

Background Resources on Black Hair Discrimination and Bias

With the explosion of the natural hair movement, a growing number of Black women are embracing natural textures and styles. Unfortunately, at times this liberation has been met with negative bias. Black hair discrimination often manifests through facially neutral policies or practices that profile, single out, and disproportionately burden Black people for wearing natural hairstyles or protective styling intimately associated with the Black identity. 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.

The NAACP Legal Defense and Educational Fund (“LDF”) is the nation’s first civil and human rights law organization. LDF 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, legislative, public education, and other advocacy strategies to promote full, equal, and active citizenship for Black Americans. LDF has been on the frontlines of opposing policies that have a discriminatory impact on Black people because of specific characteristics, including hair type.

Many Black people in the United States face barriers or judgments in the workplace when they display their natural hair. Natural hairstyles have long been the target of deep-seated invidious stereotypes about Black people and their hair—mainly, that Black hair is unclean, unprofessional, or unkempt.¹ In particular, for Black women who wish to succeed in the workplace, these stereotypes often compel them to undertake costly, time-consuming and harsh measures to conform their hair to the predominant white culture. LDF believes that these policies and practices have no place in American society, and we encourage individuals to take a stand against this discrimination. Below, we have included references to background resources, including legal documents and other materials, that may be helpful when addressing Black hair discrimination.

1. **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) GUIDANCE ON HAIR DISCRIMINATION**

In 2006, the U.S. Equal Employment Opportunity Commission (“EEOC”) included [guidance](#) in its Compliance Manual on analyzing charges of race and color discrimination under Title VII of the Civil Rights Act of 1964, a federal antidiscrimination law.² According to the EEOC, race is not limited to the color of one’s skin and includes other physical and cultural characteristics associated with race. This guidance advises that Title VII permits employers to impose neutral hairstyle rules, but those rules must respect racial differences in hair texture. In addition, Title VII “prohibits employers from applying neutral hairstyle rules more restrictively to hairstyles worn by African Americans.”

Unfortunately, federal courts are not bound by the EEOC Compliance Manual or by the EEOC’s interpretations of its own regulations, which leaves room for employers to engage in unchecked Black hair discrimination.

2. **EEOC v. CATASTROPHE MANAGEMENT SOLUTIONS**

In 2016, a federal appellate court grappled with the issue of whether a private employer could deny employment to a Black woman based on her hair. In [U.S. Equal Employment Opportunity Commission v. Catastrophe Management](#)

¹ In fact, 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).

² Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion.

[Solutions](#), the United States Court of Appeals for the Eleventh Circuit, which serves Alabama, Florida, and Georgia, held that Title VII does not prohibit discrimination on the basis of hairstyle. The ruling stemmed from a 2013 case the EEOC brought, on behalf of Chasity Jones, against an Alabama insurance claims company, Catastrophe Management Solutions (“CMS”). Chastity Jones, an African American woman with locs, was offered a position as a customer service representative. Prior to her start date, the company advised Ms. Jones that it did not permit locs and she needed to cut them as a condition of employment. When Ms. Jones refused to cut her hair, her job offer was rescinded. CMS had a written policy that required all employees to have a hairstyle that “reflect[ed] a business/professional image” and banned any hairstyles that were “excessive.” CMS interpreted this policy to prohibit locs, based on its belief that this hairstyle tended to become “messy.”

Although the Eleventh Circuit recognized that locs were a common hairstyle worn by Black people, the court ultimately concluded that locs were changeable, thus not an immutable characteristic, and that the EEOC could not state a claim for intentional race discrimination against a company seeking to enforce a “race-neutral” grooming policy. The court distinguished discrimination based on race from discrimination based on hairstyles, stating that hairstyles only have a cultural link to race or Blackness, rather than being an immutable trait of one’s race.

The EEOC decided not to appeal the decision to the Supreme Court.

The Legal Defense Fund believes that the Eleventh Circuit incorrectly dismissed Ms. Jones’s lawsuit and erred in ruling that claims under Title VII are limited to discrimination based on “immutable” physical characteristics. Under this misguided standard, even though CMS denied Jones employment based on a racial stereotype about her natural hair, the court suggests that Title VII provides no relief for this form of discrimination. If allowed to stand, the Eleventh Circuit’s ruling means that Title VII is powerless to counter employment discrimination based on racial stereotypes, and effectively permits employers to ban natural Black hairstyles in the workplace. Furthermore, this analysis contradicts Supreme Court precedent established in its seminal 1989 decision *Price Waterhouse v. Hopkins*, which ruled that Title VII prohibits discrimination based on stereotypes, regardless of whether the stereotype focuses on mutable or immutable traits. Every appellate court that has considered a similar legal question has consistently followed the Supreme Court’s guidance in *Price Waterhouse*. The Seventh Circuit, based in Chicago, even held that Title VII bars an employer from taking a negative employment action against a Black employee because she wore her hair in an afro.

In 2018, [LDF petitioned](#) the Supreme Court of the United States to review the case of Chastity Jones. LDF’s petition urged the Supreme Court to consider Jones’s case to correct the Eleventh Circuit’s ruling that departs from established Supreme Court precedent and conflicts with other circuit courts that have decided similar questions but have reached the correct conclusion. CMS’s notion that locs will become messy, and are therefore unprofessional, is a false racial stereotype that denied an employment opportunity for Ms. Jones. Antidiscrimination laws, like Title VII, were enacted to root out such discriminatory employment practices.

Unfortunately, the Supreme Court declined to review.

3. **THE CROWN ACT**

With unclear guidance from the court, legislators are taking steps to formalize protections against natural hair discrimination through the law. The Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act is one such initiative. On December 5, 2019, New Jersey senator and Democratic presidential candidate Senator [Cory Booker](#) [introduced a measure that would prohibit discrimination against hairstyles](#) commonly worn by African Americans. LDF worked with Senator Booker’s office on the text of the bill. The legislation would make “clear that discrimination based on natural and protective hairstyles associated with people of African descent, including hair that is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots and Afros is a prohibited form of racial or national origin discrimination,” Booker said. The Act ensures protection against discrimination based on hairstyles by extending statutory protection to hair texture and protective styles.

An earlier version of the CROWN Act was first introduced in California in January 2019, and was signed into law by Governor Newsom in California on July 3rd to go into effect January 1, 2020. New York quickly followed suit, and

Governor Cuomo signed a version of the CROWN Act into law on July 12th, deeming the legislation effective immediately in the state of New York. Thirteen additional states are considering the CROWN Act, including New Jersey, Michigan, Tennessee, Wisconsin, Kentucky, Illinois, Pennsylvania, Massachusetts, Maryland, Georgia, Florida, South Carolina and Virginia.

You can find more information on this important legislative effort at www.thecrownact.com.

4. OTHER RESOURCES

Below are summaries of selected reading materials for additional background on Black hair discrimination.

[*A Hair Piece: Perspectives on the Intersection of Race and Gender*](#) by Professor Paulette Caldwell

- In this seminal law review article on Black hair discrimination, Professor Caldwell utilizes the case *Rogers v. American Airlines* to demonstrate how employer grooming codes can be used to discriminate against Black women at the intersection of race and gender. In *Rogers*, a Black female employee of American Airlines filed a lawsuit under Title VII, arguing that her employer discriminated against her as a Black woman through a grooming policy that prohibited employees who had customer contact from wearing all-braided hairstyles. The district court dismissed Rogers's claims, reasoning: (1) the challenged appearance code did "not regulate on the basis of any immutable characteristic" and (2) the challenged policy applied equally to both races and sexes. The court did not address Roger's intersectional discrimination claim. In her work, Professor Caldwell argues that the fatal flaw of the *Rogers* decision was that it rested upon the premise that racism and sexism existed and operated separately and independently from each other.

[*Another Hair Piece: Exploring New Strands of Analysis Under Title VII*](#) by Professor Angela Onwuachi-Willig

- In this more current article, Professor Onwuachi-Willig argues that antidiscrimination law fails to address intersectional race and gender discrimination against Black women through hair-based grooming restrictions because it does not recognize braided, twisted, and other protective styling as Black-female equivalents of afros, which are protected as racial characteristics under existing law. Additionally, this article argues that courts should apply the special "undue burden" test that is used in gender discrimination cases to prohibit employment requirements that unnecessarily harm women to race discrimination cases. She also argues that the test should apply intersectionally in hairstyle-related cases brought by Black women.

[*Black Women Can't Have Blonde Hair . . . in the Workplace*](#) by Professor Wendy Greene

- In this article, Professor Greene examines legal cases since the *Rogers* decision that involve black women who wear natural hairstyles, and also introduces a new subset of hair cases involving Black women who are barred from wearing blonde hair in the workplace. Professor Greene argues that key factors, such as an intersectional analysis; race and gender-based privilege; and race and gender-based stigmatization, are missing from courts' analyses of Black women's claims of discrimination based on hair policies. She concludes by calling for renewed attention to the intersectional harms that Black women experience due to the enactment and enforcement of formal and informal hair regulations in the workplace.

[*The "Good Hair" Study: Explicit And Implicit Attitudes Toward Black Women's Hair*](#) by Alexis M. Johnson, et al.

- In 2016, the Perception Institute, in partnership with Shea Moisture, published the results of an implicit association test it conducted to better understand the connection between implicit bias and textured hair. The study asked participants to take an online IAT, or implicit association test, which involved rapidly changing photos of black women with smooth and natural hair, and rotating word associations with both. The test then measured the speed with which the respondent associates the images and words. According to the study, "a majority of people, regardless of race and gender, hold some bias towards women of color based on their hair."

It is our hope that these tools will be helpful to stand up against Black hair bias and discrimination. If you have questions about Black hair discrimination, please reach out to Patricia Okonta at 212-965-2200 or pokonta@naacpldf.org.