governor.ny.gov/news/governor-cuomo-signs-s6209aa7797a-make-clear-civil-rights-laws-ban-discrimination-against-hair> (emphasis added).

⁷⁷ 2019 NY Senate Bill S6209A.

Senate Majority Leader Andrea Stewart-Cousins:

Discriminating against someone because of their hair style or texture is wrong, and now it is also against the law. We should celebrate the diversity that makes New York State great and that includes respecting the hair style choices of all New Yorkers.

Assembly Speaker Carl Heastie:

No one should face discrimination at school or in the workplace, but too often we see people of color, particularly women, who are told their hair is unprofessional or not appropriate in public settings. These discriminatory policies sideline people of color—keeping children out of their classrooms and diminishing who they are. That discrimination has no place in New York State. The Assembly Majority will continue to fight so every New Yorker is treated with dignity and respect.

Senator Jamaal T. Bailey:

The way one chooses to wear their hair should be legally protected and supported—and in New York, now it will be. I thank Governor Cuomo for supporting and signing this bill that makes New York State a leader when it comes to ending racial discrimination based upon natural hair and hairstyles [. . .] When leadership is diverse, it understands and is reflective of the communities. Thank you for protecting our crowns.⁷⁸

Employment attorneys in New York City have their work cut out for them as there are three separate authorities governing employment discrimination laws that apply to most of their clients: the federal Title VI, New York state laws, and New York City laws. The state law is aligned with the New York City Human Rights Law, passed in February 2019, which instructed that employer policies that “ban, limit, or restrict natural

⁷⁸ Press Release, *supra* note 77.

hair or hairstyles associated with Black people violate the New York City Human Rights Law, the City's anti-discrimination laws."⁷⁹

Preceding New York, California was the first state to pass hair discrimination laws.⁸⁰ As of February 2021, there are eight states total, including New York and California, that have passed laws that ban hair discrimination against black hair: Connecticut, Maryland, Virginia, Colorado, Washington, and New Jersey.⁸¹ For the most part, state legislation is highly supported by state legislators. In Connecticut for example, the CROWN Act bill was passed by a vote of 33–0.⁸² During a press conference announcing her co-sponsoring of Michigan's version of the CROWN Act, State Representative Sarah Lansing said "[d]iscrimination based on hairstyles has long served as a thinly veiled excuse to discriminate based on race."⁸³ Michigan is among one of the states with pending legislation though no hearing is set at this time, 27 other Democratic representatives are also co-sponsoring the bill.⁸⁴ Rep. Lansing was inspired by the story of Cameo King, a young Black woman journalist who was advised by a managing department at her job that if she did not change her hair, her career would be limited.⁸⁵ King recalls being told "It's too big. It's too much. It's too much of a distraction and it will be a hindrance to your career," before being given the suggestion to purchase a wig.⁸⁶ Soon, comments like these will be completely illegal.

⁷⁹ Press Release, New York City Commission on Human Rights, *NYC COMMISSION ON HUMAN RIGHTS ANNOUNCES NEW PROTECTIONS AND ENFORCEMENT ACTIONS AGAINST DISCRIMINATION BASED ON NATURAL HAIRSTYLES IN EMPLOYMENT, EDUCATION, AND PUBLIC ACCOMMODATIONS* (Feb. 18, 2019), <https://www1.nyc.gov/assets/cchr/downloads/pdf/press-releases/hair-guidance-pressrelease>.

⁸⁰ *California becomes first state to ban discrimination against natural hair*, CBS NEWS (July 4, 2019, 8:48 AM), <https://www.cbsnews.com/news/crown-act-california-becomes-first-state-to-ban-discrimination-against-natural-hair/>.

⁸¹ Leah Rodriguez, *8 States Across the US That Have Banned Black Hair Discrimination*, GLOBAL CITIZEN (Mar. 5, 2021), <https://www.globalcitizen.org/en/content/hair-discrimination-crown-act-states/>.

⁸² Jeanette Settembre, *Connecticut passes CROWN Act to ban discrimination against natural hair*, FOX NEWS (Mar. 5, 2021), <https://www.foxnews.com/lifestyle/connecticut-passes-crown-act-ban-discrimination-natural-hair>.

⁸³ Chloe Trofatter, *House Dems move to bar hair discrimination*, SPARTAN NEWSROOM (Feb. 26, 2021), <https://news.jrn.msu.edu/2021/02/house-dems-move-to-bar-hair-discrimination/>.

⁸⁴ *Id.*

⁸⁵ Ken Coleman, *Lawmaker renews fight to ban discrimination based on hair*, MICHIGAN ADVANCE (Feb. 25, 2021), <https://www.michiganadvance.com/2021/02/25/lawmaker-renews-fight-to-ban-discrimination-based-on-hair/>.

⁸⁶ *Id.*

The CROWN Act is spreading like wildfire across the states and Senator Cory Booker and Congressman Cedric Richmond are among federal legislators behind the push to make the CROWN Act a federal mandate.⁸⁷

IV. CONCLUSION

Knowledge is power and knowledge is a weapon against implicit bias. “[T]here fundamentally has to be a level of awareness that the natural hair bias exists. If you don’t know that it exists, you can’t know its influence on your decision-making processes.”⁸⁸ As addressed by both the district court and the 11th Circuit decisions in *EEOC v. Catastrophe Management Solutions*—courts have ignored the significance of hairstyles culturally aligned with black hair and continuously uphold employer policies that so obviously discriminate these styles.

For example, in *Rogers v. American Airlines, Inc.*, 527 F.Supp. 229 (S.D.N.Y.1981), the plaintiff challenged her employer’s grooming policy that prohibited employees from wearing an “all-braided hairstyle,” asserting that it discriminated on the basis of race and sex. Rogers argued that the “cornrow” hairstyle had cultural and historical significance to black women. The court rejected this argument and dismissed the complaint, holding that “an all-braided hairstyle . . . is an ‘easily changed characteristic,’ and, even if socioculturally associated with a particular race or nationality, is not an impermissible basis for distinctions in the application of employment practices by an employer.”⁸⁹

In *Eatman v. United Parcel Serv.*, 194 F.Supp.2d 256 (S.D.N.Y.2002), UPS’s policy grooming policy required company drivers to wear hats to cover “unconventional” hairstyles. Eatman, who wore his hair in dreadlocks, was ultimately fired for his refusal to wear a hat. Eatman filed an employment discrimination action under Title VII asserting, inter alia, a claim for racial discrimination based on UPS’s “facially discriminatory grooming policy.” Eatman argued that the company’s appearance

⁸⁷ Kiara McClendon, *The CROWN Act Makes Waves Across the Country To End Hair Discrimination*, FORBES (Jan. 13, 2021 12:51 PM), <https://www.forbes.com/sites/forbestheculture/2021/01/13/the-crown-act-makes-waves-across-the-country-to-end-hair-discrimination/?sh=42fe23604eb5>.

⁸⁸ Rosette, *supra* note 4.

⁸⁹ *Catastrophe Mgmt.*, 11 F. Supp. 3d at 1142 (internal citations omitted).

guidelines were “facially discriminatory because they single[d] out African–Americans on the basis of a characteristic—locked hair—that is unique to African–Americans.” The court concluded that “locked hair” is not unique to African–Americans and that “it is beyond cavil that Title VII does not prohibit discrimination on the basis of locked hair.”⁹⁰

In *Pitts v. Wild Adventures, Inc.*, 2008 WL 1899306 (M.D.Ga. Apr. 25, 2008), the plaintiff argued that the defendants grooming policy was “racially discriminatory because it prohibit[ed] ‘Afro–centric hairstyles’ such as dreadlocks and cornrows.” The court rejected this argument, holding that the policy was facially neutral because “[d]readlocks and cornrows are not immutable characteristic,” and, therefore, a policy that prohibits these hairstyles is not discriminatory.⁹¹

As far as we can tell, every court to have considered the issue has rejected the argument that Title VII protects hairstyles culturally associated with race. See *Cooper v. Am. Airlines, Inc.*, 149 F.3d 1167, 1998 WL 276235, at *1 (4th Cir. May 26, 1998) (upholding district court’s 12(b)(6) dismissal of claims based on a grooming policy requiring that braided hairstyles be secured to the head or at the nape of the neck); *Campbell v. Alabama Dep’t of Corr.*, No. 2:13–CV–00106–RDP, 2013 WL 2248086, at *2 (N.D. Ala. May 20, 2013) (“A dreadlock hairstyle, like hair length, is not an immutable characteristic.”); *Pitts v. Wild Adventures, Inc.*, No. CIV.A.7:06–CV–62–HL, 2008 WL 1899306, at *5–6 (M.D. Ga. Apr. 25, 2008) (holding that a grooming policy which prohibited dreadlocks and cornrows was outside the scope of federal employment discrimination statutes because it did not discriminate on the basis of immutable characteristics).⁹²

Both the Southern District of Alabama and the 11th Circuit determined that Ms. Jones was undeserving of protection from the discriminatory impact she faced due to the CMS grooming policy solely because the argument that the protection should apply to her situation “was rejected, either implicitly or explicitly, in the cases cited above.”⁹³ These decisions were both lazy and disheartening all in one. What if the Supreme Court upheld the District of Kansas’s decision in *Brown v. Board of Education*?⁹⁴

⁹⁰ *Id.* at 1142–43 (internal citations omitted).

⁹¹ *Id.* at 1143 (internal citations omitted).

⁹² *Catastrophe Mgmt.*, 852 F.3d at 1032.

⁹³ *Catastrophe Mgmt.*, 11 F. Supp. 3d at 1143.

⁹⁴ 347 U.S. 483 (1954) (The district court ruled in favor of the Board of Education, citing the U.S. Supreme Court precedent set in *Plessy v. Ferguson*, 163 U.S. 537 (1896). The district court acknowledged that segregation in public education has a detrimental effect on Black children, but still denied relief holding that the schools in Topeka were “separate but equal” with respect to buildings, transportation, curricula, and educational qualifications of teachers. Placing high regards to the **major social and governmental changes**, the Supreme Court ultimately overturned *Plessy* stating “[t]o separate [black

How about if the Supreme Court upheld the 11th Circuit's decision in *Bostock v. Clayton County, Georgia*?⁹⁵ It is vital for the federal judiciary to recognize when precedent is no longer just or acceptable. With the introduction of hair discrimination laws slowly spreading across the country and also being supported in the House of Representatives, federal courts and employers will be forced to take a hard look at their implicit bias and these discriminatory grooming policies in order to identify and eliminate discriminatory prohibitions against natural hair and natural hairstyles.

children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone”).

⁹⁵ 140 S. Ct. 1731 (2020) (The Supreme Court held employers are in violation of Title VII by firing an employee for being homosexual or a transgendered person under the basis of the individual's sex).