

CREATING A RESPECTFUL AND OPEN WORLD FOR
NATURAL HAIR ACT OF 2021

FEBRUARY 25, 2022.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2116]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2116) to prohibit discrimination based on an individual's texture or style of hair, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	4
Background and Need for the Legislation	5
Hearings	17
Committee Consideration	17
Committee Votes	17
Committee Oversight Findings	19
Committee Estimate of Budgetary Effects	19
New Budget Authority and Congressional Budget Office Cost Estimate	19
Duplication of Federal Programs	21
Performance Goals and Objectives	21
Advisory on Earmarks	21
Section-by-Section Analysis	21
Committee Correspondence	24
Minority Views	27

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Creating a Respectful and Open World for Natural Hair Act of 2021” or the “CROWN Act of 2021”.

SEC. 2. FINDINGS; SENSE OF CONGRESS; PURPOSE.

(a) **FINDINGS.**—Congress finds the following:

(1) Throughout United States history, society has used (in conjunction with skin color) hair texture and hairstyle to classify individuals on the basis of race.

(2) Like one’s skin color, one’s hair has served as a basis of race and national origin discrimination.

(3) Racial and national origin discrimination can and do occur because of longstanding racial and national origin biases and stereotypes associated with hair texture and style.

(4) For example, routinely, people of African descent are deprived of educational and employment opportunities because they are adorned with natural or protective hairstyles in which hair is tightly coiled or tightly curled, or worn in locs, cornrows, twists, braids, Bantu knots, or Afros.

(5) Racial and national origin discrimination is reflected in school and workplace policies and practices that bar natural or protective hairstyles commonly worn by people of African descent.

(6) For example, as recently as 2018, the U.S. Armed Forces had grooming policies that barred natural or protective hairstyles that servicemembers of African descent commonly wear and that described these hairstyles as “unkempt”.

(7) The U.S. Army also recognized that prohibitions against natural or protective hairstyles that African-American soldiers are commonly adorned with are racially discriminatory, harmful, and bear no relationship to African-American servicewomen’s occupational qualifications and their ability to serve and protect the Nation. As of February 2021, the U.S. Army removed minimum hair length requirements and lifted restrictions on any soldier wearing braids, twists, locs, and cornrows in order to promote inclusivity and accommodate the hair needs of soldiers.

(8) As a type of racial or national origin discrimination, discrimination on the basis of natural or protective hairstyles that people of African descent are commonly adorned with violates existing Federal law, including provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), section 1977 of the Revised Statutes (42 U.S.C. 1981), and the Fair Housing Act (42 U.S.C. 3601 et seq.). However, some Federal courts have misinterpreted Federal civil rights law by narrowly interpreting the meaning of race or national origin, and thereby permitting, for example, employers to discriminate against people of African descent who wear natural or protective hairstyles even though the employment policies involved are not related to workers’ ability to perform their jobs.

(9) Applying this narrow interpretation of race or national origin has resulted in a lack of Federal civil rights protection for individuals who are discriminated against on the basis of characteristics that are commonly associated with race and national origin.

(10) In 2019 and 2020, State legislatures and municipal bodies throughout the U.S. have introduced and passed legislation that rejects certain Federal courts’ restrictive interpretation of race and national origin, and expressly classifies race and national origin discrimination as inclusive of discrimination on the basis of natural or protective hairstyles commonly associated with race and national origin.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the Federal Government should acknowledge that individuals who have hair texture or wear a hairstyle that is historically and contemporarily associated with African Americans or persons of African descent systematically suffer harmful discrimination in schools, workplaces, and other contexts based upon longstanding race and national origin stereotypes and biases;

(2) a clear and comprehensive law should address the systematic deprivation of educational, employment, and other opportunities on the basis of hair texture and hairstyle that are commonly associated with race or national origin;

(3) clear, consistent, and enforceable legal standards must be provided to redress the widespread incidences of race and national origin discrimination based upon hair texture and hairstyle in schools, workplaces, housing, federally funded institutions, and other contexts;

(4) it is necessary to prevent educational, employment, and other decisions, practices, and policies generated by or reflecting negative biases and stereotypes related to race or national origin;

(5) the Federal Government must play a key role in enforcing Federal civil rights laws in a way that secures equal educational, employment, and other opportunities for all individuals regardless of their race or national origin;

(6) the Federal Government must play a central role in enforcing the standards established under this Act on behalf of individuals who suffer race or national origin discrimination based upon hair texture and hairstyle;

(7) it is necessary to prohibit and provide remedies for the harms suffered as a result of race or national origin discrimination on the basis of hair texture and hairstyle; and

(8) it is necessary to mandate that school, workplace, and other applicable standards be applied in a nondiscriminatory manner and to explicitly prohibit the adoption or implementation of grooming requirements that disproportionately impact people of African descent.

(c) **PURPOSE.**—The purpose of this Act is to institute definitions of race and national origin for Federal civil rights laws that effectuate the comprehensive scope of protection Congress intended to be afforded by such laws and Congress’ objective to eliminate race and national origin discrimination in the United States.

SEC. 3. FEDERALLY ASSISTED PROGRAMS.

(a) **IN GENERAL.**—No individual in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance, based on the individual’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).

(b) **ENFORCEMENT.**—Subsection (a) shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and as if a violation of subsection (a) was treated as if it was a violation of section 601 of such Act (42 U.S.C. 2000d).

(c) **DEFINITIONS.**—In this section—

(1) the term “program or activity” has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a); and

(2) the terms “race” and “national origin” mean, respectively, “race” within the meaning of the term in section 601 of that Act (42 U.S.C. 2000d) and “national origin” within the meaning of the term in that section 601.

SEC. 4. HOUSING PROGRAMS.

(a) **IN GENERAL.**—No person in the United States shall be subjected to a discriminatory housing practice based on the person’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).

(b) **ENFORCEMENT.**—Subsection (a) shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in the Fair Housing Act (42 U.S.C. 3601 et seq.), and as if a violation of subsection (a) was treated as if it was a discriminatory housing practice.

(c) **DEFINITION.**—In this section—

(1) the terms “discriminatory housing practice” and “person” have the meanings given the terms in section 802 of the Fair Housing Act (42 U.S.C. 3602); and

(2) the terms “race” and “national origin” mean, respectively, “race” within the meaning of the term in section 804 of that Act (42 U.S.C. 3604) and “national origin” within the meaning of the term in that section 804.

SEC. 5. PUBLIC ACCOMMODATIONS.

(a) **IN GENERAL.**—No person in the United States shall be subjected to a practice prohibited under section 201, 202, or 203 of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.), based on the person’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).

(b) **ENFORCEMENT.**—Subsection (a) shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in title II of the Civil Rights Act of 1964, and as if a violation of sub-

section (a) was treated as if it was a violation of section 201, 202, or 203, as appropriate, of such Act.

(c) DEFINITION.—In this section, the terms “race” and “national origin” mean, respectively, “race” within the meaning of the term in section 201 of that Act (42 U.S.C. 2000e) and “national origin” within the meaning of the term in that section 201.

SEC. 6. EMPLOYMENT.

(a) PROHIBITION.—It shall be an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against an individual, based on the individual’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).

(b) ENFORCEMENT.—Subsection (a) shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), and as if a violation of subsection (a) was treated as if it was a violation of section 703 or 704, as appropriate, of such Act (42 U.S.C. 2000e–2, 2000e–3).

(c) DEFINITIONS.—In this section the terms “person”, “race”, and “national origin” have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

SEC. 7. EQUAL RIGHTS UNDER THE LAW.

(a) IN GENERAL.—No person in the United States shall be subjected to a practice prohibited under section 1977 of the Revised Statutes (42 U.S.C. 1981), based on the person’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).

(b) ENFORCEMENT.—Subsection (a) shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in section 1977 of the Revised Statutes, and as if a violation of subsection (a) was treated as if it was a violation of that section 1977.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit definitions of race or national origin under the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), or section 1977 of the Revised Statutes (42 U.S.C. 1981).

SEC. 9. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Purpose and Summary

H.R. 2116, the “Creating a Respectful and Open World for Natural Hair Act of 2021” or the “CROWN Act of 2021,” explicitly prohibits discrimination on the basis of hair texture or hairstyles commonly associated with a particular race or national origin in areas of federal law where discrimination on the basis of race or national origin is already prohibited. It specifically prohibits this form of discrimination in employment, housing, federally funded programs, public accommodations, and the making and enforcement of contracts. It provides that these prohibitions be enforced as if they were incorporated into Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.), and Section 1977 of the Revised Statutes (42 U.S.C. 1981), respectively.

H.R. 2116 is supported by the CROWN Act coalition, which was founded by Dove, the National Urban League, Color of Change, and the Western Center on Law and Poverty, and has been working to pass state-level versions of the CROWN Act in all 50 states.¹ Supporting members of the coalition and supporters of the CROWN Act include more than 80 organizations, including the National Association for the Advancement of Colored People, NAACP Legal Defense and Educational Fund, Inc., the National Organization of Black Elected Legislative Women, and the National Black Caucus of State Legislators.² The House passed H.R. 5309, a substantively identical bill, in the 116th Congress by voice vote under suspension of the rules.

Background and Need for the Legislation

I. BACKGROUND

A. Federal Law Regarding Hair Discrimination as Form of Race Discrimination

Federal law does not provide for any explicit protection against discrimination on the basis of natural hair as a form of race discrimination. With respect to employment discrimination, the Equal Employment Opportunity Commission (EEOC) has issued guidance interpreting Title VII of the Civil Rights Act of 1964—which prohibits race discrimination in employment—to prohibit discrimination based on hairstyle or hair texture in certain circumstances.

Section 15 of the EEOC’s Compliance Manual provides “that Title VII’s prohibition of race discrimination generally encompasses . . . a person’s physical characteristics associated with race, such as a person’s . . . hair[.]”³ The manual further explains that while employers can impose neutral hairstyle rules, these rules need to be respectful of racial differences in hair textures and applied evenhandedly. The manual explicitly states that employers cannot prevent African American women from wearing their hair in an “afro” style that complies with a neutral hairstyle rule and that neutral rules cannot be applied more strictly to hairstyles worn by African Americans.⁴

B. Recent Federal Judicial Decisions

In a 2016 decision, the United States Court of Appeals for the Eleventh Circuit rejected the EEOC’s interpretive guidance that had concluded that Title VII’s prohibition on racial discrimination included a prohibition on discrimination against someone for having dreadlocks.⁵ The Court held that Title VII protects “persons in covered categories with respect to their immutable characteristics,

¹*The CROWN Coalition Is Ending Discrimination Against Black Hair*, The Crown Act, available at <https://www.thecrownact.com/about>.

²*Markup of H.R. 2116, the Creating a Respectful and Open World for Natural Hair Act of 2021 or the CROWN Act of 2021*, U.S. House of Representatives Comm. On the Judiciary, 117th Cong. (Letter for the record from CROWN Coalition in support of H.R. 2116, submitted by the Honorable Karen Bass).

³*EEOC Compliance Manual*, Equal Employment Opportunity Commission (Apr. 19, 2006), 15–4, available at <https://www.eeoc.gov/policy/docs/race-color.pdf>.

⁴*Id.* at 15–48.

⁵*See Equal Employment Opportunity Comm’n v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1023 (11th Cir. 2016).

but not their cultural practices.”⁶ The Court held that Black hairstyle is a mutable characteristic—unlike Black hair texture which is an immutable characteristic—and thus is unprotected by Title VII.⁷

In that same case, the Eleventh Circuit surveyed existing case law and found that every court to have considered this issue has similarly rejected the argument that “Title VII protects hairstyles culturally associated with race.”⁸ Other courts have found that dreadlocks and cornrows are not an immutable characteristic, and thus fall outside the scope of Title VII protection.⁹ In addition, other courts have held that policies that prohibit “unconventional” hairstyles such as dreadlocks, braids, and cornrows are not racially discriminatory within the meaning of Title VII.¹⁰ Courts have similarly rejected challenges to grooming policies brought pursuant to 42 U.S.C. § 1981, which prohibits race discrimination in the making of contracts. These courts have found that the plaintiffs failed to demonstrate that only African Americans are impacted by these grooming policies.¹¹

Nevertheless, as far back as the 1970’s, both the EEOC and at least one federal appeals court sitting *en banc* concluded that discrimination based on a natural hairstyle of persons of African descent may be a basis for alleging race discrimination under Title VII.¹² Moreover, in a 2020 decision by the United States District Court for the Southern District of Texas granting a preliminary injunction, the court concluded that a facially race-neutral hair-length policy that prohibited hair styles of a certain length likely discriminated on the basis of race where racial discrimination was a substantial or motivating factor.¹³ In that case, one of the plaintiffs was an African American male student who wore his hair in locs and whose hair was routinely inspected by his school for potentially violating a hair length school policy that only applied to male students.¹⁴ Ultimately, the student was punished with in-school suspensions because of his hair. The student and his co-plaintiffs filed a lawsuit against the school, alleging sex discrimination and race discrimination under the Fourteenth Amendment’s Equal Pro-

⁶*Id.* at 1030.

⁷*Id.*

⁸*Id.* at 1032.

⁹See *Campbell v. Alabama Dep’t of Corr.*, No. 2:13-CV-00106-RDP, 2013 WL 2248086, at *2 (N.D. Ala. May 20, 2013); *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); *Carswell v. Peachford Hosp.*, No. C80-222A, 1981 WL 224, at *2 (N.D. Ga. May 26, 1981).

¹⁰See *Cooper v. Am. Airlines, Inc.*, 149 F.3d 1167, 1998 WL 276235, at *1 (4th Cir. May 26, 1998); *Eatman v. United Parcel Serv.*, 194 F.Supp.2d 256, 259–67 (S.D.N.Y. 2002); *McBride v. Lawstaf, Inc.*, No. CIV. A.1:96-CV-0196C, 1996 WL 755779, at *2 (N.D. Ga. Sept. 19, 1996); *Rogers v. Am. Airlines, Inc.*, 527 F.Supp. 229, 232 (S.D.N.Y. 1981).

¹¹See *Booth v. Maryland*, 327 F.3d 377, 383 (4th Cir. 2003) (holding that the plaintiff did not sufficiently demonstrate in his § 1981 suit that his company’s grooming policies—prohibiting him from wearing a hairstyle in accordance with his Rastafarian religion—discriminated against him based on race because both white and African-American employees were treated differently from him regarding their hairstyles).

¹²See *Jenkins v. Blue Cross Mutual Hospital Ins. Co.*, 538 F.2d 164 (7th Cir. 1976) (*en banc*) (holding that an employee’s allegation on an EEOC charge that she was subject to race discrimination because of her Afro was sufficient to support a lawsuit alleging race discrimination in violation of Title VII); EEOC Dec. No. 71-2444, 1971 WL 3898, 4 Fair Empl. Prac. Cas. (BNA) 18 (1971) (“the wearing of an Afro-American hair style by a Negro has been so appropriated as a cultural symbol by members of the Negro race as to make its suppression either an automatic badge of racial prejudice or a necessary abridgement of first amendment rights.”).

¹³*Arnold, et al., v. Barbers Hill Independent School District, et al.*, Memorandum Opinion and Order, Civil Action No. 4:20-CV-1802 (S.D. Tex. Aug. 17, 2020), available at <https://www.naacpldf.org/wp-content/uploads/PI-Opinion.pdf>.

¹⁴*Id.*

tection Clause pursuant to 42 U.S.C. § 1981, among other allegations.¹⁵ The judge granted the motion for a preliminary injunction to allow the student to attend classes without fear of punishment or retaliation, finding a substantial likelihood of success on the student's claims of sex and race discrimination under the Equal Protection Clause.¹⁶

C. *Developments in the Military*

Five years ago, the United States Army removed a grooming regulation prohibiting women servicemembers from wearing their hair in dreadlocks, a regulation that had a disproportionately adverse impact on Black women.¹⁷ This decision was the result of a 2014 order by then-Secretary of Defense Chuck Hagel to review the military's policies regarding hairstyles popular with African-American women after complaints that the policies unfairly targeted Black women.¹⁸ Last year, the Army announced additional updates to its grooming policy to make it more inclusive, including allowing multiple hairstyles to be worn at once (e.g. locs in a braided halo) and removing a rule that braids, twists, cornrows, and locs must have the same dimensions and size of spacing.¹⁹ In 2015, the Marine Corps issued regulations to permit locs and twist hairstyles.²⁰

D. *State and Local Laws Prohibiting Discrimination Based on Natural Hairstyle or Hair Texture*

California,²¹ New York,²² New Jersey,²³ Virginia,²⁴ Colorado,²⁵ Washington,²⁶ Maryland,²⁷ Connecticut,²⁸ Delaware,²⁹ New Mex-

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Women Servicemembers Rejoice*, N.Y. Times (Feb. 10, 2017), available at <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicewomen.html>.

¹⁸ *Id.*

¹⁹ Michella Oré, *The U.S. Army Is Updating Its Grooming Policy to Address Lack of Inclusion*, Glamour (Jan. 27, 2021), available at <https://www.glamour.com/story/army-updates-grooming-policy-to-address-lack-of-inclusion>.

²⁰ *Id.*

²¹ Phil Willon and Alexa Díaz, *California Becomes First State to Ban Discrimination Based on One's Natural Hair*, Los Angeles Times (July 3, 2019), available at <https://www.latimes.com/local/lanow/la-pol-ca-natural-hair-discrimination-bill-20190703-story.html>.

²² Janelle Griffith, *New York is Second State to Ban Discrimination Based on Natural Hairstyles*, NBC News (July 15, 2019), available at <https://www.nbcnews.com/news/nbcblk/new-york-second-state-ban-discrimination-based-natural-hairstyles-n1029931>.

²³ Mariel Padilla, *New Jersey is Third State to Ban Discrimination Based on Hair*, N.Y. Times (Dec. 20, 2019), available at <https://www.nytimes.com/2019/12/20/us/nj-hair-discrimination.html>.

²⁴ Francisco Guzman and Saba Hamedy, *It's official: Virginia is now the fourth state to ban hair discrimination*, CNN (Mar. 5, 2020), available at <https://www.cnn.com/2020/03/05/us/virginia-ban-hair-discrimination-bill-trnd/index.html>.

²⁵ Melissa Reeves, *Governor Polis signs the CROWN Act, banning discrimination based on hair.*, 9NEWS (Mar. 6, 2020), available at <https://www.9news.com/article/news/politics/governor-polis-signs-the-crown-act-banning-discrimination-based-on-hair/73-becfe2d4-191a-420e-9016-4c1b01910773>.

²⁶ Associated Press, *Ban on Race-Based Hairstyle Discrimination Signed Into Law*, U.S. News & World Rep. (Mar. 19, 2020), available at <https://www.usnews.com/news/best-states/washington/articles/2020-03-19/ban-on-race-based-hairstyle-discrimination-signed-into-law>.

²⁷ Ovetta Wiggins, *States are banning discrimination against black hairstyles. For some lawmakers, it's personal.*, Wash. Post (Mar. 16, 2020), available at https://www.washingtonpost.com/local/md-politics/maryland-bill-crown-act-hairstyles-discrimination/2020/03/12/c3b81582-5f05-11ea-b014-4fafa866bb81_story.html.

²⁸ Jacqueline Laurean Yates, *Connecticut passes CROWN Act to ban natural hair discrimination*, Good Morning America (Mar. 4, 2021), available at <https://www.goodmorningamerica.com/style/story/connecticut-passes-crown-act-ban-natural-hair-discrimination-76250200>.

²⁹ Bella Cacciatore, *Delaware Officially Passes the Crown Act, Making Hair Discrimination Illegal*, Glamour (Apr. 14, 2021), available at <https://www.glamour.com/story/delaware-passes-the-crown-act-hair-discrimination>.

ico,³⁰ Nebraska,³¹ Oregon,³² Nevada,³³ and Illinois,³⁴ as well as dozens of local jurisdictions³⁵ have enacted laws banning discrimination on the basis of an individual’s natural hairstyle. California became the first state to pass a bill, with the purpose of “ensur[ing] protection against discrimination in the workplace and schools based on hairstyles by prohibiting employers and schools from enforcing purportedly ‘race neutral’ grooming policies that disproportionately impact persons of color.”³⁶

1. California

California enacted a version of the CROWN Act in June 2019 with unanimous bipartisan support.³⁷ The Act extended state anti-discrimination statutory protections in the California Fair Employment and Housing Act and the California Education Code to prohibit discrimination based on hair texture and hairstyles.³⁸ Specifically, the California statute amended the Education Code and Government Code to provide that “race” includes “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.”³⁹ Protective hairstyles are hairstyles that tuck the ends of one’s hair away and minimize manipulation and exposure to the weather, therefore helping keep hair healthy.⁴⁰ The Act defines “protective hairstyles” as including (but not limited to) “braids, locks, and twists.”⁴¹

In passing the California CROWN Act, the California Legislature made several key findings.⁴² These include:

(a) America’s laws and societal norms have equated “blackness” and associated physical traits (such as dark skin, and kinky and curly hair) to a “badge of inferiority.”

(b) This understanding of blackness permeates “societal understanding of professionalism,” which has long been associated with European features and mannerisms. This has led to those who do not conform with Eurocentric norms to have to alter their appearances in order to be “deemed professional.”

³⁰ Associated Press, *New Mexico adopts new law to fight hairstyle discrimination*, KRQE (Apr. 5, 2021), available at <https://www.krqe.com/news/politics-government/new-mexico-adopts-new-law-to-fight-hairstyle-discrimination/>.

³¹ Martha Stoddard, *Nebraska Legislature passes natural hair discrimination ban*, Omaha World Herald (Apr. 30, 2021), available at https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-legislature-passes-natural-hair-discrimination-ban/article_226cb7ea-a901-11eb-bf1c-9bdf6a7e5aca.html.

³² Dirk VanderHart, *Oregon lawmakers pass CROWN Act, banning discrimination based on hairstyles*, OPB (June 2, 2021), available at <https://www.opb.org/article/2021/06/02/oregon-lawmakers-pass-crown-act-banning-discrimination-based-on-hairstyles/>.

³³ Gabby Hart, *Nevada is 12th state to pass CROWN Act, making race-based hair discrimination illegal*, KSNV (June 24, 2021), available at <https://news3lv.com/news/local/nevada-become-12th-state-to-pass-crown-act-making-race-based-hair-discrimination-illegal>.

³⁴ Associated Press, *New Illinois law bans ‘hairstyle discrimination’ in schools*, NBC News (Aug. 16, 2021), available at <https://www.nbcnews.com/news/nbcblk/new-illinois-law-bans-hairstyle-discrimination-schools-rcna1683>.

³⁵ *About*, The Crown Act, available at <https://www.thecrownact.com/about>.

³⁶ Jennifer Rufer, *CA First to Ban Discrimination on Natural Black Hairstyles*, Spectrum News 1 (Jul. 26, 2019), available at <https://spectrumnews1.com/ca/la-west/inside-the-issues/2019/07/26/ca-first-to-ban-discrimination-on-black-hair>.

³⁷ *California Senate Bill No. 188*, California Legislative Information, available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB188.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Natalya Moosa, *Protective Styling: What Every Natural Needs to Know*, AfroCenchix (Oct. 25, 2018) available at <https://afrocenchix.com/blogs/news/protective-styling-what-every-natural-needs-to-know>.

⁴¹ *California Senate Bill No. 188*, California Legislative Information, available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB188.

⁴² *Id.*

(c) Hair remains a source of racial discrimination with economic and health consequences. This disproportionately impacts Black individuals.

(d) Workplace dress codes and grooming policies that prohibit certain hairstyles, “including afros, braids twists, and locks” have a disparate impact on Black individuals. These policies are “more likely to deter Black applicants and burden or punish Black employees than any other group.”

(e) Federal courts have not recognized that naturally presented Black hair, such as braids, twists, and locks, are protected under Title VII.

(f) Because hair is a proxy for race, “hair discrimination targeting hairstyles associated with race is racial discrimination.”

(g) Enforcing “Eurocentric image[s] of professionalism through purportedly race-neutral grooming policies that disparately impact Black individuals and exclude them from some workplaces is in direct opposition to equity and opportunity for all.”

2. *New York*

New York enacted a law substantially identical to California’s CROWN Act in July 2019 with bipartisan support. The New York law amends the state’s human rights and education laws to prohibit discrimination based on hair texture and protective hairstyles.⁴³

The New York State Legislature made several key findings.⁴⁴ These include:

(a) The New York City Commission on Human Rights found that hair restrictions in workplaces, schools, and public places are a form of racial discrimination.

(b) The Commission recommended guidelines to allow people to maintain their “natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.”

(c) There have been recent stories of hair discrimination in the news. These include: a New Jersey high school wrestler who was forced to cut his hair or forfeit his wrestling match, a 6-year-old Florida boy who was turned away from a private school on his first day because his hair extended below his ears, and a New Orleans-area girl who was sent home from the start of the school year at a Catholic school for wearing braids.

In response to the bill being signed into law, Assembly Speaker Carl Heastie said, “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.”⁴⁵

3. *New Jersey*

New Jersey enacted a law similar to California’s CROWN Act in December 2019 with nearly unanimous bipartisan support. The

⁴³ *Senate Bill S6209A*, The New York State Senate, available at: <https://www.nysenate.gov/legislation/bills/2019/s6209>.

⁴⁴ *Id.*

⁴⁵ Griffith, *supra* note 22.

New Jersey law amends the state’s Law Against Discrimination to prohibit discrimination based on hair texture, hair type, and protective hairstyles.⁴⁶

When the bill was signed into law, the sponsor of the bill, Sen. Sandra B. Cunningham, stated “[t]his law will ensure people of color are free to wear their hair however they feel best represents them, whether that be locks, braids, twists or curls. No one should ever be told it is ‘unprofessional’ to embrace their culture. It is unacceptable that someone could be dismissed from school or denied employment *because they wear their hair exactly how it grows*, but that has been the reality for many black and brown individuals. Today, here in New Jersey, we’ve changed that.”⁴⁷

4. Virginia

Virginia enacted a law similar to California’s CROWN Act in March 2020 with bipartisan support, including unanimous support in the State Senate. The Virginia law amends the Virginia Human Rights Act to prohibit discrimination based on hair texture, hair type, and protective hairstyles.⁴⁸

Del. Delores McQuinn, who sponsored the bill in the Virginia House of Delegates, praised its passage stating, “A person’s hair is a core part of their identity. Nobody deserves to be discriminated against simply due to the hair type they were born with.”⁴⁹

5. Colorado

Colorado enacted a law similar to California’s CROWN Act in March 2020 with bipartisan support. The Colorado law amends numerous laws with nondiscrimination provisions to prohibit discrimination based on hair texture, hair type, and protective hairstyles.⁵⁰

The legislature made several key findings.⁵¹ These included:

(a) Society has used hair, in conjunction with skin color, to classify people on the basis of race throughout U.S. history.

(b) Hair, like skin color, serves as a basis of race discrimination.

(c) Racial discrimination can and does occur because of racial biases and stereotypes associated with hair.

(d) People of African descent are routinely deprived of education and employment opportunities because they wear their hair in natural or protective styles.

(e) Racial discrimination is reflected in policies and practices in schools and workplaces that prohibit natural or protected hairstyles common among people of African descent, as well as Jewish, Latinx, and Native American people.

(f) Colorado should acknowledge that people who have hair textures or styles that are associated with people of African, Jewish,

⁴⁶ *Senate Bill 3945*, New Jersey Legislature, available at <https://www.njleg.state.nj.us/bill-search/2018/S3945>.

⁴⁷ *Governor Murphy Signs Legislation Clarifying that Discrimination Based on Hairstyles Associated with Race is Illegal*, Governor Phil Murphy (Dec. 12, 2019) (emphasis added), available at <https://www.nj.gov/governor/news/news/562019/approved/20191219c.shtml>.

⁴⁸ *SB 50 Virginia Human Rights Act; racial discrimination, hair*, Virginia’s Legislative Information System, available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB50>.

⁴⁹ Autumn Childress, *Gov. Northam signs bill to ban hair discrimination in Virginia*, WHSV (Mar. 4, 2020), available at <https://www.wHSV.com/content/news/Gov-Northam-signs-bill-to-ban-hair-discrimination-in-Virginia-568490981.html>.

⁵⁰ *HB 20-1048*, Colorado General Assembly, available at <https://leg.colorado.gov/bills/hb20-1048>.

⁵¹ *Id.*

Latinx, or Native American descent suffer harmful discrimination in various contexts because of racial stereotypes and bias.

(g) A clear and comprehensive law is needed to address the deprivation of opportunities, including in educational and employment settings, on the basis of hair textures, types, and protective styles commonly associated with certain races.

(h) Clear, consistent, and enforceable legal standards are necessary to provide remedies to address race discrimination on the basis of hair texture, type and protective hair styles in numerous contexts.

(i) It is necessary to prevent decisions, practices, and policies in educational, employment and other settings resulting from negative racial biases and stereotypes.

(j) The state must enforce its antidiscrimination laws to secure equal opportunities regardless of race and protect against racial discrimination based on hair texture, type, and protective styles.

(k) The state must prohibit and provide recourse for those who are discriminated against on the basis of race because of their hair texture, hair type, or protective style.

6. *Washington*

Washington enacted a law similar to California’s CROWN Act in March 2020 with bipartisan support. The Washington law amends the state’s nondiscrimination protections to prohibit discrimination based on hair texture and protective hairstyles.⁵²

In response to the bill being signed into law, lead sponsor Rep. Melanie Morgan stated “Black women should not be barred from success because of the way we wear our hair. The way we choose to style our hair is culturally meaningful, and it has no impact on our abilities to show up professionally, hygienically, and naturally at work and school. We are sending a message to our children, ‘You are beautiful just the way you are.’”⁵³

7. *Maryland*

Maryland enacted a law similar to California’s CROWN Act in May 2020 with nearly unanimous bipartisan support. The Maryland law amends existing law to prohibit discrimination based on hair texture, Afro hairstyles, and protective hairstyles.⁵⁴

Del. Stephanie Smith, who sponsored the bill in the General Assembly told the Washington Post, “To require people to pretty much alter chemically or in some type of extreme way how their hair grows out of the head seems to me so beyond intrusive. In the 21st century, it shouldn’t be necessary to make those kind of accommodations so someone can see you as a human or as a professional.”⁵⁵

⁵² *HB 260—2019–20*, Concerning Hair Discrimination, Washington State Legislature, available at <https://app.leg.wa.gov/bills/summary?BillNumber=2602&Initiative=false&Year=2019>.

⁵³ *Governor signs Morgan bill to prohibit hair discrimination*, Washington State House Democrats (Mar. 19, 2020) available at <https://housedemocrats.wa.gov/morgan/2020/03/19/governor-signs-morgan-bill-to-prohibit-hair-discrimination/>.

⁵⁴ *SB 531*, Maryland General Assembly, available at <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0531?ys=2020RS>.

⁵⁵ Wiggins, *supra* note 27.

8. Connecticut

Connecticut enacted a law similar to California’s CROWN Act in March 2021 with nearly unanimous bipartisan support. The law amends existing nondiscrimination law to prohibit discrimination based on hair texture and protective hairstyles.⁵⁶

Governor Ned Lamont stated, after signing the bill into law, “Racial discrimination of any kind is unacceptable, and we must strive to eradicate all forms, including those instances which are not overt. For example, when a person of color has a job interview or simply goes to work, they should never be judged based on anything other than skills, work product, commitment, dedication, and work ethic. This measure is critical to helping build a more equitable society.”⁵⁷

9. Delaware

Delaware enacted a law similar to California’s CROWN Act (along with additional provisions to conform existing law to the standards of the Delaware Legislative Drafting Manual) in April 2021 with unanimous bipartisan support. The law, among its other provisions, amends existing nondiscrimination law to prohibit discrimination based on hair texture and protective hairstyles.⁵⁸

In response to the bill being signed into law, lead sponsor Sen. Darius Brown stated, “This statute is part and parcel to establishing racial equity, fairness in employment, and ending race-based discrimination. It makes clear that traits historically associated with race—specifically hair texture and styles—are included in our definition of race and cannot be used to skirt long-standing anti-discrimination statutes. Hair should never define a person, their capability, or their place on this Earth and I am proud to have played a part in building a better, fairer future for all Delawareans.”⁵⁹

10. New Mexico

New Mexico enacted a law in April 2021 with nearly unanimous bipartisan support to prohibit discrimination based on hair, as well as cultural or religious headdresses. The law amends existing non-discrimination law, law related to school discipline policies, and law related to charter schools to prohibit discrimination based on hair texture, length of hair, protective hairstyles or cultural or religious headdresses.”⁶⁰

In response to the bill being signed into law, lead sponsor Sen. Harold Pope stated, “Workplace biases and corporate grooming policies unfairly impact Black women and people of color, not only is this a discrimination issue but an equity issue as it has a social

⁵⁶ Bill No. 6515, Connecticut General Assembly, available at https://www.cga.ct.gov/asp/CGABillStatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB6515.

⁵⁷ Press Release, Ned Lamont, Governor, Conn., Governor Lamont Signs Law Prohibiting Discrimination Based on Ethnic Hairstyles (Mar. 10, 2021), available at <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2021/03-2021/Governor-Lamont-Signs-Law-Prohibiting-Discrimination-Based-on-Ethnic-Hairstyles>.

⁵⁸ SB 32, Delaware General Assembly, available at <https://legis.delaware.gov/BillDetail?LegislationId=48276>.

⁵⁹ Press Release, CROWN Coalition, Dove And The Crown Coalition Celebrate The State Of Delaware Becoming The Ninth State To Pass The Crown Act Banning Hair Discrimination (Apr. 15, 2021), available at <https://www.thecrownact.com/delaware>.

⁶⁰ SB 80, New Mexico Legislature, available at <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=80&year=21>.

and economic cost. SB80 is the most inclusive legislation in the country, inspired by the ‘Crown Act’ the goal is to end discrimination at our public schools, charter schools and workplaces. We must have protections in place that respect all New Mexicans.”⁶¹

11. Nebraska

Nebraska enacted a law in May 2021 with nearly unanimous bipartisan support to prohibit discrimination in employment based on hair texture and protective hairstyles.⁶²

Lead sponsor Sen. Terrell McKinney described the goal of the bill as setting out to “create equity in the workplace and allow individuals to be their full selves and not have to assimilate or comply to rules that don’t look at the full scope of a persona and look at them for who they are and accept them for who they are.”⁶³

12. Oregon

Oregon enacted a law in June 2021, with nearly unanimous bipartisan support, amending existing nondiscrimination law to prohibit discrimination based on natural hair, hair texture, hair type and protective hairstyles.⁶⁴

During consideration of the bill, lead sponsor Rep. Janelle Bynum remarked, “Where we as a society can do everything that we can to make kids feel welcomed, included, supported, like they have a shot at life. We should remove all barriers to that. We just want kids to play and to show up as they are. It’s about the liberation of all Oregonians to be who they are, to show up as they are.”⁶⁵

13. Nevada

Nevada enacted a law in June 2021 with nearly unanimous bipartisan support amending existing nondiscrimination law to prohibit discrimination based on hair texture and protective hairstyles, among other provisions.⁶⁶

Commenting on the importance of the law, lead sponsor Sen. Dina Neal stated, “It was important to pass statutory protections against discrimination based on race-based hairstyles by extending statutory protection to hair texture and protective styles such as braids, locs, twists, and knots in the workplace and public schools. Hair is a part of identity and race. The importance of this bill for generations to come will be a feeling of safety in wearing natural hair. A student Naika Belizaire testified at the Senate hearing that she was sent to detention for wearing her natural hair. We want

⁶¹ Press Release, Michelle Lujan Grisham, Governor, N.M, Gov. Lujan Grisham signs bill banning discrimination based on hair or cultural headdress (Apr. 5, 2021), available at <https://www.governor.state.nm.us/2021/04/05/gov-lujan-grisham-signs-bill-banning-discrimination-based-on-hair-or-cultural-headdress/>.

⁶² LB 451, Nebraska Legislature, available at https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=43705.

⁶³ Alyssa Curtis, *Advocates say natural hair discrimination bill will make Nebraska more inclusive and safe*, KMTV (Feb. 12, 2021), available at <https://www.3newsnow.com/news/local-news/advocates-say-natural-hair-discrimination-bill-will-make-nebraska-more-inclusive-and-safe>.

⁶⁴ HB 2935, Oregon State Legislature, <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2935/Enrolled>.

⁶⁵ Latisha Jensen, *Oregon House Passes CROWN Act Banning Hair Discrimination*, Willamette Week (Apr. 29, 2021), available at <https://www.wweek.com/news/2021/04/29/oregon-house-passes-crown-act-banning-hair-discrimination/>.

⁶⁶ SB 327, NELIS, available at <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/7961/Text>.

to protect students in schools and the workplace from this kind of discriminatory activity.”⁶⁷

14. Illinois

Illinois enacted a law in August 2021 with bipartisan support that ensured schools cannot prohibit hairstyles historically associated with race, ethnicity, or hair texture, including, but not limited to, protective hairstyles.⁶⁸

In response to the bill being signed into law, lead sponsor Sen. Mike Simmons stated, “No child should ever have to experience being singled out by their school for sporting a hairstyle that remains true to their heritage, culture or ancestry. These policies have no purpose and only serve to disproportionately impact and humiliate students of color who choose to wear their hair in a style that is traditionally non-white.”⁶⁹

II. NEED FOR THE LEGISLATION

A. Persistence of Hair-Based Discrimination

While state laws provide some measure of protection against discrimination on the basis of hair texture or hairstyles commonly associated with a particular race or national origin, such protections are incomplete and leave many minorities, especially Black Americans, vulnerable to discrimination. In addition, recent court rulings have found that existing civil rights laws do not prohibit discrimination based on hair texture or hairstyle. Clear and explicit non-discrimination protections on the basis of hair texture or hairstyles commonly associated with a particular race or national origin are therefore necessary to ensure minorities, especially Black Americans, are protected from this form of insidious discrimination.

According to a 2019 study conducted by the JOY Collective (CROWN Act Coalition, Dove/Unilever, National Urban League, Color of Change) [hereinafter “CROWN Study”], Black people are “disproportionately burdened by policies and practices in public places, including the workplace, that target, profile, or single them out for their natural hair styles—referring to the texture of hair that is not permed, dyed, relaxed, or chemically altered.”⁷⁰ The CROWN Study found that Black women’s hair is “more policed in the workplace, thereby contributing to a climate of group control in the company culture and perceived professional barriers” compared to non-Black women. The study also found that “Black women are more likely to have received formal grooming policies in the workplace, and to believe that there is a dissonance from her hair and other race’s hair” and that “Black women’s hairstyles were consistently rated lower or ‘less ready’ for job performance.”⁷¹ Among the

⁶⁷Bianca Holman, *The CROWN Act: New legislation in Nevada prohibits race-based hair discrimination*, 8 News Now Las Vegas (June 20, 2021), available at <https://www.8newsnow.com/news/local-news/the-crown-act-new-legislation-in-nevada-prohibits-race-based-hair-discrimination/>.

⁶⁸*SB 817*, Illinois General Assembly, available at <https://www.ilga.gov/legislation/billstatus.asp?DocNum=817&GAID=16&GA=102&DocTypeID=SB&LegID=133444&SessionID=110>.

⁶⁹Aryana Azari, *Mom’s fight against hair bias sparks statewide changes in Illinois*, Good Morning America (Aug. 17, 2021), available at <https://www.goodmorningamerica.com/family/story/moms-fight-hair-bias-spark-statewide-illinois-78425465>.

⁷⁰JOY Collective, C.R.O.W.N. Research Study, Unilever PLC (2019), available at https://static1.squarespace.com/static/5edc69fd622c36173f56651f/t/5edeaa2fe5ddef345e087361/1591650865168/Dove_research_brochure2020_FINAL3.pdf.

⁷¹*Id.*

study's other findings are that 80 percent of Black women believed that they had to change their hair from its natural state to "fit in at the office," that they were 83 percent more likely to be judged harshly because of their looks, that they were 1.5 times more likely to be sent home from the workplace because of their hair, and that they were 3.4 times more likely to be perceived as unprofessional compared to non-Black women.⁷²

While the CROWN Study illustrates the prevalence of hair discrimination, numerous stories across the country put names and faces to the people behind those numbers. For example, in 2017, a Banana Republic employee was told by a manager that she was violating the company's dress code because her box braids were too "urban" and "unkempt."⁷³ A year later, in 2018, Andrew Johnson, a New Jersey high school student, was forced by a white referee to either have his dreadlocks cut or forfeit a wrestling match, leading him to have his hair cut in public by an athletic trainer immediately before the match.⁷⁴ That same year, an 11-year-old Black girl in Louisiana was asked to leave class at a private Roman Catholic school near New Orleans because her braided hair extensions violated the school's policies.⁷⁵ The next year, two African-American men in Texas alleged being denied employment by Six Flags because of their hairstyles—one had long braids and the other had dreadlocks.⁷⁶ And in 2020, there were news reports of a Texas student who would not be allowed to walk at graduation because his dreadlocks were too long.⁷⁷ There have been several high-profile news reports of Black students forced to change their natural hair, or having been turned away from schools because of their hair.⁷⁸ In California, school officials in the Fresno area have sent Black students home because of curls and shaved heads.⁷⁹ Unfortunately, these are just a few of the many cases of hair discrimination against Black workers and students in recent years.

B. The Minority's Concern About Employers' Ability To Ensure Workplace Safety Is Misplaced

During the markup, Rep. Cliff Bentz (R-OR) and Rep. Dan Bishop (R-NC) raised the concern that the CROWN Act's prohibition on discrimination based on hairstyle or hair texture commonly

⁷² *Id.*

⁷³ Lindsay Schallon, *Employers Have Policed Black Hair for Decades. These Four Women Have Had Enough*, *Glamour* (Aug. 13, 2019), available at <https://www.glamour.com/story/hair-discrimination-woty-all-year>.

⁷⁴ Jacob Bogage, Eli Rosenberg and Alex Horton, *A white referee told a high school wrestler to cut his dreadlocks or forfeit. He took the cut.*, *Wash. Post* (Dec. 22, 2018), available at <https://www.washingtonpost.com/sports/2018/12/21/referee-high-school-wrestler-cut-your-dreadlocks-or-forfeit/>.

⁷⁵ Julia Jacobs and Dan Levin, *Black Girl Sent Home From School Over Hair Extensions*, *N.Y. Times* (Aug. 21, 2018), available at <https://www.nytimes.com/2018/08/21/us/black-student-extensions-louisiana.html>.

⁷⁶ Bill Hanna, *Two African-American teens denied jobs at Six Flags Over Texas because of hairstyles*, *Fort Worth-Star Telegram* (Mar. 29, 2019), available at <https://www.star-telegram.com/news/local/arlington/article228387009.html>.

⁷⁷ Leah Asmelash, *If this Texas student doesn't cut his dreadlocks, he won't get to walk at graduation. It's another example of hair discrimination, some say*, *CNN* (Jan. 24, 2020), available at <https://www.cnn.com/2020/01/23/us/barbers-hill-isd-dreadlocks-deandre-arnold-trnd/index.html>.

⁷⁸ See, e.g., Janelle Griffith, *When hair breaks rules: Some black children are getting in trouble for natural hairstyles*, *NBC* (Feb. 23, 2019), available at <https://www.nbcnews.com/news/nbcblk/when-hair-breaks-rules-some-black-children-are-getting-trouble-n973346>.

⁷⁹ Alexa Diaz, *California Set to Be First State to Protect Black People from Natural Hair Discrimination*, *Los Angeles Times* (June 27, 2019), available at <https://www.latimes.com/local/lanow/la-pol-ca-hair-discrimination-bill-20190627-story.html>.

associated with a particular race or national origin may prohibit employers from regulating hairstyles for workplace safety reasons, citing concerns about potential accidents on production lines. Such concern about the bill is misplaced.

As Chairman Nadler noted during the markup in response to this argument, the bill does nothing to prohibit employers from addressing safety concerns. Indeed, the bill accounts for employers' legal obligation to ensure workplace safety. Specifically, Section 6(b) of the bill expressly provides that its employment non-discrimination provision "shall be enforced in the same manner and by the same means, including with the same jurisdiction, as if such subsection was incorporated in Title VII of the Civil Rights Act of 1964." Under the longstanding burden-shifting scheme applied by courts in Title VII cases, an employer may defeat a discrimination claim by asserting that workplace safety was a legitimate, non-discriminatory reason for taking an adverse employment action against an employee, with the burden then shifting to the employee to prove that the asserted reason was a pretext for discrimination.⁸⁰ Assuming the employee cannot demonstrate that the employer's assertion of workplace safety was pretextual, the employer would prevail against an employment discrimination claim. In this way, current employment discrimination law allows employers to take actions to ensure workplace safety—including by regulating hair length and taking other hair-related measures—and the CROWN Act expressly incorporates this standard by reference. In short, the bill accounts for the concern raised by Rep. Bentz and Rep. Bishop in allowing employers to fulfill their legal obligations to ensure workplace safety,⁸¹ so long as such actions are not a mere pretext for unlawful discrimination.⁸²

III. CONCLUSION

H.R. 2116 would expressly prohibit discrimination on the basis of hair texture or hairstyle that is commonly associated with a particular race or national origin. While it is the Committee's view that federal civil rights laws already prohibit such discrimination, some courts have questioned that view. As a result, H.R. 2116 is necessary to clarify that hair-based discrimination, when associated

⁸⁰In employment discrimination cases, employers have the opportunity to assert a legitimate, nondiscriminatory reason for an adverse employment action. For example, they could raise safety as a legitimate nondiscriminatory reason for an employment action in response to a prima facie case of employment discrimination under Title VII. The employee would then bear the burden of proving the employer's reason is pretextual; if they don't meet that burden, the claim is defeated. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁸¹For example, the Occupational Safety and Health Administration includes "requiring the securing of long hair with new or caps" as an appropriate safe work procedure to safeguard equipment and prevent amputations. OCCUPATIONAL SAFETY & HEALTH ADMIN., SAFEGUARDING EQUIPMENT AND PROTECTING EMPLOYEES FROM AMPUTATIONS, OSHA 3170-02R, at 18 (2007).

⁸²Rep. Bishop, together with Rep. Louie Gohmert (R-TX) and Rep. Burgess Owens (R-UT) raised a similar concern about the ability of sports officials to prohibit hairstyles that may pose a danger. The response is the same, namely that the bill incorporates by reference the standards of current law prohibiting discrimination in federally funded programs (in this case, in Section 3(b)), including the burden-shifting analysis that allows a defendant to defeat a discrimination claim where safety is a legitimate, non-discriminatory reason for the challenged action and the plaintiff fails to prove that such reason is a pretext for unlawful discrimination. See *Rashdan v. Geissberger*, 764 F.3d 1179, 1182 (9th Cir. 2014) (concluding that *McDonnell Douglas* burden-shifting analysis applies to Title VI claims); *Gazarov ex rel. Gazarov v. Diocese of Erie*, 80 Fed.Appx. 202, 203-05 (3d Cir. 2003) (same); *Bryant v. Indep. Sch. Dist. No. 1-38 of Garvin Cnty., Okla.*, 334 F.3d 928, 929-30 (10th Cir. 2003) (same); *Fuller v. Rayburn*, 161 F.3d 516, 518 (8th Cir. 1998) (same); *Ga. State Conference of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985) (same), *abrogated on other grounds by Lee v. Etowah Cnty. Bd. of Educ.*, 963 F.2d 1416, 1419 n. 3 (11th Cir. 1992).

with race or national origin, is unlawful. At least 14 states have adopted versions of the CROWN Act on a bipartisan basis. Congress must follow suit to ensure that such nondiscrimination protection is available nationwide.

Hearings

For the purposes of clause 3(c)(6)(A) of House Rule XIII, the following hearing was used to consider H.R. 2116:

On February 17, 2021, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing entitled, “H.R. 40: Exploring the Path to Reparative Justice in America.” The witnesses at the hearing were: Shirley N. Weber, Secretary, Office of the California Secretary of State; E. Tendayi Achiume, Professor of Law, UCLA School of Law and UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Kathy Masaoka, Co-Chair, Nikkei for Civil Rights & Redress; Herschel Walker, Former Professional Athlete; Kamm Howard, National Male Co-Chair, National Coalition of Blacks for Reparations in America; Laurence Elder, Attorney, Author, and Radio Host; Dreisen Heath, Assistant Researcher/Advocate, US Program, Human Rights Watch; and Hilary O. Shelton, Director, NAACP Washington Bureau. The hearing outlined the legacy of slavery and the continuing societal effects of the racism that ungirded it. The witnesses discussed continuing racial inequalities stemming from that legacy, including economic disparities in employment and housing.

Committee Consideration

On September 30, 2021, the Committee met in open session and ordered the bill, H.R. 2116, favorably reported as an amendment in the nature of a substitute by a rollcall vote of 23 to 15, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee’s consideration of H.R. 2116:

1. The motion to report H.R. 2116, as amended, favorably was agreed to by a vote of 23 to 15. The vote was as follows:

Roll Call No. 15

Date: 9/30/21

COMMITTEE ON THE JUDICIARY
House of Representatives
117th Congress

Final Passage on: HR 2116

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)			
Mondaire Jones (NY-17)	✓		
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)			
	AYES	NOS	PRES.
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)			
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)			
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)		✓	
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)		✓	
Chip Roy (TX-21)		✓	
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)		✓	
Scott Fitzgerald (WI-05)		✓	
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	23	15	

Committee Oversight Findings

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

**New Budget Authority and Congressional Budget Office
Cost Estimate**

Pursuant to clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee sets forth, with respect to the bill, H.R. 2116, the following analysis and estimate prepared by the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 19, 2022.

Hon. JERROLD NADLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2116, the CROWN Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 2116, CROWN Act of 2021			
As ordered reported by the House Committee on the Judiciary on September 30, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	4	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	Excluded from UMRA
		Contains private-sector mandate?	Excluded from UMRA
* = between -\$500,000 and \$500,000.			

H.R. 2116 would prohibit discrimination based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin. Specifically, the bill would prohibit this type of discrimination against individuals participating in or receiving benefits provided by federally funded programs, such as housing programs under the Fair Housing Act. The legislation also would prohibit this type of discrimination in employment settings and in public accommodations. To enforce the prohibitions, H.R. 2116 would allow aggrieved parties to file civil suits in federal courts in the same manner as discrimination suits filed for other violations under the Civil Rights Act and the Fair Housing Act.

Using information from the Equal Employment Opportunity Commission (EEOC), CBO expects that the EEOC would receive roughly 200 to 300 more employment discrimination claims each year under H.R. 2116. To meet that additional workload, CBO estimates that the commission would need the equivalent of four additional employees, at a cost of about \$3 million over the 2022–2026 period.

Furthermore, using information from the Department of Housing and Urban Development (HUD), CBO expects that HUD's Fair Housing Activities Program would receive approximately 60 more housing discrimination complaints each year under H.R. 2116. To meet that additional workload, CBO estimates HUD would need about \$1 million over the 2022–2026 period for new staff, training, and outreach to process the complaints.

Taken together, CBO estimates that implementing the bill would cost \$4 million over the 2022–2026 period. Such spending would be subject to the availability of appropriated funds.

If enacted, CBO expects that the legislation would likely result in a small increase in the number of discrimination suits filed in federal courts under those civil rights laws. The federal judiciary charges fees to file suit in district court. Those fees are recorded as revenues and can be spent by the judiciary without further appropriation action. Because the expected increase in the number of lawsuits is small, CBO estimates that enacting H.R. 2116 would in-

crease both direct spending and revenues by less than \$500,000 over the 2022–2031 period.

CBO has not reviewed H.R. 2116 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that would establish or enforce statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, and disability. CBO has determined that the bill falls within that exclusion because it would prohibit discrimination against individuals based on their hair texture or style if associated with their race or national origin.

The CBO staff contacts for this estimate are Lindsay Wylie (for federal costs) and Lilia Ledezma (for mandates). The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House Rule XIII, no provision of H.R. 2116 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 2116 would explicitly prohibit discrimination on the basis of hair texture or hairstyles commonly associated with a particular race or national origin in areas of the law where discrimination on the basis of race or national origin is already prohibited.

Advisory on Earmarks

In accordance with clause 9 of House Rule XXI, H.R. 2116 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title. Section 1 sets forth the short title of the bill as the “Creating a Respectful and Open World for Natural Hair Act of 2021” or the “CROWN Act of 2021.”

Section 2. Findings; Sense of Congress; Purpose. Section 2(a) sets forth various findings in support of the bill, including that while discrimination against people of African descent based on natural or protective hairstyles or texture already constitutes race or national origin discrimination that is prohibited by existing federal civil rights statutes because such traits are commonly associated with race, several federal courts have erroneously interpreted such statutes to exclude discrimination based on hairstyle or hair texture from such existing anti-discrimination protections.

Section 2(b) states that it is the sense of Congress that a federal law protecting against discrimination based on hair textures and hairstyles associated with African Americans or people of African descent is necessary to protect more comprehensively against racial and national origin discrimination.

Section 2(c) sets forth the Act's purpose to ensure that federal civil rights laws prohibiting race and national origin discrimination are applied comprehensively.

Section 3. Federally Assisted Programs. Section 3(a) prohibits discrimination in federally funded programs and activities based on an individual's hair texture or hairstyle if it is commonly associated with a particular race or national origin, including "a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros."

Section 3(b) provides that Section 3(a) will be enforced as if it was incorporated into Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in federally funded programs, and that violations of Section 3(a) will be treated as if they were violations of Section 601 of the Civil Rights Act of 1964.

Section 3(c) provides that the term "program or activity" has the same meaning as it does in Section 606 of the Civil Rights Act of 1964 and the terms "race" and "national origin" have the same meanings as they do in Section 601 of the 1964 Act.

Section 4. Housing Programs. Section 4(a) prohibits discrimination in housing based on an individual's hair texture or hairstyle if it is commonly associated with a particular race or national origin, including "a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros."

Section 4(b) provides that Section 4(a) will be enforced as if it was incorporated into the Fair Housing Act, which prohibits discrimination in housing on the basis of, among other things, race and national origin, and that violations of Section 4(a) will be treated as if they were discriminatory housing practices.

Section 4(c) provides that the terms "discriminatory housing practice" and "person" have the same meanings as they do in Section 802 of the Fair Housing Act and "race" and "national origin" have the same meanings as they do in Section 804 of the Fair Housing Act.

Section 5. Public Accommodations. Section 5(a) prohibits discrimination in public accommodations, as prohibited under Sections 201, 202, and 203 of the Civil Rights Act of 1964, based on an individual's hair texture or hairstyle if it is commonly associated with a particular race or national origin, including "a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros."

Section 5(b) provides that Section 5(a) will be enforced as if it was incorporated into Title II of the Civil Rights Act of 1964, which prohibits discrimination or segregation in public accommodations on the basis of, among other things, race and national origin, and that violations of Section 5(b) will be treated as if they were violations of Sections 201, 202, or 203 of the Civil Rights Act of 1964.

Section 5(c) provides that the terms "race" and "national origin" have the same meanings as they do in Section 201 of the Civil Rights Act of 1964.

Section 6. Employment. Section 6(a) prohibits discrimination in employment (including by an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs) based on an individual's hair texture or

hairstyle if it is commonly associated with a particular race or national origin, including “a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros.”

Section 6(b) provides that Section 6(a) will be enforced as if it was incorporated into Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of, among other things, race and national origin, and that violations of Section 6(b) will be treated as if they were violations of Sections 703 or 704 of the Civil Rights Act of 1964.

Section 6(c) provides that the terms “race” and “national origin” have the same meanings as they do in Section 701 of the Civil Rights Act of 1964.

Section 7. Equal Rights Under the Law. Section 7(a) applies the prohibited practices under Section 1977 of the Revised Statutes (42 U.S.C. 1981) to encompass practices based on an individual’s hair texture or hairstyle if it is commonly associated with a particular race or national origin, including “a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros.” Section 1977 of the Revised Statutes provides that all people within the jurisdiction of the United States will have the same rights as white citizens to “make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property . . . and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

Section 7(b) provides that Section 7(a) will be enforced as if it was incorporated into Section 1977 of the Revised Statutes and that violations of Section 7(b) will be treated as if they were violations of Section 1977 of the Revised Statutes.

Section 8. Rule of Construction. Section 8 provides a rule of construction that the Act shall not be construed to limit the definitions of race or national origin under the Civil Rights Act of 1964, the Fair Housing Act, or Section 1977 of the Revised Statutes.

Section 9. Determination of Budgetary Effects. Section 9 provides that the budgetary effects of this bill, for the purposes of complying with PAYGO, will be determined by referencing the statement submitted for the Congressional Record by the Chairman of the House Budget Committee, assuming one has been submitted, prior to vote on passage.

Committee Correspondence



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman
RUD M. GRUJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORIO KILILI CANACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESALLINER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. HOSIELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
LUCY McBERTH, GEORGIA
JAHANA HAYES, CONNECTICUT
ANDY LEVIN, MICHIGAN
ILHAKI OMAR, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNANDEZ, NEW MEXICO
MONDAIRE JONES, NEW YORK
KATHY E. MANNING, NORTH CAROLINA
FRANK J. MRVAN, INDIANA
JAMAL BOWMAN, NEW YORK
SHEILA DIERFELDS-MOODORNOCK, FLORIDA
MARK POCAN, WISCONSIN
JOSALIN CASTRO, TEXAS
MIKE SHERILL, NEW JERSEY
ADRIANO ESPALLAT, NEW YORK
KWEISI MPUME, MARYLAND

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member
JOE WILSON, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANK, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BHASKES, INDIANA
JAMES COMER, KENTUCKY
RUSS FULTON, IDAHO
FRED KELLER, PENNSYLVANIA
MARANNETTE MILLER-MEEKS, IOWA
BURRIS OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. McCLAIN, MICHIGAN
DIANA HARSHBARGER, TENNESSEE
MARY E. MILLER, ILLINOIS
VICTORIA SPARTZ, INDIANA
SCOTT FITZGERALD, WISCONSIN
MADISON GWYNETHORN, NORTH CAROLINA
MICHELLE STEEL, CALIFORNIA
JULIA LETLOW, LOUISIANA
VACANCY

February 24, 2022

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler:

I write concerning H.R. 2116, the *CROWN Act*. This bill was primarily referred to the Committee on Judiciary, and additionally to the Committee on Education and Labor. As a result of Leadership and the Committee on the Judiciary having consulted with me concerning this bill generally, I agree to forgo formal consideration of the bill so the bill may proceed expeditiously to the House floor.

The Committee on Education and Labor takes this action with our mutual understanding that by forgoing formal consideration of H.R. 2116, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and we will be appropriately consulted and involved as the bill or similar legislation moves forward so we may address any remaining issues within our Rule X jurisdiction. I also request that you support my request to name members of the Committee on Education and Labor to any conference committee to consider such provisions.

Finally, I would appreciate a response confirming this understanding and ask that a copy of our exchange of letters on this matter be included in the committee report for H.R. 2116 and in the *Congressional Record* during floor consideration thereof.

Sincerely,



Robert C: "Bobby" Scott
Chairman

cc: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor
The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Nancy Pelosi, Speaker
The Honorable Steny Hoyer, Majority Leader
The Honorable Jason Smith, Parliamentarian

JERROLD NADLER, New York
CHAIRMAN

JIM JORDAN, Ohio
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

February 24, 2022

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

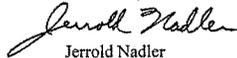
Dear Chairman Scott:

I am writing to you concerning H.R. 2116, the "Creating a Respectful and Open World for Natural Hair Act of 2021" or the "CROWN Act of 2021."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Education and Labor. I acknowledge that your Committee will not formally consider H.R. 2116 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in H.R. 2116 which fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Jerrold Nadler
Chairman

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

Minority Views

Using a pretextual reason as cover for taking an action prohibited by federal civil rights law is nonetheless a violation of federal civil rights law.¹ In *Oncale v. Sundowner Offshore Services, Inc.*, the Supreme Court explained that “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils.”² The Civil Rights Act and other federal civil rights statutes prohibit discrimination on the basis of race, color, or national origin in public accommodations,³ public facilities,⁴ public education,⁵ federally funded programs,⁶ housing,⁷ employment,⁸ and other aspects of our daily lives. While the contours of these laws vary to fit their respective arenas, their primary thrust is simple and consistent: disparate treatment of one individual when compared to another cannot be based on race, color, or national origin.⁹

However, a race-neutral policy is not disparate treatment simply because it is applied to a member of a protected class.¹⁰ Courts have long recognized that neutral policies may legitimately require members of protected classes to meet certain appearance standards, such as when hair would impede the use of a job-critical tool like a respirator.¹¹ H.R. 2116 asserts that “society has used (in conjunction with skin color) hair texture and hairstyle to classify individuals on the basis of race” and that “[r]acial and national origin discrimination can and do occur because of longstanding racial and national origin biases and stereotypes associated with hair texture and style.”¹² To the extent these assertions are true, such conduct is already illegal under federal civil rights laws. In fact, some federal courts have already ruled that “grooming requirements . . . applied to black persons [may] constitute[] . . . racial discrimination”¹³ H.R. 2116 is therefore unnecessary as a matter of law.

The process by which the Committee has considered H.R. 2116 is also deficient. At the beginning of the 116th Congress, the Democrats added a requirement to the House Rules that a committee must hold a legislative hearing on a bill before it is considered on the floor.¹⁴ This legislative hearing is meant to inform the committee of what problem the bill is meant to solve, the bill’s merits, and whether Congressional action is necessary. Here, the Democrat majority failed to abide by their own rules—the Committee invested no time in a legislative hearing for H.R. 2116 in the 117th Congress.

¹ See, e.g., *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 805 (1973) (“Title VII does not . . . permit petitioner to use respondent’s conduct as a pretext for the sort of discrimination prohibited by § 703(a)(1).”).

² *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998).

³ See 42 U.S.C. § 2000a et seq.

⁴ See 42 U.S.C. § 2000b et seq.

⁵ See 42 U.S.C. § 2000c et seq.

⁶ See 42 U.S.C. § 2000d et seq.

⁷ See 42 U.S.C. § 3601 et seq.

⁸ See 42 U.S.C. § 2000e et seq.

⁹ See, e.g., *Oncale*, 523 U.S. at 80 (“The critical issue, Title VII’s text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” (internal quotations omitted)).

¹⁰ See, e.g., *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016).

¹¹ See, e.g., *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

¹² CROWN Act of 2021, H.R. 2116, 117th Cong. § 2(a).

¹³ *Jenkins v. Blue Cross Mut. Hospital Ins., Inc.*, 538 F.2d 164, 168 (7th Cir. 1976).

¹⁴ See House Rule XXI, Cl. 12, 117th Cong. (2021).

The Committee made no effort to receive testimony from alleged victims of the discrimination targeted by this bill on whether this bill is needed in light of existing caselaw. The Committee also made no effort to receive testimony from legal scholars or those responsible for enforcing our Nation's civil rights laws on the possible efficacy of this bill, and whether it will achieve its desired effect. For example, Members raised concerns that the text could be interpreted to prevent a covered entity from enforcing a race-neutral policy against a member of a protected class.¹⁵ The Committee would have benefited from the opportunity to question legal scholars familiar with civil rights law on this question and others.

JIM JORDAN,
Ranking Member.



¹⁵See, e.g., *Business Meeting of the H. Comm. on the Judiciary, Day 2, at 246-247* (Sept. 29, 2021).