

September 14, 2020

Dear Members of the United States House of Representatives Committee on the Judiciary:

For your consideration, I respectfully submit this letter in support of H.R. 5309: the “Creating a Respectful and Open World for Natural Hair Act of 2019” or the “C.R.O.W.N. Act of 2019”).

I am a Professor of Law at Drexel University Thomas R. Kline School of Law and the author of a forthcoming book, #FREETHAHAIR: LOCKING BLACK HAIR TO CIVIL RIGHTS MOVEMENTS under contract with the University of California-Berkeley Press. For over a decade, I have published an authoritative body of legal publications on the social construction of race and the contemporary operation of racial discrimination in the Americas and Caribbean. I am also one of the nation’s leading anti-discrimination law scholars specializing in “grooming codes discrimination.”¹ My legal scholarship in this area of the law has been and is currently instrumental in creating civil rights protections on federal, state, and municipal levels—in particular, protections against racial, national origin, and religious discrimination in public and private spheres.

Recently, my definition of race for the purposes of enforcing federal civil rights laws published in my 2008 article, “Title VII: What’s Hair (and Other Race-Based Characteristics) Got to Do with It?,”² was endorsed by the Ninth Circuit of Appeals³ and cited by the Eleventh Circuit Court of Appeals in *EEOC v. Catastrophe Management Solutions*.⁴ *EEOC v. Catastrophe Management Solutions* is an internationally renowned Title VII race discrimination case challenging the revocation of a Black woman’s job offer because she refused to cut off her locs. Formulations of my definition of race have been adopted in the landmark C.R.O.W.N. Acts (Creating a Respectful Open Workplace/World for Natural Hair Acts), which are now law in California, New York, New Jersey, Virginia, Colorado, Washington, Maryland, and Montgomery County, Maryland. I also have assisted in drafting parallel legislation introduced in the South Carolina legislature as well as H.R. 5309 now under your consideration.

The need for H.R. 5309, also known as the C.R.O.W.N. Act of 2019, is vital to securing the full guarantees of inclusion, equality, freedom, and economic security that our federal civil rights laws embody. This bill provides a clarifying definition of race and national origin to guide bodies charged with enforcing federal anti-discrimination statutes like the 1964 Civil Rights Act, Section 1981 of the 1866 Civil

¹ A term that I coined to describe the ways appearance and grooming regulations implicate anti-discrimination laws, which is now recognized in civil rights and labor and employment law communities. Relevant publications are as follows: 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 MIAMI L. REV. 1 (2017); D. Wendy Greene, *A Multidimensional Analysis of What Not to Wear in the Workplace: Hijabs and Natural Hair*, 8 FIU L. REV. 333 (2013); *Black Women Can’t Have Blonde Hair...in the Workplace*, 14 J. GENDER, RACE & JUST. 405 (2011); and D. Wendy Greene, *Title VII: What’s Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355 (2008).

² D. Wendy Greene, *Title VII: What’s Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355 (2008).

³ *Guam v. Davis*, 932 F.3d 822, 835 (9th Cir. 2019).

⁴ *Equal Employment Opportunity Commission v. Catastrophe Management Solutions, Inc.*, 876 F.3d 1273 (11th Cir. 2017).

Rights Act, and the Fair Housing Act. Shortly after the Civil Rights Act of 1964 was enacted, federal courts declared that unlawful race and national origin discrimination is limited to discrimination on the basis of “immutable characteristics:” fixed characteristics with which one is born or shared by all or only members who identify as a member of a particular racial or ethnic group. Contrary to belief, there is no one characteristic that all people who identify as white or Black possess. Nonetheless, in race and national origin discrimination cases, federal courts have repeatedly applied this understanding of race and national origin when adopting the “immutability doctrine,” which has no basis in legislative history or statutory text. For over 40 years, this misinterpretation of federal anti-discrimination law has produced an untenable legal precedent and a multitude of harmful consequences, which H.R. 5309 effectively redresses.

In accordance with the immutability doctrine, if an employer fires a Black woman because she wears an Afro, this adverse employment action constitutes unlawful race discrimination under federal civil rights law. However, once this Black woman locks, braids, or twists her Afro and loses her job on those grounds, this adverse employment decision is no longer considered unlawful race discrimination because federal courts have pronounced that these hairstyles resulting from her natural hair texture are neither “immutable characteristics” nor do they bear any relationship to her identification as a Black or African descended woman—despite compelling, historically grounded legal arguments to this effect.⁵ Consequently, employers are free to deprive not only Black women but also Black men employment opportunities or terminate them from employment for which they are qualified as well as discipline, harass, or deny Black employees promotions and related compensation they have earned when they don their hair as it naturally grows—unless it is an Afro.

One may say: “what’s the big deal? It’s just hair.” Well, like most things in life, it is just not that simple. In 2017, the Perception Institute published *The “Good Hair” Study: Explicit and Implicit Attitudes Toward Black Women’s Hair*, which produced the following important findings:

- 1) Black women report suffering greater levels of anxiety, pressure, and stress to comply with formal or informal straight hair expectations than white women;
- 2) Black women are more likely to report spending more time on their hair than white women;
- 3) Black women are more likely to report having professional styling appointments more often than white women;
- 4) Black women are more likely to spend more money on hair products than white women; and
- 5) Black women are three times more likely than white women to report that they disengage in exercise and other physical activities *because of their hair*⁶ in light of the significant monetary and

⁵ See generally, Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991).

⁶ It is common for Black women to refrain from physical or outdoor activities like exercising because perspiration or exposure to humidity or water will revert the texture of their hair to its naturally curly state and thereby destroy a straightened hairstyle. Two legislators that Dr. Nadia Brown interviewed admitted that they intentionally avoid physical activities that might cause their hair to “revert back to its natural state.” Nadia Brown, *It’s More than Hair...That’s Why You Should Care”: The Politics of Appearance for Black Women State Legislators*, POLITICS, GROUPS AND IDENTITIES, 2: 3, 295, 305-308 (2014). See also Helen W. Brown, Ph.D., MPH, *Executive Summary of African American Women’s Hair Issues and Engagement in Physical Activity Focus Groups*

temporal investment alongside the heightened professional and social pressures to maintain straight hair.⁷

Just last month, researchers at Duke University’s Fuqua School of Business published a study reaffirming that Black women’s non-conformity with a Eurocentric norm of straight hair constitutes a real barrier to employment. According to this study, Black women who wore Afros, twists, locs, and braids were perceived as “less professional,” “less competent” and were less likely to secure job interviews than Black women with straightened hairstyles, white women with straight hair, and white women with curly hair.⁸ Again, under federal law—except for the cases of Afros—it is generally lawful for employers to require Black women to cut off their natural hairstyles or wear their hair straightened; the latter is usually achieved through toxic chemicals, extreme heat-styling, wigs, and weaves, which are expensive and time-consuming to maintain.⁹ Long-term use of chemical relaxants, heat, wigs, and/or weaves often causes temporary or permanent damage to African descendant women and girls’ hair and scalp. It is common for African descended women and girls to suffer through chemical burns while chemical relaxers are being applied to their hair and scalp, which are not only excruciatingly painful but also severely damaging. African descended women and girls endure temporary hair breakage, temporary and permanent balding, as well as scalp disorders like alopecia due to chemical relaxers as well as wigs, weaves, and extreme heat being applied.¹⁰ Naturally, balding, hair loss, and scalp damage engender emotional and/or psychological harms like stress, depression, diminished confidence and a negative body image alongside additional financial investments to repair the harm.

commissioned by the American Association of Retired People (AARP) (November 2009)
<https://assets.aarp.org/rgcenter/health/aahair.pdf>

⁷ Alexis McGill Johnson et al., *The “Good Hair” Study: Explicit and Implicit Attitudes Toward Black Women’s Hair*, Perception Institute (Feb.2017), <https://perception.org/wp-content/uploads/2017/01/TheGood-HairStudyFindingsReport.pdf>. The CROWN Research Study conducted in 2019 similarly reports that 80% of Black women surveyed reported they are more likely to change their natural hair to meet social norms or expectations at work and that among the research study participants natural hairstyles were ranked the lowest for “job readiness.” *New Dove Study Confirms Workplace Bias Against Hairstyles Impacts Black Women’s Ability to Celebrate Their Natural Beauty*, Cision PR Newswire (May 1, 2019, 1:21 PM) https://www.prnewswire.com/news-releases/new-dove-study-confirms-workplace-bias-against-hairstyles-impacts-black-womens-ability-to-celebrate-their-natural-beauty-300842006.html?tc=eml_cleartime.

⁸ Christy Zhoul Koval & Ashleigh Shelby Rosette, *The Natural Hair Bias in Job Recruitment*, Soc. Psych. Personality Sci. 1 (Aug. 19, 2020).

⁹ See generally, Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L. J. 1079, 1112–20 (2010) (illuminating the different temporal, economic, and emotional burdens for Black women to comply in with an employer’s straight hair mandate or preference in comparison to white women).

¹⁰ See Pamela Madu & Roopal V. Kundu, *Follicular and Scarring Disorders in Skin of Color: Presentation and Management*, 15(4) AM. J. CLINIC. DERMATOLOGY 307 (2014); Louise Gagnon, *Community Partnerships Connect Hair Loss Patients with Dermatologists*, 36 (11) DERMATOLOGY TIMES, at 27 (Nov. 2015).



Research also indicates potential correlations between hair straightening products that African descended women commonly use and their increased chances of developing uterine fibroids,¹¹ hormone-related infertility, and more aggressive forms of breast and uterine cancer.¹² Studies even indicate a possible linkage between chemical relaxants and increased hormonal activity amongst African descended girls.¹³ Therefore, natural hair bans leave African descended women and girls in a precarious Catch-22: either don your natural hair at the risk of lawfully being deprived of an employment or educational opportunity or don straight hair at the risk of enduring consequential harms to your psychological, physical, and physiological well-being.

African descended women, girls, men, and boys are systematically denied educational opportunities, employment, housing, and access to public accommodations on the basis of their natural hairstyles—a characteristic, like skin color, that informs one’s self-identification as an African descended person and is commonly associated with African descended peoples—without recourse under federal civil rights law. In fact, the texture and styling of one’s hair has continuously served as a legal and social marker of racial identity, like one’s skin color. In turn, like one’s skin color, African descended people’s natural hairstyles such as Afros, locs, braids, and twists have served as a lawful basis of racial enslavement, segregation, harassment, and discrimination in the United States, which ensues in the 21st century.

Today, grooming policies—which are often shaped by longstanding negative biases and stereotypes associated with African descendants’ natural hair texture and hairstyles as “unkempt,” “unprofessional,” “unattractive,” and “distracting”—are consistently enforced. African descended boys and men are required to cut off their hair in order to maintain a job opportunity for which they are qualified; receive alongside their classmates a high school diploma they have earned; and participate in sporting competitions in which they rightfully advanced. Similarly, African descended women and girls are deprived employment, educational, and extra-curricular opportunities along with being subjected to heightened scrutiny, resulting in the hyper-regulation of their bodies and greater discipline in schools and workplaces when they don natural and protective hairstyles.¹⁴ Presently, federal jurisprudence permits this systemic form of race-based discrimination, rooted in the eras of racial slavery and apartheid in this country, not only in schools and workplaces but also public accommodations and housing. These

¹¹ See Lauren A. Wise et al., *Hair Relaxer Use and Risk of Uterine Leiomyomata in African-American Women*, 175(5) AM. J. EPIDEMIOLOGY 432 (2012).

¹² See Carolyn E. Eberle et al., *Hair Dye and Chemical Straightener Use and Breast Cancer Risk in A Large US Population of Black and White Women*, 147 INT’L J. CANCER 383 (Dec. 3, 2019). Safiya Charles, ‘Under Protected.’ Women Ingest Hair Products’ Toxins Every Day. For Black Women, It’s Worse, MONTGOMERY ADVERTISER (Feb. 24, 2020, 9:18 AM), <https://www.montgomeryadvertiser.com/story/news/2020/02/24/black-hair-care-products-toxic-dangerous-chemicals-black-women-breast-cancer-fibroids-edcs/4564877002/>

¹³ Id.

¹⁴ See Kimberlé Williams Crenshaw with Priscilla Ocen & Jyoti Nanda, *Black Girls Matter: Pushed Out, Overpoliced and Underprotected*, AFR. AM. POL’Y F. & CTR. FOR INTERSECTIONALITY AND SOC. POL’Y STUD. (2015) https://static1.squarespace.com/static/53f20d90e4bob80451158d8c/t/54d2d22ae4booc506cffe978/1423102506084/BlackGirlsMatter_Report.pdf. See also Kayla Lattimore, *When Black Hair Violates the Dress Code*, NPR (July 17, 2017) <https://www.npr.org/sections/ed/2017/07/17/534448313/when-black-hair-violates-the-dress-code>.

misinterpretations of federal civil rights laws also perpetuate the aforementioned economic, psychological, physical, and physiological harms that African descendants endure, which are either unknown or under-discussed.

Overall, H.R. 5309 closes a critical gap in civil rights protections against race and national origin discrimination and its harms which have persisted for decades. Like religious, color, and sex discrimination, discrimination on the basis of race and national origin is not simply animated by characteristics that federal courts have deemed “immutable characteristics.” Daily, people throughout the United States suffer discrimination in workplaces, housing, public accommodations, and schools on the basis of mutable or changeable characteristics that are commonly associated with race and national origin, like one’s skin color, accent, language, clothing, hair texture, and hairstyles. However, with the imposition of the immutability doctrine in race and national origin discrimination cases, current federal jurisprudence does not reflect this common understanding of race and national origin. As a result, federal civil rights laws leave all people vulnerable to common forms of racial and national origin discrimination. Thus, the C.R.O.W.N. Act of 2019 clarifies the definition of race and national origin and ensures equal treatment—not special treatment—under the law for all victims of race and national origin discrimination in workplaces, schools, housing, and public accommodations.

Accordingly, I, along with the undersigned 247 legal academics from across the United States, support H.R. 5309: the “Creating a Respectful and Open World for Natural Hair Act of 2019.”

In their individual capacities, the following U.S. legal academics have extended their support of H.R. 5309: the “Creating a Respectful and Open World for Natural Hair Act of 2019.” Their institutional information is provided solely for identification purposes and does not represent the endorsement of their respective institutions.

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