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New York City Commission on Human Rights

Hearing on

**Proposed Rule § 2-09 Prohibiting Race and Religious Discrimination Based
on Hairstyle and Hair Texture**

October 15, 2020

Good afternoon Chairwoman Malalis and members of the Commission. My name is Katurah Topps and I serve as Policy Counsel for the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). We thank you for the opportunity to testify today on Proposed Rule § 2-09, which seeks to amend Chapter 2 of title 47 of the Official Compilation of the Rules of the City of New York to prohibit racial and religious discrimination based on a person's hairstyle or hair texture.

LDF is the nation's first civil and human rights law organization. It was founded in 1940 by Thurgood Marshall, who later became the first Black U.S. Supreme Court Justice. During the nearly 80 years since its inception, LDF has used litigation, policy/advocacy, and public education to promote full, equal, and active citizenship for Black people. This work has included litigating seminal cases such as *Brown v. Board of Education* and *Newman v. Piggie Park Enterprises*, which upheld Title II of the Civil Rights Act of 1964 and its prohibition on racial discrimination in public accommodations. Consistent with its mission, LDF has been on the frontlines of challenging policies that have a discriminatory impact on Black people because of their specific characteristics, including hair type.¹

LDF has vigorously opposed hair policies that serve as pretexts or justifications for racial discrimination in schools and in the workplace, including *EEOC v. Catastrophe Management Solutions*, where LDF petitioned the Supreme Court of the United States to review the case of Chastity Jones, a Black woman whose job offer was rescinded solely because she wore her hair in locs.² In just the past two years alone, we challenged a hair policy in a Boston-area charter school that denied students Mya and Deanna Cook the right to wear braid extensions at their school;³ obtained public records and demanded institutional change when Andrew Johnson, a Black high school student in New Jersey, was forced to cut his hair in order to

¹ See, e.g., Brief of NAACP Legal Def. & Educ. Fund, Inc. et al., as Amici Curiae, *EEOC v. Catastrophe Management Solutions*, 2016 WL 7173828 (11th Cir. Dec. 2, 2016); *Hearing on Perspectives on TSA's Policies to Prevent Unlawful Policing Before the H. Comm. on Homeland Security*, 116th Cong. (2019) (testimony of Janai S. Nelson, Assoc. Dir.-Counsel, NAACP LDF); *Letter Regarding Discrimination Against Andrew Johnson* to Rachel, Apter, Dir., New Jersey Division of Civil Rights, (Feb. 12, 2019); *Florida Department of Education Complaint on Behalf of Clinton Stanley Jr.* to Adam Miller, Exec. Dir., Office of Indep. Educ. and Parental Choice, Fla. Dep't of Educ. (Nov. 29, 2018).

² See Press Release, *LDF Files Supreme Court Petition in Major Employment Discrimination Case Targeting Natural Black Hairstyles (Apr. 5, 2018)*, <https://www.naacpldf.org/press-release/ldf-files-supreme-court-petition-major-employment-discrimination-case-targeting-natural-black-hairstyles/>.

³ After pressure from parents and local activists, as well as media attention brought by LDF, the school's trustees lifted the no-extension ban through the end of the school year and permitted Deanna, Mya, and other students who received similar penalties to resume all extracurricular activities. See Press Release, *Civil Rights Groups Retained to Represent African American Teens Punished for Wearing Braids at Massachusetts Charter School* (2017), <https://www.naacpldf.org/press-release/civil-rights-groups-retained-to-represent-african-american-teens-punished-for-wearing-braids-at-massachusetts-charter-school/>.

compete in a high school wrestling match;⁴ and filed an administrative complaint with the Florida Department of Education on behalf of a six-year-old boy, Clinton Stanley Jr., who was denied entry on his first day of school because he wore his hair in locs.⁵ Most recently LDF initiated litigation in the state of Texas after the Barbers Hill Independent School District (“BHISD”) informed students Arnold and K.B that they would be required to either cut their natural locs or no longer participate in regular classes and school activities, including Arnold’s graduation ceremony. In August 2020, a federal judge granted the our client’s request to enjoin enforcement of BHISD’s discriminatory dress and grooming policy, enabling K.B to return to class and extracurricular activities.⁶ Our extensive experience gives us a unique understanding of the critical need for policies and legislation to eradicate discriminatory practices that prevent Black people and other traditionally marginalized groups from moving freely in society, with equal access and opportunities.

Consistent with its deeply rooted history of anti-Black racism, America has a long legacy of discriminating against Black people for wearing hairstyles or textures that are linked to Black identity and culture. Natural Black hair generally grows outward in thick, tight coils and forms or can be groomed into locs, an Afro, twists, braids or other natural hairstyles and formations.⁷ Black people have long battled the prevalent stereotype that these natural styles and formations are unsuitable for the workplace.⁸ By mislabeling these hairstyles and formations as un-

⁴ After conversations with LDF, the National Federation of State High School Associations changed their hair rule, eliminating the reference to an athlete’s natural hair state entirely. See Press Release, *LDF Makes Public Records Request in Response to Hair Discrimination Case Involving Buena Regional High School Wrestler* (Jan. 7, 2019), <https://www.naacpldf.org/press-release/ldf-makes-public-records-request-response-hair-discrimination-case-involving-buena-regional-high-school-wrestler/>; see also Press Release, *LDF Sends Letters Over Concerns with Discriminatory Hair Policies Stemming from Incident Involving New Jersey High School Wrestler* (Feb. 12, 2019), <https://www.naacpldf.org/press-release/ldf-sends-letters-concerns-discriminatory-hair-policies-stemming-incident-involving-new-jersey-high-school-wrestler/>.

⁵ Letter from Angel S. Harris, et al., to Adam Miller re: Clinton Stanley Jr. Complaint (Nov. 29, 2018), <https://www.naacpldf.org/wp-content/uploads/11.29.2018-Stanley-Complaint-002.pdf>. After pressure from LDF and an investigation from the Florida Department of Education, A Book’s Christian Academy discontinued enrollment in state scholarship programs.

⁶ See Press Release, *LDF Defends Black High School Student Against Discriminatory Hair Policy in Preliminary Injunction Hearing* (July 22, 2020), <https://www.naacpldf.org/press-release/ldf-defends-black-high-school-student-against-discriminatory-hair-policy-in-preliminary-injunction-hearing/>.

⁷ D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair* in *EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 999-1000 (2017).

⁸ A 2017 study found that white women, on average, believe that “[B]lack women’s textured hair,” is “less professional than smooth hair. Alexis m. Johnson, et al., *The “Good Hair” Study: Explicit And Implicit Attitudes Toward Black Women’s Hair* 6, Perception Institute (Feb. 2017), <https://perception.org/wp-content/uploads/2017/01/TheGood-HairStudyFindingsReport.pdf>; see Dawn D. Bennett-Alexander & Linda F. Harrison, *My Hair Is Not Like Yours: Workplace Hair Grooming Policies for African American Women As Racial Stereotyping in Violation of Title VII*, 22 CARDOZO J.L. & GENDER 437, 446 (2016).

sanitary, unkempt, and/or unsuitable for the workplace, as well as educational and other spaces, public and private actors found yet another way to exclude Black people from public spaces and/or suppress Black characteristics.⁹ Though frequently guised as “appearance policies” or “dress codes,” these policies merely use the uniqueness and beauty of Black hair as a proxy for routine racial discrimination.¹⁰ These racial proxies are employed to limit the mobility of Black people in public and private spaces, strike at the freedom and dignity of Black people, and maintain the myth of white supremacy.

“Almost fifty years ago, the Equal Employment Opportunity Commission (“EEOC”) recognized that natural hair discrimination constituted race discrimination. In a 1971 decision, the EEOC “concluded that race discrimination encompassed an employer’s prohibition of Afro hairstyles.¹¹ In its reasoning, the EEOC noted that wearing traditionally Black hairstyles have “been so appropriated as a cultural symbol,” that their suppression would automatically indicate racial prejudice.¹² The EEOC later codified this interpretation in its Compliance Manual, which analyzes charges of race and color discrimination under Title VII of the Civil Rights Act of 1964, a federal antidiscrimination law.¹³ This guidance advises that Title VII permits employers to impose neutral hairstyle rules, but those rules must respect racial differences in hair texture and it “prohibits employers from applying neutral hairstyle rules more restrictively to hairstyles worn by African Americans.”¹⁴

Recently, federal, state, and local leaders have begun acknowledging that policies that discriminate against traditionally Black hairstyles qualify as racial discrimination. California passed the Creating a Respectful and Open Workplace for Natural Hair (“CROWN”) Act in January 2019. The law, in effect as of January 1, 2020,¹⁵ prohibits schools and employers from discriminating against natural hair-

⁹ The term “dreadlocks” originated from slave traders who described Africans’ hair that had naturally formed into locs as “dreadful.” See Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 INT’L J. MEDIA & CULTURAL POL. 295, 965 n.3 (2005) [hereinafter White].

¹⁰ See generally White, *supra* note ix; see also David S. Joachim, *Military to Ease Hairstyle Rules After Outcry from Black Recruits*, N.Y. TIMES (Aug. 14 2014), <https://www.nytimes.com/2014/08/15/us/military-hairstyle-rules-dreadlocks-cornrows.html>; Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, TIME, Aug. 13, 2014, <https://time.com/3107647/military-black-hairstyles/>.

¹¹ Br. of the Equal Employment Opportunity Commission, *EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482 at *26 (11th Cir. Sept. 22, 2014), available at 2014 WL 4795874 [hereinafter EEOC Br.]

¹² EEOC Br. Dec. No. 71-2444, 1971 WL 3898, 4 Fair Empl. Prac. Cas. (BNA) 18 (1971).

¹³ Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees based on sex, race, color, national origin, and religion.

¹⁴ U.S. Equal Employment Opportunity Commission, *EEOC Compliance Manual Section on Race and Color Discrimination*, <https://www.eeoc.gov/racecolor-discrimination>; see also EEOC Compliance Manual, § 15.VII.B.5 (2006), available at <https://www.eeoc.gov/policy/docs/race-color.html#VIIIB5>.

¹⁵ S.B. 188, 2019-2020Leg., (Cal. 2020).

styles associated with race.¹⁶ According to the sponsor of the bill, Sen. Holly J. Mitchell: “There are still far too many cases of Black employees and applicants denied employment or promotion— even terminated—because of the way they choose to wear their hair. I have heard far too many reports of Black children humiliated and sent home from school because their natural hair was deemed unruly or a distraction to others.”¹⁷

Following California’s lead, on July 12, 2019 New York State enacted the CROWN Act, which “[p]rohibits race discrimination based on natural hair or hair-styles” and defines race to include “traits historically associated with race, including but not limited to, hair texture” and “braids, locks, and twists.”¹⁸ And in New York City, this Commission rightly noted that employers and public accommodations “are engaging in unlawful race discrimination when they target natural hair or hair-styles associated with Black people, and/or harass Black employees based on their hair” and “may face liability under the [New York City Human Rights Law] NYCHRL because these policies subject Black employees to disparate treatment.”¹⁹

In addition to California and New York, Maryland, Virginia, Washington, and Colorado, and New Jersey have passed state versions of the CROWN act and twenty-four other states have considered or are considering similar CROWN act language.²⁰ We commend these jurisdictions for taking action to address the pervasive discrimination based on hair texture and styles.

On December 5, 2019, Senator Cory Booker and Congressman Cedric Richmond introduced the federal CROWN Act to prohibit discrimination against

¹⁶ See Kristin Lam, *California’s CROWN Act seeks to end racial discrimination based on hair-styles*, USA Today (Apr. 23, 2019), <https://www.usatoday.com/story/news/nation/2019/04/23/california-bill-end-racial-discrimination-hairstyle/3557231002/>.

¹⁷ “Senate OKs Sen. Mitchell’s bill to protect against discrimination based on hair texture, styles,” YouTube.com (Apr. 22, 2019), https://www.youtube.com/watch?time_continue=182&v=Ty69wWU-M7E.

¹⁸ See N.Y. Exec. Law § 292 (McKinney); N.Y. Educ. Law § 11 (McKinney); see also *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>.

¹⁹ New York City Commission on Human Rights, *Legal Enforcement Guidance on Race Discrimination on the Basis of Hair* at 6-7 (Feb. 2019), <https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>, (“Covered employers that enact grooming or appearance policies that ban or require the alteration of natural hair or hair styled into twists, braids, cornrows, Afros, Bantu knots, fades, and/or locs may face liability under the NYCHRL because these policies subject Black employees to disparate treatment . . . employers may not enact discriminatory policies that force Black employees to straighten, relax, or otherwise manipulate their hair to conform to employer expectations. The existence of such policies constitutes direct evidence of disparate treatment based on race and/or other relevant protected classes under the NYCHRL.”).

²⁰ See <https://www.thecrownact.com/about> listing states that have filed or pre-filed CROWN Act legislation.

hairstyles commonly worn by Black people. LDF endorsed this important bill, which clarifies that discrimination based on natural and protective hairstyles associated with people of African descent – including hair that is tightly coiled or in locs, cornrows, twists, braids and Afros—is a prohibited form of racial or national origin discrimination under federal anti-discrimination laws.²¹ With 63 cosponsors, the bill passed the U.S. House of Representatives on September 21, 2020.

Despite these efforts, racist stereotypes and discriminatory conduct surrounding Black hair continue to permeate numerous social environments, including those in New York City.²² Black people should not have to mute or alter their naturally forming hair, identity, or culture, in order to ensure they have equal access to undisrupted and unbiased opportunities. Accordingly, we strongly support amending Chapter 2 of title 47 of the Official Compilation of the Rules of the City of New York to add Proposed Rule § 2-09. We urge this Commission to continue the bold leadership displayed in its February 2019 “Guidance on Race Discrimination on the Basis of Hair.”

Additionally, we strongly encourage the Commission to ensure that rigorous public education, data collection and assessment, and public reporting follow the addition of Proposed Rule § 2-09.

LDF is committed to continuing to work alongside organizations and policymakers that aim to end policies and practices that have a discriminatory impact on Black people because of their hair texture and/or style.

Thank you for considering this testimony. If you have any questions, or would like any additional information, please do not hesitate to contact Katurah Topps at 212-965-2200 or ktopps@naacpldf.org.

Sincerely Yours,

²¹ See Press Release, *LDF Statement on House Judiciary Committee Considering CROWN Act*, (Sep. 16, 2020), <https://www.naacpldf.org/wp-content/uploads/CROWN-Act-Statement-Final.pdf>.

²² See e.g., Michael Elsen-Rooney, *Queens Catholic school told 8-year-old student to lose his cornrows in order to stay in class: lawsuit*, DAILY NEWS (Oct. 30, 2019), <https://www.nydailynews.com/new-york/education/ny-catholic-school-hair-discrimination-20191030-smfttve3mnhypbhsx6szbtjmu-story.html>; Stacey Stowe, *Upper East Side Salon Under Investigation for Racial Discrimination*, N.Y. TIMES (Feb. 23, 2019), <https://www.nytimes.com/2019/02/23/style/sharon-dorram-color-sally-hershberger-hair-discrimination.html>.

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