

February 2021

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Recommended Citation

Alesha Hamilton, *Untangling Discrimination: The CROWN Act and Protecting Black Hair*, 89 U. Cin. L. Rev. 483 (2021)

Available at: <https://scholarship.law.uc.edu/uclr/vol89/iss2/7>

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UNTANGLING DISCRIMINATION: THE CROWN ACT AND PROTECTING BLACK HAIR

*Alesha Hamilton**

I. INTRODUCTION

Imagine you send your six-year-old son to school for his first day of first grade. You dress him in a tie and a nice shirt and arrive at the school to meet his new teachers. He is bursting with excitement and on his best behavior. However, the school administrators say that your son cannot pursue his education that day—because of his hair. This is the story of CJ Stanley, a six-year-old Florida student who was refused the opportunity to learn due to an alleged violation of the school’s dress code, which discriminates against Black hair.¹ This is the unfortunate experience of many Black² individuals in various settings across the country—denial of employment or educational opportunities based on grooming policies that outlaw Black hair. However, these stories have been increasingly publicized the last few years via social media and the news, leading state and local governments to change their discrimination statutes to consider hair discrimination a form of racial discrimination.

Civil rights groups and grassroots movements have long focused their efforts on state and local³ governments to more adequately protect minorities and others adversely affected by existing federal laws, or lack thereof.⁴ This is not a new trend. Different issues have

* Associate Member, University of Cincinnati Law Review 2019-2020. The author would like to thank Professor Sandra Sperino for her research suggestions and invaluable guidance on early drafts of this Comment. Additionally, the author would like to thank Shannon Reid and editor Kris Schroder for their suggestions and enthusiasm for this Comment. Finally, the author would like to thank her father Alfonzo Hamilton and her mother Diane Hamilton who have always encouraged the author to embrace her natural hair, to be proud of the color of her skin, and to speak out against injustice.

1. Clinton Stanley, *My Black Son was Sent Home from First Grade because of His Natural Hair*, ACLU (Nov. 29, 2018), <https://www.aclu.org/blog/racial-justice/race-and-inequality-education/my-black-son-was-sent-home-first-grade-because-his> [<https://perma.cc/W8Y9-WF34>].

2. This Article will use “Black” and “African American” interchangeably to describe individuals who identify as having African ancestry, while maintaining the verbiage of authors cited. See D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 990 n.15 (2017) [hereinafter Greene, *Splitting Hairs*].

3. This Author will use the terms “local,” “city,” and “municipal” interchangeably, as do scholars and sources on this topic. See, e.g., *Cities 101—Types of Local Government*, NAT’L LEAGUE OF CITIES (Dec. 13, 2016), <https://www.nlc.org/resource/cities-101-types-of-local-governments> [<https://perma.cc/ZFZ8-XYCS>].

4. Robert Pear, *States are Found More Responsive on Social Issues*, N.Y. TIMES (May 19, 1985), <https://www.nytimes.com/1985/05/19/us/states-are-found-more-responsive-on-social-issues.html> [<https://perma.cc/SJ4F-GRG6>]; see also Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1120

dominated the conversation at different points throughout history. For years, community coalitions, religious organizations, nonprofits, and legal aid entities have all collaborated in an effort to advance regulation on behalf of various social causes.⁵ In fact, over three decades ago, civil rights groups focused on cities and states to protect rights such as maintaining affirmative action policies, advocating for Social Security disability benefits, funding for education programs, and regulating toxic waste sites.⁶ Today, advocates focus on issues like protecting immigrants through the establishment of sanctuary cities,⁷ legalizing and decriminalizing marijuana in an effort to reduce the prison population,⁸ and preventing hair discrimination.⁹ While much local government legislation on these issues has been positive, some municipalities have recently wielded their power to cripple individual rights. This is exemplified in the institution of anti-transgender “bathroom bills”¹⁰ and ordinances that criminalize homelessness.¹¹ This oscillation of policy and tension between politically liberal and politically conservative jurisdictions highlights the practical concerns with allowing municipalities to dominate the national stage on social issues. Although states have attempted to preempt local ordinances, cities are fighting back.¹²

The importance of state and local governments in protecting civil

(2007) [hereinafter Diller, *Intrastate Preemption*] (noting that “different interest groups - particularly so-called ‘progressive’ groups - see the smaller scale politics of the city as more amenable to government reform and serious policy experimentation”).

5. Jesse Newmark, *Legal Aid Affairs: Collaborating with Local Governments on the Side*, 21 B.U. PUB. INT. L.J. 195, 338 (2012).

6. Pear, *supra* note 4.

7. See Toni M. Massaro & Shefali Milczarek-Desai, *Constitutional Cities: Sanctuary Jurisdictions, Local Voice, and Individual Liberty*, 50 COLUM. HUM. RTS. L. REV. 1, 16 (2018).

8. See Robert A. Mikos, *Marijuana Localism*, 65 CASE W. RES. L. REV. 719, 720 (2015).

9. See Martin Childs IV, Comment, *Who Told You Your Hair Was Nappy?: A Proposal for Replacing an Ineffective Standard for Determining Racially Discriminatory Employment Practices*, 2019 MICH. ST. L. REV. 287, 314 (2019).

10. “Bathroom bills” are laws that prohibit trans individuals from using bathroom facilities consistent with their gender identity. See Stephen Rushin & Jenny Carroll, *Bathroom Laws as Status Crimes*, 86 FORDHAM L. REV. 1, 8 (2017) (“Bathroom bills are a relatively recent legislative priority. There are few records of state legislators proposing bathroom bills before 2013”).

11. Jack Healy, *Rights Battles Emerge in Cities Where Homelessness Can Be a Crime*, N.Y. TIMES (Jan. 9, 2017), <https://www.nytimes.com/2017/01/09/us/rights-battles-emerge-in-cities-where-homelessness-can-be-a-crime.html> [<https://perma.cc/8HX7-YYQ6>] (“In November, San Francisco voted to ban sidewalk tents and allow the city to remove them with 24 hours’ notice . . . In Denver, videos of the police seizing blankets and tents on the cusp of winter created a public outcry and demands to soften the city’s approach”).

12. Lauren E. Phillips, Note, *Impeding Innovation: State Preemption of Progressive Local Regulations*, 117 COLUM. L. REV. 2225, 2227-28 (2017); see also Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 958 (2019) (“state oversight is turning punitive . . . [but] [l]ocal governments and their advocates have hardly acquiesced, mounting a series of hotly contested lawsuits to defend local autonomy and local democracy.”)

rights has recently been highlighted through the new increase in hair discrimination laws to protect Black Americans.¹³ Legislatures have enacted these hair discrimination laws in response to various news stories about African Americans of all ages and genders being rejected from schools, jobs, and other public places due to their natural hair or protective hairstyles.¹⁴ Because it is often easier for individuals and civil rights groups to assert more targeted pressure on local governments,¹⁵ the fight for equal treatment of natural hairstyles has been fought almost exclusively in state and local legislatures and state courts.¹⁶ However, the fight to end Black hair discrimination has recently entered the federal arena. Congress introduced the Creating a Respectful and Open World for Natural Hair Act (“CROWN Act”) in December 2019, which aims to prohibit discrimination based on natural hair textures and protective hairstyles on the federal level.¹⁷ Legislators who introduced the bill believe that race and hair discrimination are two sides of the same coin.¹⁸

Part II of this Comment will explore the general historical tension between federal, state, and local laws, and then analyze the recent movement of hair discrimination laws. Part III will discuss the future of hair discrimination laws and the impact of the CROWN Act on reducing hair discrimination against Black individuals in the United States.

13. See Charisse Jones & Nicquel T. Ellis, *Banning Ethnic Hairstyles 'upholds this notion of white supremacy.' States Pass Laws to Stop Natural Hair Discrimination*, USA TODAY (Oct. 14, 2019), <https://www.usatoday.com/story/news/nation/2019/10/14/black-hair-laws-passed-stop-natural-hair-discrimination-across-us/3850402002/> [https://perma.cc/PZ7Y-S4WM].

14. See *id.* (explaining a few recent stories); see also Stacey Stowe, *New York City to Ban Discrimination Based on Hair*, N.Y. TIMES (Feb. 18, 2019), <https://www.nytimes.com/2019/02/18/style/hair-discrimination-new-york-city.html> [https://perma.cc/TU2W-5U44] (“it isn’t difficult to find black women and men who can speak about how their hair has affected their lives in both subtle and substantial ways, ranging from veiled comments from co-workers to ultimatums from bosses to look ‘more professional’ or find another job . . . [i]n the past several years, there have been a number of cases of black students sent home or punished for their hairstyles”).

15. Crystal Powell, Comment, *Bias, Employment Discrimination, and Black Women's Hair: Another Way Forward*, 2018 BYU L. REV. 933, 967 (2019) (“protections for Black hair is ripe for more localized social engineering”).

16. See *id.* at 949-61 (exploring multiple state court cases regarding hair discrimination).

17. Jacqueline L. Yates, *Sen. Cory Booker Announces 1st Federal Bill to Ban Natural Hair Discrimination*, GOOD MORNING AMERICA (Dec. 5, 2019), <https://www.goodmorningamerica.com/style/story/sen-cory-booker-announces-1st-federal-bill-ban-67518242> [https://perma.cc/UR2R-P2YY].

18. *Id.* (quoting Senator Booker as stating “Discrimination against black hair is discrimination against black people . . . this is a violation of our civil rights, and it happens every day for black people across the country”).

II. BACKGROUND

This section will first provide a brief history of the shift from negligible municipal authority to the more expansive “home rule.” Then, this section will explore both criticism and support for expanded local autonomy. Next, this section will present a detailed background about hair discrimination and recent legislation to prevent this type of discrimination. Finally, this section will examine recent scholarly analysis of how hair discrimination should be handled by courts and the federal legislature.

A. Friction of Federalism: Powers of Local, State, and Federal Governments

Notably, local governments are not mentioned in the United States Constitution.¹⁹ Municipalities were not always provided the latitude to create laws different from those of the state. Under Dillon’s Rule, which rose to prominence in the late 1800s and early 1900s, cities “possessed only those powers indispensable to the purposes of their incorporation as well as any others expressly bestowed upon them by the state.”²⁰ Dillon’s Rule restricted municipal authority to a few select categories and clearly favored state law over that of cities.²¹ Dillon’s Rule created a regime where cities were completely subservient to states.²² While mostly abandoned in the United States, this traditional view continues to influence how courts analyze municipal powers.²³

Under “home rule,” which became popular in the 1900s, local autonomy was rapidly expanded.²⁴ Though “home rule” does not have one specific definition, one scholar defines it as “a system of state and local relations that gives some degree of permanent substantive lawmaking authority to localities beyond that which was provided by

19. Matthew J. Parlow, *Progressive Policy-making on the Local Level: Rethinking Traditional Notions of Federalism*, 17 TEMP. POL. & CIV. RTS. L. REV. 371, 372 (2008).

20. Diller, *Intrastate Preemption*, *supra* note 4, at 1122-23 (noting further that cities had “no inherent lawmaking authority”); *see also* Scott Ferron, *Suing for the City: Expanding Public Interest Group Enforcement of Municipal Ordinances*, 50 COLUM. HUM. RTS. L. REV. 220, 235 n.62 (2019) (“eight states maintain some form of Dillon’s Rule”).

21. *See* Ferron, *supra* note 20, at 234. (explaining further that “any ambiguity or doubt to the existence of a municipal power was to be resolved against the city . . . absent specific grants from state legislatures, cities were powerless to act in a myriad of contexts”).

22. *See* Bradley Pough, *Understanding the Rise of Super Preemption in State Legislatures*, 34 J.L. & POL. 67, 73 (2018) (“if a city wanted to build a road, that city first needed to receive road-making authority through an express delegation from its state legislature.”).

23. *See* Phillips, *supra* note 12, at 2231 (“Judicial assessment of local power has traditionally been guided by ‘Dillon’s Rule’ . . . some scholars argue that it continues to influence courts in determining how expansively to read a local government’s powers”).

24. *See* Diller, *Intrastate Preemption*, *supra* note 4, at 1127-28.

the traditional Dillon's Rule regime.”²⁵ Almost every state has embraced “home rule,” but each state implements it differently. While some states have adopted complex statutory schemes, others have incorporated “home rule” into their state constitutions.²⁶ For example, the Ohio Constitution provides for “home rule” in Article XVIII, Section III, which states that “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”²⁷ Intuitively, it seems that states would possess more power than local governments; however, some “cities’ economic strength, large populations, and political importance make them more powerful and influential than some states.”²⁸

Supporters of home rule argue that cities are “laboratories for policy experiments” and that heightened civic participation is best cultivated at the local level.²⁹ When multiple cities in a state adopt legislation intended to increase protections for vulnerable populations, it encourages the state government to take issues more seriously.³⁰ This snowball effect of policy innovation can sometimes eventually catch the attention of federal agencies, Congress, and the Supreme Court.³¹

25. *Id.* at 1124.

26. Phillips, *supra* note 12, at 2232 (explaining that “Typically, if a state establishes home rule, the state constitution or state legislation will explicitly allow local governments to establish a charter under which the city may regulate local areas of concern. While localities may still face state preemption, particularly in areas determined to be of statewide concern, home rule has substantially expanded the power of cities and has curtailed states’ abilities to interfere with some “local” activities”).

27. OHIO CONST. art. XVIII, § 3. *But see* Karen Kasler, *State vs. Local: Battle Over Home Rule Rages in Ohio*, WKSU (Oct. 25, 2019), <https://www.wksu.org/post/state-vs-local-battle-over-home-rule-rages-ohio#stream/0> [<https://perma.cc/7MNY-R5FY>] (“In nearly all recent cases where home rule is at issue, the Ohio Supreme Court has sided with state lawmakers.”).

28. For example, the city of Chicago, Illinois has more residents than nineteen states. Parlow, *supra* note 19, at 373.

29. Diller, *Intrastate Preemption*, *supra* note 4, at 1127-28; *see also* Tiffany M. Wilson, *Lead the Way: Using Local Communities as Legal Laboratories to Combat Drug Addiction*, 38 J. LEGAL MED. 163, 167 (2018) (referring to cities as “policy entrepreneurs” and “legal laboratories”); *see also* Paul Diller, *Reorienting Home Rule: Part 2--Remedying the Urban Disadvantage Through Federalism and Localism*, 77 LA. L. REV. 1045, 1080 (2017) [hereinafter Diller, *Reorienting Home Rule*] (referring to cities as “laboratories of policy innovation”); *see also* Parlow, *supra* note 19, at 372 (referring to local governments as “Petri dishes for innovative policies”).

30. Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 105 (2017) (“In most cases, states are free to override local ordinances unless those ordinances have a very limited reach, such as those relating to the internal organization of municipal government . . . Issues that have effects outside the city’s borders or impede uniformity throughout the state are considered to be matters of statewide concern, both ineligible for local regulation and subject to state override.”).

31. *See* Newmark, *supra* note 5, at 206 (“[s]uccessful policies can [] spread first to similar local jurisdictions, increasing the relevance of the experimental results little by little, until they are sufficiently informative to merit state or federal consideration. Each successive government or polity can also take advantage of the time and resources invested by prior jurisdictions; spared from reinventing the policy

Furthermore, in many states, the legislature underrepresents urban preferences.³² Instead, state governments often focus on the desires of their rural and exurban constituents.³³

Despite local authority to impose novel ordinances, states retain the power to overrule local legislation in most cases.³⁴ This authority is referred to as “preemption” and reflects a recent shift in states’ understanding of municipal power.³⁵ While legislatures usually make the initial decision of whether to preempt local ordinances, the interpretation of the effect of preemption on local ordinances is left to the discretion of the courts.³⁶

B. Criticism and Support for Local Ordinances and State Law as a Matter of Policy

On one hand, home rule allows cities to create laws that directly respond to the needs and desires of their constituents, rather than relying on state and federal governments to protect them.³⁷ Additionally, “each individual vote has a greater relative impact at the local level,” providing citizens with more political power.³⁸ On the

wheel, these later actors can instead devote their energies to improving or tweaking it to accommodate local conditions”).

32. Diller, *Reorienting Home Rule*, *supra* note 29, at 1077-78 (“Prominent examples of policies often favored by urban-centered coalitions, but rejected or even preempted by state legislatures include transgender and sexual orientation discrimination protections, gun control, higher minimum wages, inclusionary zoning, paid sick leave, paid family leave, Medicaid expansion under the Affordable Care Act (“ACA”), and additional public health measures such as menu labeling, trans-fat bans, and clean indoor-air laws.”).

33. *Id.* at 1077 (further noting that “political gerrymandering alone cannot explain the legislature’s underrepresentation of urban preferences in many states.”).

34. Schragger, *supra* note 30, at 105.

35. See Pough, *supra* note 22, at 77 (“preemption is neither a necessary nor an intuitive practice in a system where subsidiary governments possess lawmaking authority. Instead, state preemption is a recent phenomenon responding to modern changes to the laws governing city power.”).

36. *Id.* at 78 (“while legislatures most always have the ability to decide *if* they will preempt a particular local action, *whether* they have preempted or *what* they have preempted are often open questions that courts are enlisted to answer.”) (emphasis in original).

37. Skye L. Daley, *The Gray Zone in the Power of Local Municipalities: Where Zoning Authority Clashes with State Law*, 5 J. BUS. ENTREPRENEURSHIP & L. 215, 240 (2012) (“Local governments are more amenable to the needs of their constituents, and are capable of tailoring rules and regulations to fit the needs of the community better than the state legislature, which must legislate for a larger, more diverse group.”); see also Wilson, *supra* note 29, at 167 (“cities . . . have the political will to make policy choices that improve the wellbeing of their local constituents.”); see also Parlow, *supra* note 19, at 373 (“local governments can be viewed as perhaps the most critical level of government in terms of responding--through regulation, goods, or services--to the needs and wants of its constituents.”).

38. Newmark, *supra* note 5, at 201-02 (“From Thomas Jefferson to Justice Louis Brandeis, influential minds have seen local governments as crucial to the survival of American democracy, because they allow for more meaningful political participation than higher levels of government . . . this stands in stark contrast to the average citizen’s involvement with the federal government”) (internal quotations

other hand, allowing municipalities to modify state and federal laws can cause problems for some segments of society. While criminal defendants and public sector unions frequently oppose local regulations, the business community has been the most vocal opponents of these regulations.³⁹

Opposition to state and local regulations are especially pronounced in the area of employment and discrimination laws, where state and local governments have been active for decades.⁴⁰ One of the main concerns for businesses in this sphere is that lack of legal uniformity results in logistical burdens and financial costs on local businesses.⁴¹ These concerns are especially prevalent for issues such as minimum wage requirements and bans on plastic bags or trans fats.⁴² Additionally, businesses fear economic ramifications of statewide controversial legislation, which may cause out-of-state business and consumers to do business elsewhere.⁴³ If businesses cannot convince local governments to quash ordinances, they often ask the state legislature to expressly preempt municipal legislation.⁴⁴

Furthermore, the conflict between conservative, or “red,” states and democratic, or “blue,” cities has resulted in tensions between the laws of many jurisdictions.⁴⁵ Similarly, even within local governments, urban areas tend to be “blue,” while the surrounding rural towns tend to be “red.”⁴⁶ Across the country, states have increasingly threatened to quash local efforts to expand protection of individual rights and freedoms.⁴⁷ In some cases, both state and federal government action

omitted); *but see* Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 576-77 (1999) (“[t]he idea that states are more likely to foster citizen participation simply because they are closer to the people than the national government is an unproven theoretical assumption of federalism—an oft-repeated mantra, probably grounded in romanticism, that has come to be accepted by many as truth. Yet, as an empirical matter, citizen participation in national politics is stronger than it is in state and local races, despite polling data that suggests citizens have slightly higher confidence in their state, rather than federal, governments”).

39. Diller, *Intrastate Preemption*, *supra* note 4, at 1134-40.

40. *See* Chad A. Readler, *Local Government Anti-Discrimination Laws: Do They Make A Difference?*, 31 U. MICH. J.L. REFORM 777, 784 (1998).

41. Diller, *Intrastate Preemption*, *supra* note 4, at 1134.

42. *Id.*

43. Keith Cunningham-Parmeter, *Forced Federalism: States as Laboratories of Immigration Reform*, 62 HASTINGS L.J. 1673, 1711 (2011).

44. Diller, *Intrastate Preemption*, *supra* note 4, at 1138.

45. David A. Graham, *Red State, Blue City*, THE ATLANTIC (Mar. 2017), <https://www.theatlantic.com/magazine/archive/2017/03/red-state-blue-city/513857/> [<https://perma.cc/BR6D-N43Y>] (“Republicans enjoy unprecedented control in state capitals . . .

Increasingly, the most important political and cultural divisions are not between red and blue states but between red states and the blue cities within.”).

46. *Id.*; *see also* Pough, *supra* note 22, at 70 (“Many of America’s urban centers are becoming increasingly liberal, affluent islands in seas of rural red.”).

47. *See* Sophie Quinton, *Expect More Conflict Between Cities and States*, PEW (Jan. 25, 2017),

succeeds in preempting local legislation.⁴⁸

Despite the vast power held by local and state governments, the federal government has the final word on many issues. Furthermore, the federal government is better equipped to handle certain issues that have a nationwide, or even global effects. For example, the response to the coronavirus pandemic, also known as COVID-19, was largely conducted by states in the early days of the outbreak.⁴⁹ However, centralized, federal government action was required to successfully impose travel restrictions and efficiently allocate medical resources in order to fight the coronavirus pandemic.⁵⁰

C. Emerging Trend: Hair Discrimination Laws

Racial discrimination in the workplace, and in many other spheres of life, continues to be a prevalent issue in the United States. However, one form of racial discrimination is starting to garner awareness on both the local and national stage—hair discrimination against African Americans in the workplace and at school.⁵¹ For example, in the educational sphere, some schools have created a media buzz by threatening to expel children because their natural afros are “distracting” and violate the school’s grooming policy.⁵² Other schools

<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/25/expect-more-conflict-between-cities-and-states> [<https://perma.cc/DM97-ZHK6>] (quoting Tallahassee, Florida Mayor Andrew Gillum stating “If people had a sense of the number of threats to local decision-making there are — either under consideration or that have already been passed by legislatures — their heads would spin”).

48. Parlow, *supra* note 19, at 382 (“local governments still have rather limited law-making authority under current law and are thus often preempted by state and federal law when they attempt such local policy experimentation”).

49. Jessie Balmert & Jackie Borchardt, *Why Ohio is leading the U.S. response to coronavirus*, CINCINNATI ENQUIRER (Mar. 14, 2020), <https://www.cincinnati.com/story/news/2020/03/14/coronavirus-why-ohio-leading-u-s-response/5040630002/> [<https://perma.cc/V9W9-G55Q>] (“While President Donald Trump was slow to shut down public events, including the Republican’s own campaign rallies, Ohio Gov. Mike DeWine’s administration imposed the nation’s most restrictive ban on large gatherings. He then closed all schools for at least three weeks . . . DeWine, a Republican, made those decisions before anyone died of COVID-19 in Ohio and with just a handful of confirmed cases concentrated in the northeastern part of the state.”).

50. See Fanyin Zheng, *States cannot fight coronavirus alone. The federal government must step up*, FORTUNE (Mar. 21, 2020), <https://fortune.com/2020/03/21/coronavirus-state-federal-government-travel-tests/> (explaining that “research shows that in the face of epidemics, there is no substitute for centralized, federal-level actions when designing effective policies. The reason is that states and cities are not isolated from one another. They are interconnected because individuals and goods travel freely among them without any screening or testing.”).

51. Notably, hair discrimination has also become increasingly common in elementary and high schools. See Janelle Griffith, *When hair breaks rules: Some black children are getting in trouble for natural hairstyles*, NBC NEWS (Feb. 23, 2019), <https://www.nbcnews.com/news/nbcblk/when-hair-breaks-rules-some-black-children-are-getting-trouble-n973346> [<https://perma.cc/N63W-K2Q8>].

52. Clare Kim, *Florida school threatens to expel student over ‘natural hair,’* MSNBC (Nov. 26, 2013), <http://www.msnbc.com/the-last-word-94> [<https://perma.cc/A7VQ-KFQ7>] (explaining that a

have taken it a step further by telling Black students that they “need to get [their] hair done” because “dread-like hair” is specifically prohibited.⁵³ In the employment sphere, seemingly “race-neutral” grooming policies prohibiting “excessive hairstyles [and] unusual colors” have been used to prevent African Americans from wearing natural hair or protective styles because it “tends to get messy.”⁵⁴ The reality is that these “race-neutral” policies disproportionately prohibit Black hairstyles and allow for subjective and racist enforcement.⁵⁵

While the idea of hair discrimination might seem superficial and insignificant at first glance, this widespread prejudice against Black hair is ingrained in American history and has significant consequences for people of all ages in many different settings.⁵⁶ In the most extreme cases, this discrimination results in employers refusing to hire people, or firing current employees, for wearing their hair the way it naturally grows or in a protective hairstyle.⁵⁷ This prejudice can also result in high school students being prohibited from walking across the stage at their graduation ceremonies or forced to cut their hair in front of a crowd to continue participating in an athletic competition.⁵⁸

Florida school, Faith Christian Academy, threatened to expel a 12 year old due to their official dress code which reads “[h]air must be a natural color and must not be a distraction.”).

53. Crystal Tate, *16-Year-Old Black Student With Natural Hair Asked By School To 'Get Her Hair Done'*, ESSENCE (May 16, 2017), <https://www.essence.com/hair/natural/black-student-natural-hair-asked-to-get-hair-done/> [https://perma.cc/SEY3-RUPW].

54. Steven Pearlman, *'Professional Appearance' in the Workplace Under Scrutiny*, FORBES (Sept. 24, 2019), <https://www.forbes.com/sites/stevenpearlman/2019/09/24/professional-appearance-in-the-workplace-under-scrutiny/#36747dab3412> [https://perma.cc/38AG-W66U] (briefly explaining the 2016 case of EEOC v. Catastrophe Management Solutions).

55. Andre Perry, *Schools Are Policing Black Kids' Hair, and Betsy DeVos Needs to Stop Them*, THE NATION (Mar. 5, 2019), <https://www.thenation.com/article/archive/hair-school-education-betsy-devos/> [https://perma.cc/JN9V-PWKT] (“the bottom line is that these prohibitions are very subjective, driven by a negative view of blackness, which disproportionately affects black students . . . Dress codes are supposed to inspire uniformity. But for black students, uniformity too often translates to conformity to whiteness . . . these hair-code policies reinforce the idea that black students and blackness are of lesser value”).

56. See Dawn D. Bennett-Alexander & Linda F. Harrison, *My Hair Is Not Like Yours: Workplace Hair Grooming Policies for African American Women as Racial Stereotyping in Violation of Title VII*, 22 CARDOZO J.L. & GENDER 437, 438-39 (2016) (“While it may seem like a trivial issue, hair is anything but . . . Workplace grooming policies generally require that hair be groomed in a manner that is professional, businesslike, conservative . . . These subjective terms have been interpreted by employers to ban from the workplace African American women's natural hairstyles . . . these grooming policies excluding . . . natural hairstyles are based on stereotypes rooted in race and gender, and operate to illegally exclude them from the workplace”); see also Christopher Mele, *Army Lifts Ban on Dreadlocks, and Black Servicewomen Rejoice*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/army-ban-on-dreadlocks-black-servicewomen.html> [https://perma.cc/X6WT-HMKA] (explaining past hair discrimination in the United States military and the recent change to the United States Army's policy on protective hairstyles).

57. Bennett-Alexander & Harrison, *supra* note 56, at 438. (“Such policies can mean that African American women are not being hired, or are being fired, simply for neatly wearing their hair in its natural state.”).

58. See Leah Asmelash, *If this Texas student doesn't cut his dreadlocks, he won't get to walk at*

Not only is Black hair a stark visual contrast to that of whites,⁵⁹ but Black hair is biologically different than that of other races.⁶⁰ The shape of Black hair fibers presents a “high degree of irregularity,” consisting of “frequent twists, with random reversals in direction and pronounced flattening.”⁶¹ Additionally, Black hair retains less moisture, breaks more easily, and is generally much more fragile than white hair.⁶² As a result, many African Americans resort to protective hairstyles, such as locs, braids, and twists, which prevent breakage of natural hair.⁶³ Alternatively, some Black women choose, or are required by their employers or schools, to apply chemical relaxers, which cause their hair to conform to Eurocentric beauty standards. These chemical processes are time consuming, expensive, and usually result in some damage to the hair follicles and scalp.⁶⁴

Though the idea of hair discrimination has only recently garnered popular attention, the phenomenon of society trying to control Black hair dates back to the slave trade.⁶⁵ Upon the other horrific actions taken by slave traders, one of the first things they did upon loading captured slaves onto ships was cut off their hair.⁶⁶ During the Jim Crow era, African Americans were often portrayed as “nappy-haired caricatures” with exaggerated facial features in marketing materials for

graduation. It's another example of hair discrimination, some say, CNN (Jan. 24, 2020), <https://www.cnn.com/2020/01/23/us/barbers-hill-isd-dreadlocks-deandre-arnold-trnd/index.html> [https://perma.cc/8D3F-2ENF]; see also Tom McGurk, *Referee who made high school wrestler cut dreadlocks is suspended for two years*, USA TODAY (Sept. 18, 2019), <https://www.usatoday.com/story/sports/highschool/2019/09/18/wrestler-dreadlocks-controversy-new-jersey-referee-suspended-two-years/2367239001/>.

59. Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079, 1094 (2010) (“black women generally have tightly coiled, woolly hair and white women . . . generally have straight, fine (compared to black women) hair”).

60. Venessa Simpson, Note and Comment, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW. L. REV. 265, 265 (2017).

61. Alain Franbourg, et al., *Current research on ethnic hair*, 48 J. AM. ACAD. DERMATOLOGY S115 (2003) [doi:10.1067/mjd.2003.277].

62. *Id.* (“African hair generally has less tensile strength and breaks more easily than Caucasian hair . . . African hair is more difficult to comb than Caucasian hair because of its extremely curly configuration”).

63. Simpson, *supra* note 60, at 265.

64. Greene, *Splitting Hairs*, *supra* note 2, at 1012 (“workplace prohibitions against locks, twists, and braids effectively require African descendant women to wear straightened hair by donning hair weaves, wigs, or hair extensions, along with applying chemical relaxers and/or extreme heat to their hair . . . these methods of achieving and maintaining straightened hair can be expensive, time-consuming, and damaging to Black women’s physical well-being. Doing so can also be damaging to Black women’s emotional well-being.”).

65. See generally Bennett-Alexander & Harrison, *supra* note 56.

66. See *id.* at 444 (“One of the traders’ first acts of control was to commodify their cargo. They cut off the hair of those they captured as a show of power. Hair identified tribes. Removing it decreased a slave’s ability to remain attached to a community, thus weakening the subjugated person.”).

various products and companies.⁶⁷ As a result, the mid-1900s ushered in a booming beauty industry, including the development of chemical treatments and hot combs, geared towards helping Black women remove their natural texture in order to be considered more professional.⁶⁸ However, a few years later, the “Black is Beautiful” movement emerged, which encouraged African Americans to “reject the Eurocentric standard of beauty” and embrace their natural hair.⁶⁹ Today, the “Black is Beautiful” movement, also called the “Natural Hair” movement,⁷⁰ has reemerged, though many individuals continue to choose to use chemicals and other hair products to alter their natural hair for personal and professional reasons. In response to these cultural changes, consumer product companies like Procter & Gamble have recently developed affordable hair products to celebrate the variety of approaches to Black hair care, whether individuals choose to wear their hair straight, natural or in a protective style.⁷¹

Even decades after the passage of the Civil Rights Act of 1964, schools, employers, and other institutions have continued to establish “race-neutral” appearance and grooming policies that have a disparate impact on African Americans⁷² and perpetuate race discrimination.⁷³

67. *See id.* at 446.

68. *See id.* at 446-47.

69. Childs IV, *supra* note 9, at 304.

70. *Id.* at 305-06.

71. *Pantene Celebrates Diversity with Powerful “All Strong Hair is Beautiful Hair” Campaign*, BUS. WIRE (Mar. 23, 2017), <https://www.businesswire.com/news/home/20170323005616/en/Pantene-Celebrates-Diversity-Powerful-%E2%80%9CAll-Strong-Hair> [<https://perma.cc/3G6Y-52DY>] (acknowledging that “while diversity and inclusion continue to improve in society, there is still a level of inequality in how African American hair is represented in popular culture and in mainstream hair care advertising”); *see also* Greene, *Splitting Hairs*, *supra* note 2, at 1000 (explaining that “Black women may wear a natural hairstyle to minimize or eliminate the physical and financial inconveniences that come along with wearing straightened hairstyles . . . for aesthetic reasons, as a form of racial/ethnic expression, and/or to challenge pervasive expectations and pressures to wear a straightened hairstyle as an implicit petition for genuine inclusion, respect, and equal treatment . . . [or] simply wearing their hair the way in which it grows on their heads—with or without any motive or meaning.”) (internal citation omitted).

72. *See* D. Wendy Greene, *Title VII: What’s Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355, 1383 (2008) (“in order to realize equal employment opportunity for all races, courts must take into account racial stigma in Title VII disparate treatment cases. Specifically . . . courts should construe Title VII to prohibit employment policies and decisions that render stigmatic harm on an individual or group because such an interpretation advances the stated Congressional intent underlying Title VII: ‘Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation.’ Accordingly, in individual disparate treatment race, national origin, and color discrimination cases, courts must also evaluate evidence of stigmatic harm to the plaintiff”).

73. *See* Corinn Jackson, *Dear Littler: Can We Still Maintain Hairstyle and Personal Grooming Policies?*, LITTLER (Dec. 9, 2019), <https://www.littler.com/publication-press/publication/dear-littler-can-we-still-maintain-hairstyle-and-personal-grooming> [<https://perma.cc/S6GV-BJEA>]; *see also* Perry, *supra* note 55. (“Permed straight hair wrapped tight in a ponytail isn’t questioned, but dreadlocks in that same ponytail are. A boy’s short, faded haircut won’t make him smarter or a school lesson more rigorous than an Afro. Comrows are not an alteration of hair’s natural state, any more than a French braid—or any

Over a decade ago, in 2009, comedian Chris Rock produced a documentary called *Good Hair*, which highlighted the psychological and financial impact of Eurocentric beauty standards on Black women and their hair.⁷⁴ The documentary includes interviews with both celebrities and ordinary people at salons, barbershops, schools, and beauty stores in an effort to explain the unique challenges faced by African Americans.⁷⁵

In 2019, the Oscar-winning animated short film, *Hair Love*, continued the conversation, but focused on natural hair. The film depicts a young Black girl trying to style her hair for a big day.⁷⁶ When she cannot style it herself, she asks her father to do it, who first fails but then succeeds in styling it using an online video.⁷⁷ At the end of the film, it is revealed that the big day is going to a hospital to visit her mother, who has lost her hair due to cancer treatments.⁷⁸ In addition to being a heartwarming story, *Hair Love* illustrates the inherent struggles of styling Black hair and encourages Black women and children to find confidence in wearing their hair naturally.⁷⁹ This increased media representation of unique issues faced especially by African Americans has likely contributed to the expansion of successful legislation as well as heightened awareness of this issue on a national scale, which in turn likely gave Congress the confidence to introduce the CROWN Act.⁸⁰ In fact, Matthew Cherry, the director of *Hair Love*, mentioned the CROWN Act during his Oscar's acceptance speech, using his platform to draw further attention to the issue of hair

braids—are. Question: Would French braid get a white kid put out of school?").

74. Zorianna Kit, *Chris Rock's Good Hair Documentary: Something to Talk About*, HUFFINGTON POST (Mar. 18, 2010), https://www.huffpost.com/entry/chris-rocks-good-hair-doc_b_316952?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xLLmNvbS8&guce_referrer_sig=AQAAAHa0OQCRLFuyJD6jMEa_gZFQwJesoyRL39Y2P0BdV59uM99Pw_4yNIB2lsyo5ZUyQ7bxRNIuL4yYIEQYVCfn2qxHVb50D3xiyss-4_-z77qx9pB1RGQ6Ap8Sx5Wym2OyVXq64FMGpuv8bc6qivGUD6tjyE2-2QfrFmwuSirkXVU [https://perma.cc/7ZMN-PJEU] (explaining that the documentary also highlights the damage of these chemicals by including “a scientific experiment showing that hair relaxers have enough chemicals to completely dissolve a Coke can”).

75. *Id.*

76. Matthew A. Cherry, *Hair Love* (Aug. 2019), <http://www.matthewacherry.com/hair-love> [https://perma.cc/K8TZ-HCFR].

77. *Id.*

78. *Id.*

79. Tola Onanuga, *What does Hair Love's Oscar success say about diversity in Hollywood?*, THE GUARDIAN (Feb. 25, 2020), <https://www.theguardian.com/film/2020/feb/25/what-hair-love-oscar-success-diversity-hollywood> [https://perma.cc/MN7V-X24N] (quoting one of the producers stating “he also believes Hair Love has helped socialise the black experience, ‘not only with the daughter, but with the father having dreadlocks. It has helped spark a conversation about what are acceptable norms around hair.’”).

80. CROWN Act of 2019, H.R. 5309, 116th Cong. § 2 (2019). This Act will be discussed in further detail later in this Article.

discrimination against African Americans in the United States.⁸¹

With the recent increase in media coverage regarding hair discrimination against African Americans, along with the return of the natural hair movement,⁸² there is an increased tension between seemingly “race-neutral” grooming policies and the students, employees, and other individuals to which these standards apply. Courts have failed to protect individuals from this form of discrimination, which is due in part to the judiciary’s lack of cultural competence in Black hair.⁸³ Courts have mainly relied on the determination of hair as a mutable characteristic, and thus not protected by federal law.⁸⁴ However, the fact that the genetic makeup of Black hair and the damage that can result from not utilizing protective hairstyles should warrant Black hair to be categorized an immutable characteristic, like race. More specifically, courts have generally protected the right of Black people to wear their hair in afros (immutable, according to the courts) in the employment setting, but viewed protective hairstyles as a “cultural characteristic beyond the scope of Title VII protection.”⁸⁵ As a result, employers and schools expect African Americans to either wear their hair the way it naturally grows (and then firing them for looking “unprofessional”⁸⁶ or

81. ‘Hair Love’ boosts fight to end natural black hair discrimination, MSNBC (Feb. 16, 2020), https://www.msnbc.com/msnbc/watch/-hair-love-boosts-fight-to-end-natural-black-hair-discrimination-78854725749?cid=sm_npd_ms_fb_ma&fbclid=IwAR2qeg6vu-BXzX0NCDH_NRoDrWH8t48B2cNbQ_KM1rIwhZQ6LGuy3Xi8emY [https://perma.cc/ZQG7-EGYR]; see also Kimberley Richards, ‘Hair Love’ Director Matthew A. Cherry Calls For Normalizing Black Hair In Oscars Speech, HUFF POST (Feb. 24, 2020), https://www.huffpost.com/entry/hair-love-2020-oscars-matthew-a-cherry-crown-act_n_5e40b117c5b6f1f57f13a221 [https://perma.cc/3XLN-BBJH].

82. Childs IV, *supra* note 9, at 306-07 (explaining that “[i]n addition to promoting the health benefits of natural hair, the Natural Hair Movement has created a sense of pride and ownership in African heritage and history. It has established an avenue where African Americans can reclaim a piece of the identity that was stripped from enslaved Africans centuries ago”).

83. Greene, *Splitting Hairs*, *supra* note 2, at 1000 (“The court’s miseducation about African descendant women’s hair produced a powerful legal precedent—one that accorded employers essentially limitless freedom, authority, and privilege to stigmatize, exclude, and marginalize African descendant women in the workplace because of their hair.”); see also Onwuachi-Willig, *supra* note 59, at 1114 (“Specifically, courts have ignored the biological nature of black women’s hair that makes it hard work for black women to obtain and maintain straightened hair or that may motivate them to forego any hair straightening process.”).

84. Childs IV, *supra* note 9, at 307-12; see also Greene, *Splitting Hairs*, *supra* note 2, at 995-96 (“A primary reason for federal courts’ non-recognition of their race discrimination claims is a judicial understanding of race as an immutable characteristic: an identity trait that is fixed or difficult to change and/or with which one is born and is marked by features that all or only individuals who share a racial identity possess”).

85. Greene, *Splitting Hairs*, *supra* note 2, at 1017.

86. See, e.g., Chrissy Callahan, *Brittany Noble Jones was told her natural hair was ‘unprofessional’ and fired*, TODAY (Jan. 17, 2019), <https://www.today.com/style/brittany-noble-was-told-her-natural-hair-was-unprofessional-fired-t146857> [https://perma.cc/U7WY-7EFE].

suspending them from school⁸⁷), or spend money and time enduring chemical treatments or buying more hair products to make their hair look more like their white counterparts.⁸⁸ Some of these entities prohibit natural Black hair altogether, while others prohibit necessary protective styles, such as cornrows and locs—an absurd catch-22. According to a 2019 survey of approximately 2,000 women who had recently been employed or were currently employed in an office setting, Black women’s hair is over three times more likely to be viewed as unprofessional and Black women are 80 percent more likely to modify their natural hair to conform to workplace standards.⁸⁹ Although most people spend some level of time and money on personal grooming and hair, “the extent to which these decisions are emotional, personal, political, and professional . . . are unique to the Black women’s experience.”⁹⁰ Furthermore, decisions about personal grooming have potential negative educational and employment consequences for Black people in a way that does not affect white individuals.⁹¹

There are two major cases in the realm of racial discrimination based on hair in the employment setting—*Rogers v. American Airlines*⁹² and *EEOC v. Catastrophe Management Solutions*.⁹³ In the late 1970s, after working at American Airlines for 11 years, Renee Rodgers⁹⁴ wore her hair braided into cornrows. Thereafter, American Airlines banned

87. See generally Jabari Julien, Note, *Leveraging Title VI and the Administrative Complaint Process to Challenge Discriminatory School Dress Code Policies*, 119 COLUM. L. REV. 2205 (2019).

88. See Ría Tabacco Mar, *Why Are Black People Still Punished for Their Hair?*, N.Y. TIMES (Aug. 29, 2018), <https://www.nytimes.com/2018/08/29/opinion/black-hair-girls-shaming.html> [https://perma.cc/L5TD-9ZS3]; see Mindy Isser, *The grooming gap: What “looking the part” costs women*, SALON (Jan. 5, 2020), https://www.salon.com/2020/01/05/the-grooming-gap-what-looking-the-part-costs-women_partner/ [https://perma.cc/63YG-NRTT] (explaining that, while there are not many official studies regarding the cost of these treatments, it is estimated that African Americans spend roughly nine times more on hair and beauty products, compared to other races).

89. See Reba Letsa, *The CROWN: Anti-Hairstyle Discrimination Legislation Protecting Natural Hairstyles in the Workplace*, JD SUPRA (Feb. 26, 2020), <https://www.jdsupra.com/legalnews/the-crown-anti-hairstyle-discrimination-79118/#2> [https://perma.cc/84ER-L5U7] (describing the results of the The Creating a Respectful and Open World for Natural Hair (CROWN) Coalition’s survey, which can be found at <https://www.thecrownact.com/research> [https://perma.cc/WP4A-K8UZ]).

90. Greene, *Splitting Hairs*, *supra* note 2, at 1013.

91. *Id.* at 1013-14 (explaining that “when a Black woman dons her naturally textured hair and thus does not assume the additional financial, temporal, and health-related burdens to comply with this condition of employment--unrelated to her job performance or ability--a direct violation of Title VII’s plain language results: she is deprived of employment opportunities for which she is qualified on the basis of her race and gender”).

92. *Rogers v. Am. Airlines, Inc.*, 527 F.Supp. 229 (S.D.N.Y. 1981).

93. *Equal Emp’l. Opportunity Comm’n. v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016).

94. Greene, *Splitting Hairs*, *supra* note 2, at 997 n.47 (noting that the plaintiff’s name is actually spelled “Rodgers,” though the case name spells it “Rogers”).

braided hairstyles and Rogers sued, bringing a Title VII claim for intersectional discrimination based on both race and sex.⁹⁵ The *Rogers* court held that American Airlines' grooming policy did not violate federal discrimination law because they found that cornrows are a mutable, aesthetic choice.⁹⁶ The court contrasted protective hairstyles, like cornrows, with the more "natural" hairstyle of afros and concluded that employers may ban the former as long as they allow the latter.⁹⁷

Decades later, in 2016, the Eleventh Circuit utilized a similarly restrictive view of federal discrimination law to uphold the right of employers to discriminate against prospective and current employees based on their ethnic hairstyles.⁹⁸ In *EEOC v. Catastrophe Management Solutions*, Chastity Jones interviewed for a call center position at Catastrophe Management Solutions ("CMS"). The interview proceeded without commentary or concern for her hair, which was worn in a curly, locked formation.⁹⁹ Ms. Jones was offered the job, but when she met with a Human Resources Manager about an initial scheduling conflict, she was told that she could not wear her "dreadlocks," as they were in violation of the grooming policy which prevented "excessive hairstyles."¹⁰⁰ When Ms. Jones refused to cut off her dreadlocks, CMS rescinded her job offer.¹⁰¹ Ms. Jones sued CMS, and the Equal Employment Opportunity Commission (EEOC) attempted to challenge the immutability doctrine as it applies to race-based grooming policies, specifically focusing on the burdens faced by Blacks when employers forbid both natural and protective hairstyles.¹⁰² However, the Eleventh Circuit held that Title VII only protects traits that an individual is "born with or cannot change" and reiterated the concept that Black hairstyles do not fall under that narrow definition.¹⁰³ Notably, in both of these cases, the courts relied heavily on both federal discrimination legislation and the doctrine of immutability in reaching their conclusions.

95. *Id.* at 997.

96. *Id.* at 999.

97. *Id.* at 998. ("The court concurred that if American Airlines enacted a ban against afros such a policy would likely violate Title VII. However, it did not apply this reasoning to American Airlines' no braids policy . . . it appears that the Rogers court presumed that a workplace prohibition against afros constituted a form of race discrimination because African descendants predominantly or exclusively don or are born with an afro")

98. *Id.* at 1021.

99. *Id.* at 1006-07.

100. *Id.*

101. *Id.*

102. *Id.* at 1008-12.

103. *Id.* at 1021-22.

D. State and Local Laws: Paving the Way for the Federal CROWN Act

Despite the lack of judicial protection,¹⁰⁴ state and local legislatures have begun to step in and protect African Americans in their jurisdictions. In early 2019, New York and California became the first states to prohibit employers from engaging in racial discrimination on the basis of hair.¹⁰⁵ In October, 2019, Cincinnati, Ohio became only the second city, after New York City, to prohibit discrimination against natural hair and hairstyles associated with a particular race.¹⁰⁶ According to the 2010 U.S. Census, Cincinnati's population is roughly 43 percent African American.¹⁰⁷ Specifically, Cincinnati's ordinance amended the city's definition of "discrimination" to expressly include "natural hair types and natural hair styles commonly associated with race."¹⁰⁸ Notably, there was one "no" vote from Councilwoman Amy Murray, who believed that this type of discrimination was already protected by federal law.¹⁰⁹

A few months later, New Jersey became the third state to pass hair discrimination legislation.¹¹⁰ In March 2020, Virginia became the first southern state to ban hair discrimination—the bill passed unanimously.¹¹¹ The same week, Colorado followed suit.¹¹² A few days later, Washington became the sixth state to ban discriminatory

104. See Childs IV, *supra* note 9, at 307-12.

105. *Id.* at 314; see also Janelle Griffith, *New York is second state to ban discrimination based on natural hairstyles*, NBC NEWS (July 15, 2019), <https://www.nbcnews.com/news/nbcblk/new-york-second-state-ban-discrimination-based-natural-hairstyles-n1029931> [<https://perma.cc/FY5P-2QLU>].

106. Sharon Coolidge, *Cincinnati outlaws discrimination based on natural hairstyles associated with race*, USA TODAY (Oct. 9, 2019), <https://www.usatoday.com/story/news/nation/2019/10/09/cincinnati-council-votes-ban-discrimination-based-natural-hair/3926284002/> [<https://perma.cc/44T5-WSLN>]; see also *Cincinnati council votes to ban natural hair discrimination*, ABC NEWS (October 9, 2019), <https://abcnews.go.com/US/wireStory/cincinnati-council-votes-ban-natural-hair-discrimination-66173039> [<https://perma.cc/HTU2-WM4R>].

107. Statistics can be found at <https://www.census.gov/quickfacts/cincinnati-city-ohio> [<https://perma.cc/FU9V-K5B5>].

108. Cincinnati, Ohio, Ordinance 379 (Oct. 9, 2019).

109. Coolidge, *supra* note 106.

110. Dakin Andone, *New Jersey banned discrimination based on hairstyle a year after a black student wrestler cut his dreadlocks to compete*, CNN (Dec. 19, 2019), <https://www.cnn.com/2019/12/19/us/new-jersey-governor-discrimination-hairstyle-trnd/index.html> [<https://perma.cc/D2NY-NYG2>].

111. Kenya Evelyn, *Virginia becomes first southern US state to ban hair discrimination*, THE GUARDIAN (Mar. 6, 2020), <https://www.theguardian.com/us-news/2020/mar/06/virginia-hair-discrimination-ban> [<https://perma.cc/8F6D-USZS>] ("Advocates say the law will put an end to punitive actions that have disproportionately affected African Americans, both in schools and the workforce").

112. Helen Robinson, *Colorado becomes 5th state to ban hair discrimination*, THE COLO. SPRINGS BUS. J. (Mar. 9, 2020), <https://www.csbj.com/2020/03/09/colorado-becomes-5th-state-to-ban-hair-discrimination/> [<https://perma.cc/G9V7-92HS>].

treatment based on hair.¹¹³ Though Montgomery County, Maryland outlawed hair discrimination in February 2020 (becoming only the third individual city to do so),¹¹⁴ Maryland's government did not provide statewide protection until June 2020.¹¹⁵ This rapid explosion of hair discrimination statutes underscores the importance of protecting African Americans against this form of racial discrimination.¹¹⁶

Luckily, in the case of hair discrimination, the federal government has been paying attention and acted relatively quickly to attempt to address this issue on a national level. While most of the legislation passed, and pending, regarding this issue has occurred at the local and state level, Congress introduced the CROWN Act in December 2019, and referred it to the Committee on the Judiciary and to the Committee on Education and Labor.¹¹⁷ Notably, on September 21, 2020, the House of Representatives passed the CROWN Act.¹¹⁸ If the Senate passes the CROWN Act and it becomes law, the CROWN Act¹¹⁹ would protect individuals from discrimination based on hairstyles associated with race at the federal level.¹²⁰ The CROWN Act would prohibit discrimination “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,

113. *Ban on Race-Based Hairstyle Discrimination Signed into Law*, U.S. NEWS & WORLD REPORT (Mar. 19, 2020), <https://www.usnews.com/news/best-states/washington/articles/2020-03-19/ban-on-race-based-hairstyle-discrimination-signed-into-law>.

114. Kyley Schultz, *CROWN Act becomes law: It's now illegal to discriminate based on hair in Montgomery County*, WUSA9 (Feb. 6, 2020), <https://www.wusa9.com/article/news/local/maryland/crown-act-passes-in-montgomery-county/65-471853d9-53c0-4c53-bce0-b9a7ebff186c> [<https://web.archive.org/web/20200809151931/https://www.wusa9.com/article/news/local/maryland/crown-act-passes-in-montgomery-county/65-471853d9-53c0-4c53-bce0-b9a7ebff186c>].

115. Robert Niccolini & Patrick Wilson, *Maryland Legislature Passes Hairstyle Discrimination, Facial Recognition in Hiring, Retaliation, and Equal Pay Laws*, JD SUPRA (June 3, 2020), <https://www.jdsupra.com/legalnews/maryland-legislature-passes-hairstyle-30796/> [<https://perma.cc/4R5Z-44MF>].

116. Cities have continued to introduce and approve hair discrimination legislation through the end of 2020. However, hair discrimination statutes have not been passed in all states where they have been introduced. See Danielle Meadows, *Gov. Ricketts vetoes hair discrimination bill*, KMTV (Aug. 15, 2020), <https://www.3newsnow.com/news/local-news/gov-ricketts-vetoes-hair-discrimination-bill> [<https://perma.cc/5S3F-4XQE>] (explaining that Nebraska’s Governor vetoed the state’s hair discrimination bill because, in his opinion, “hairstyles can easily be changed”).

117. H.R. 5309.

118. Alexandra Kelley, *House passes bill banning race-based hairstyle discrimination*, THE HILL (Sept. 23, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/517769-house-passes-bill-banning-race-based-hairstyle> [<https://perma.cc/QAJ8-JTJF>].

119. *Id.* at § 1.

120. H.R. 5309.

Bantu knots, and Afros).¹²¹ This prohibition on hair discrimination would apply to federally assisted programs,¹²² housing programs,¹²³ public accommodations,¹²⁴ and employers.¹²⁵

The CROWN Act was introduced in the Senate by Senator Cory Booker and co-sponsored by Senator Sherrod Brown, with Representatives Cedric Richmond, Ayanna Pressley, Marcia Fudge, and Barbara Lee introducing companion legislation in the House.¹²⁶ The drafting of the CROWN Act was motivated, in part, by several recent discriminatory actions perpetuated against Black individuals on the basis of their natural hair or protective hairstyles.¹²⁷ Additionally, it is a personal issue for some of the sponsors, with Representative Pressley stating that she chooses to wear a protective hair style (twists) on Capitol Hill because she wants to “intentionally create space for all of us to show up in the world as our authentic selves – whether it’s in the classroom, in the workplace or in the halls of Congress.”¹²⁸

The CROWN Act incorporates existing enforcement mechanisms already available for various antidiscrimination regimes.¹²⁹ For example, the provision applicable to employers would 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.”¹³⁰ In other words, the CROWN Act effectively changes the federal definition of racial discrimination to include discrimination based on hairstyles associated with race.

E. Recent Scholarly Analysis

While hair discrimination itself is not new, this accelerated acknowledgement by local and state legislatures is new. As a result,

121. *Id.*

122. *Id.* at § 3.

123. *Id.* at § 4.

124. *Id.* at § 5.

125. *Id.* at § 6.

126. *Booker, Richmond Unveil CROWN Act Banning Hair Discrimination* (Dec. 5, 2019), <https://www.booker.senate.gov/news/press/booker-richmond-unveil-crown-act-banning-hair-discrimination> [<https://perma.cc/M534-AQXD>]

127. *Id.* (“a New Jersey student named Andrew Johnson was forced to cut his dreadlocks to avoid forfeiting a wrestling match . . . Penn State football player Jonathan Sutherland received a racist letter deeming his dreadlocks ‘disgusting.’ . . . actress Gabrielle Union had been critiqued on ‘America’s Got Talent’ for her hairstyle being ‘too black.’”).

128. *Id.* (explaining further that she is “proud to support the CROWN Act, which is a bold step towards ensuring that people can stand in their truth while removing the narrative that black people should show up as anything other than who they are”).

129. *See generally* H.R. 5309.

130. *Id.* § 6(b).

there is limited comprehensive scholarly analysis of this phenomenon. Professor Wendy Greene has argued that courts should reject the immutability doctrine as a strict barrier to providing protection against hair discrimination.¹³¹ Specifically, with regards to employment law, Dr. Greene suggests that Title VII's statutory language prohibits employers from promulgating grooming policies that limit or deprive Black people of employment opportunities because of their race.¹³²

One scholar has proposed that courts adopt the “New Standard” as an approach to prevent hair discrimination specifically within the workplace.¹³³ Under the “New Standard,” courts would utilize a three-step process.¹³⁴ First, courts would determine if the policy “has a disproportionate and adverse impact on the employment opportunities of a protected class of individuals.”¹³⁵ Second, courts would examine whether the policy “discriminates against a characteristic that is historically or culturally associated with the race of the class of individuals identified in step one.”¹³⁶ Finally, courts would determine if the employer is “objectively justified in creating its policy.”¹³⁷ The “New Standard” aims to align with congressional intent in protecting against discrimination while also allowing employers to act in the best interests of their business.¹³⁸

To cope with courts' reliance on the argument of hair as a mutable characteristic,¹³⁹ some proposals suggest that courts should utilize an undue burden standard when analyzing hair discrimination cases.¹⁴⁰ Most African Americans—especially African American women—must turn to chemical straighteners and other harsh processes to achieve similar hair texture and style as their white counterparts.¹⁴¹ The Black hair care industry is valued at over \$2.5 billion each year,¹⁴²

131. See generally Greene, *Splitting Hairs*, *supra* note 2.

132. *Id.* at 1031.

133. Childs IV, *supra* note 9, at 288.

134. *Id.* at 327.

135. *Id.*

136. *Id.* at 328.

137. *Id.* at 329 (explaining further that “[i]f an employer is able to prove that there is a legitimate reason for implementing the policy, the law will be upheld; however, if the employer cannot prove that the policy is objectively justified, it will be held unconstitutional.”).

138. *Id.* at 329-31.

139. Powell, *supra* note 15, at 958 (quoting one court as stating “Title VII prohibits discrimination on the basis of immutable characteristics, such as race, sex, color, or national origin. A hairstyle, even one more closely associated with a particular ethnic group, is a mutable characteristic.”).

140. *Id.* at 962; see generally Onwuachi-Willig, *supra* note 59.

141. Ashleigh Shelby Rosette & Tracy L. Dumas, *The Hair Dilemma: Conform to Mainstream Expectations or Emphasize Racial Identity*, 14 DUKE J. GENDER L. & POL'Y 407, 411 (2007).

142. Ashley Turner, *The black hair care industry generates billions — but the US is missing out on the market*, CNBC (Aug. 17, 2018), <https://www.cnbc.com/2018/08/17/black-hair-care-wigs-weaves-extensions-salons.html> [<https://perma.cc/3CJH-DN5T>] (“black hair care industry [is valued] at more than

with an estimated \$50 million of that spent on chemical straighteners alone.¹⁴³ On an individual level, the cost for relaxing Black hair can range from \$1,200 to more than \$4,000 per year for one woman.¹⁴⁴ In addition to the immense time¹⁴⁵ and cost of these processes, many of the chemicals used can result in hair loss and skin damage.¹⁴⁶ These proposals argue that hair discrimination is an intersectional issue and these heightened financial strains and health risks place an “undue burden” on African Americans.

Finally, other scholars recommend that employers specifically consider ten factors when establishing a workplace grooming policy.¹⁴⁷ These include a consideration of the industry or position for which the employer is establishing the policy as well as any health or safety issues associated with the grooming policy.¹⁴⁸ However, the proposal does not suggest comprehensive legislative action or court procedures for enforcement against discriminatory policies.

III. DISCUSSION

Many previous scholarly proposals¹⁴⁹ as well as state and local legislation, sometimes focus attention solely on hair discrimination within the realm of the workplace. However, as explained above, African Americans are also victims of discriminatory action at school and in other public places. To ameliorate this problem, more comprehensive protection for these individuals is past due. When Cincinnati, Ohio became only the second individual American city to pass a hair discrimination ordinance, there was one “no” vote from Councilwoman Amy Murray.¹⁵⁰ Murray’s reasoning was simple—

\$2.5 billion, but that statistic doesn’t include products such as hair accessories, wigs or electric styling products. So, the industry is actually worth much more”).

143. Rosette & Dumas, *supra* note 140, at 411.

144. Onwuachi-Willig, *supra* note 59, at 1114 (“To straighten a black woman’s hair through a relaxer costs approximately \$60 to \$300 for each full permanent or \$40 to \$100 dollars for each touch-up in between full relaxers, with either full relaxers or touch-ups occurring every four to eight weeks or sooner”).

145. *Id.* at 1115 (“[m]aintaining relaxed hair can be a lengthy daily task . . . straightening black hair with a hot comb requires an exorbitant amount of time, often necessitating two to three hours of work every few days, just for straightening without any styling. Additionally, the time that many black women spend worrying about rain, pools, or other forms of water that may counteract the effects of any applied relaxer or hot pressing is further limiting.”).

146. Powell, *supra* note 15, at 965; *see also* Rosette & Dumas, *supra* note 140, at 411.

147. Bennett-Alexander & Harrison, *supra* note 56, at 457.

148. *Id.* at 457.

149. *See generally* Bennett-Alexander & Harrison, *supra* note 56; *see generally* Childs IV, *supra* note 9.

150. Erin Couch, *City Council: Discrimination against natural hair banned in Cincinnati*, FOX19 (Oct. 9, 2019), <https://www.fox19.com/2019/10/09/cincinnati-city-council-vote-protect-natural-hair->

“protections for natural hair already fall under federal race discrimination law . . . [p]assing a city law would be redundant.”¹⁵¹ However, she is mistaken. Although hair discrimination based on race *should* be protected under federal race discrimination law, courts fail to recognize it as such. Although passing a city ordinance to protect people based on a racially associated characteristic *seems* unnecessary, unfortunately it is crucial.

A. Hair Discrimination is not Prohibited Under Federal Law

Hair discrimination is clearly unprotected by other federal civil rights laws. EEOC guidance states that “Title VII’s prohibition of race discrimination generally encompasses . . . employment discrimination based on . . . hair.”¹⁵² However, courts are not bound by the language of the EEOC guidance¹⁵³ and have repeatedly denied that racial discrimination protections extend to hair discrimination.¹⁵⁴ This lack of protection is further evidenced both through actions by employers as well as the widespread city ordinances and state laws, which expressly prohibit this type of discrimination. If this discrimination were already protected by federal law, there would be no reason for the legislatures of several states and a few major cities to use their valuable time to discuss and draft these protections. In addition, no federal court has directly protected against hair discrimination, aside

types-styles-discrimination/ [https://perma.cc/6REY-86NY].

151. Coolidge, *supra* note 106.

152. EEOC COMPLIANCE MANUAL, SECTION 15 RACE AND COLOR DISCRIMINATION, *available at* <https://www.eeoc.gov/policy/docs/race-color.html#II> (explaining further that “[e]mployers can impose neutral hairstyle rules – e.g., that hair be neat, clean, and well-groomed – as long as the rules respect racial differences in hair textures and are applied evenhandedly. For example, Title VII prohibits employers from preventing African American women from wearing their hair in a natural, unpermed “afro” style that complies with the neutral hairstyle rule. Title VII also prohibits employers from applying neutral hairstyle rules more restrictively to hairstyles worn by African Americans”). An EEOC fact sheet explains that “Discrimination on the basis of an immutable characteristic associated with race, such as . . . hair texture,” <https://www.eeoc.gov/facts/fs-race.pdf>; *see also* Bennett-Alexander & Harrison, *supra* note 56, at 443 (explaining that “based on the EEOC’s stated position, a black claimant denied a job because her natural hair is styled in dreadlocks, cornrows, or braids—even if they are neat, clean, and well-groomed—would have a viable claim of race discrimination in violation of Title VII”).

153. Kaili Moss, Note, *Black Hair(tage): Carrer Liability or Civil Rights Issue?*, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 191, 209 (2018) (“astoundingly the federal courts are not bound by the EEOC’s manual”).

154. Powell, *supra* note 15, at 967 (“While federal antidiscrimination law prohibits discrimination on the basis of race, federal courts have routinely denied that these protections extend to the vast majority of Black textured hairstyles . . . Antidiscrimination suits . . . have largely been unsuccessful. There have been essentially forty years of failure with no change of pattern in sight.”); *see also* Childs IV, *supra* note 9, at 307-12 (reviewing several court cases regarding hair discrimination); *see also* Moss, *supra* note 152, at 215 (“courts have been unwilling to find a constitutional basis for the argument that hairstyles should be protected by Title VII.”).

from the right for Black people to wear an afro in the workplace.¹⁵⁵

One of the major interest groups who likely oppose local and state hair discrimination legislation are businesses, who need to remain knowledgeable about constantly changing legislation in the states where they do business. One of the main concerns for businesses operating within many local jurisdictions, which have different local ordinances, is that the different ordinances may cut into profits or pose a compliance burden on companies.¹⁵⁶ However, discrimination laws are different from other legislation. Businesses would be hard-pressed to communicate a similar and legitimate argument to discouraging hair discrimination in the workplace. While municipal legislation such as minimum wage requirements and sales tax¹⁵⁷ clearly affect business operations, compliance with an antidiscrimination law does not pose a comparable financial burden. Furthermore, a federal law about hair discrimination would eliminate the need for businesses to keep up with changing legislation on the state and local level.

Hair discrimination laws only require that institutions refrain from discrimination and, if necessary, update their appearance and grooming policies to reflect a more inclusive space for African Americans. In the employment sphere, these efforts also may include additional training for or the dissemination of information to employees, managers, and hiring personnel.¹⁵⁸ However, this is a small burden on companies and does not outweigh the importance of preventing racial discrimination in the workplace.

155. Stowe, *supra* note 14 (“To date, there is no legal precedent in federal court for the protection of hair.”); *see also* Cortney Bryson, Comment, *'Hair' Today, Gone Tomorrow: How Immutable Traits May Become the New Face of Discrimination As Interpreted in Equal Employment Opportunity Comm'n v. Catastrophe Mgmt. Sols.*, 39 N.C. CENT. L. REV. 166, 166-67 (2017) (“the courts have not ruled it illegal for an employer to refuse to hire persons based on “immutable” traits, such as hairstyles that are not found to be natural . . . Courts have vaguely defined an immutable characteristic as one that is uneasily changed, such as race and national origin. This imprecise definition, along with various decisions by courts supporting this rationale, fails to include [] natural hairstyles.”).

156. *See* Erin A. Schraff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1494.

157. *Id.* at 1494. (“tax scholars are often critical of the complexity imposed when local jurisdictions implement their own sales and income tax bases. Businesses may face significant compliance costs when the tax base differs across municipal boundaries.”).

158. *See* Tara Dudum & Newmeyer Dillion, *The CROWN Act Makes an Oscars Debut: What to Know about California's Newest Racially Inclusive Workplace Law*, JD SUPRA (Feb. 18, 2020), <https://www.jdsupra.com/legalnews/the-crown-act-makes-an-oscars-debut-21008/> [<https://perma.cc/7GVU-H3EM>] (making several suggestions for California employers for obeying California's version of the CROWN Act).

B. Hair Discrimination should be Prohibited Under Federal Law: The CROWN Act

Some scholars have recommended that Black hair be considered an immutable characteristic under Title VII¹⁵⁹ or that hair discrimination be considered under the “undue burden standard.”¹⁶⁰ While these proposals were meticulously developed and explicated, the solutions proposed focus narrowly on discrimination in the workplace. Furthermore, protecting hair discrimination via the proposed methods would likely require years of litigation before achieving a favorable Supreme Court decision. On the other hand, the federal CROWN Act could be the law of the land in a matter of months.¹⁶¹ The CROWN Act would make hair discrimination synonymous with racial discrimination in many different areas of life, such as education, housing, employment, and federally assisted programs.¹⁶²

Despite the rapid introduction of hair discrimination legislation at the state and local levels, there has been little media buzz regarding the federal CROWN Act introduced in December 2019.¹⁶³ The original selected date for the CROWN Act to take effect was August 9, 2020.¹⁶⁴ However, as a result of the coronavirus pandemic, this timeline has been delayed. Understandably, Congress’s focus has shifted to providing relief to the American people, assisting healthcare facilities in obtaining equipment and protective materials, and helping the country’s economy recover,¹⁶⁵ which has proved to be a contentious endeavor.¹⁶⁶ Despite a delay in enactment, it is still important that

159. See, e.g., Childs IV, *supra* note 9.

160. Powell, *supra* note 15, at 962; see also Kim Carter, *Workplace Discrimination and Eurocentric Beauty Standards*, GPSOLO at 36 (Sept./Oct. 2019), https://www.tjsl.edu/sites/default/files/black_hair_law_-_kc_article.pdf. (explaining that Eurocentric beauty standards “require Blacks to shun their natural tresses and take extreme—and at times harmful—measures to change their hair textures or remove their hair all together, to conform to social norms.”)

161. The author recognizes that the expediency with which the CROWN Act could become law also means that the law could be undone relatively quickly as well.

162. H.R. 5309 § 9.

163. In fact, a simple google search about the federal CROWN Act returns only relatively few mainstream media articles that merely refer to the act (in the context of the *Hair Love* Oscar acceptance speech) and directs readers to the official website of the Act. See Amir Vera, *What you need to know about the CROWN Act*, CNN (Feb. 9, 2020), <https://www.cnn.com/2020/02/09/entertainment/crown-act-oscarstrnd/index.html> [<https://perma.cc/5JEA-BMLB>].

164. H.R. 5309.

165. See Lauren Eagan, Julie Tsirkin, & Rebecca Shabad, *White House, Senate reach deal on massive \$2 trillion coronavirus spending bill*, NBC NEWS (Mar. 25, 2020), <https://www.nbcnews.com/politics/congress/white-house-senate-reach-deal-massive-2-trillion-coronavirus-spending-n1168136> [<https://perma.cc/M728-Y9XN>] (“Legislation rarely moves this rapidly in Washington, especially a bill of this size. But both parties appeared motivated to act quickly as unemployment numbers continue to rise and more businesses are forced to close their doors”).

166. See Emily Cochrane & Nicholas Fandos, *Top Senate Democrat and Treasury Secretary Say*

Congress pass the CROWN Act to protect African Americans against hair discrimination, as a form of racial discrimination, on the federal level.

While cities and states generally use their authority to broaden the protection of the rights of their constituents, governments sometimes use their power to crush rights as well. For example, in recent years, state governments have increasingly flexed their regulatory muscles to stifle local ordinances that protect the rights of transgender and transitioning individuals to use the bathrooms consistent with their gender identity.¹⁶⁷ These discriminatory laws “roughly coincided with the proliferation of local nondiscrimination ordinances protecting trans individuals.”¹⁶⁸ Similarly, this pattern could repeat in the realm of hair discrimination laws.

State and local legislation are well suited for some issues like minimum wage law, and other regulations that impact the finances and operations of businesses and the local economy. On the other hand, major discrimination law, like hair discrimination statutes, should be left to the federal government to handle. One main concern with allowing for local and state regulation of civil rights is that these laws will be preempted. Furthermore, because courts appear to rely heavily on federal anti-discrimination legislation in these cases, the CROWN Act would provide additional guidance. Therefore, the CROWN Act should become federal law. Hair discrimination and racial discrimination should be considered equivalent transgressions.¹⁶⁹

While the CROWN Act’s language and spirit makes it nearly impossible to oppose, considering the polarization of this country and lack of understanding of hair discrimination against African Americans, the measure could fail. Should the CROWN Act not pass, it may be time for scholars and attorneys fighting for civil rights to consider alternative routes to protecting hair discrimination against

They Are Near a Stimulus Deal, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/us/politics/stimulus-package-for-coronavirus.html> [<https://perma.cc/ZW7B-7AVW>] (“after a marathon day of talks as Democrats demanded stronger protections for workers and restrictions for bailed-out businesses . . . Democrats said the measure under discussion did too little to help ordinary Americans or to ensure that federal money would not be abused by businesses that received aid”).

167. *See generally* Rushin & Carroll, *supra* note 10, at 3-5 (“Texas joined a growing list of jurisdictions that have considered or enacted so-called “bathroom bills” since 2013, including Alabama, Arizona, Colorado, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, Washington, and Wisconsin.”).

168. *Id.* at 9; *see also* *Cities and Counties with Non-Discrimination Ordinances That Include Gender Identity*, HUM. RTS. CAMPAIGN, <http://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender> [<https://perma.cc/4MFM-C3Q4>].

169. *See* Dudum & Dillion, *supra* note 157.

African Americans. One option would be to narrow the focus to the arena of employment law and push for ethnic hair to be considered an immutable characteristic under the “New Standard.”¹⁷⁰ However, as previously mentioned, it may take years of litigation to set this precedent. Alternatively, considering the success of grassroots efforts on the state and local level so far, it might be best to continue targeting these legislatures.

IV. CONCLUSION

While local governments can serve as laboratories of innovation and policymaking for the greater good of their communities, the American concept of federalism only allows local governments to govern certain aspects of everyday life—other protections must be provided by the federal government. Furthermore, though local authority is often used to advance civil rights and freedoms, this power can also be abused to trample individual liberties.¹⁷¹ In order to properly protect African Americans from discrimination based on natural hair and protective hairstyles, federal action is required.

Perhaps phrased best by Senator Cory Booker, who introduced the CROWN Act in the Senate, “implicit and explicit biases against natural hair are deeply ingrained in workplace norms and society at large.”¹⁷² While some of the state and local laws focus on hair discrimination solely in the context of employment, the CROWN Act is more comprehensive. The CROWN Act prohibits hair discrimination in several different spheres, including federally assisted programs,¹⁷³ housing programs,¹⁷⁴ public accommodations,¹⁷⁵ and the workplace.¹⁷⁶ As a result, the CROWN Act would provide uniform guidance for the entities that are required to comply. Thus, these institutions could modify their existing grooming policies and cultures in order to promote acceptance of African Americans in the classroom, at work, and in public places.

An individual’s job security or perceived professionalism and a

170. Childs IV, *supra* note 9.

171. See Davidson, *supra* note 12, at 958 (further explaining that “[c]urrent advocacy for local governments is often motivated by interest in protecting local policies that advance equity and inclusion. The legal arguments advocates invoke in these conflicts, however, could just as easily be turned against the very values they are defending through local autonomy . . . This is the double-edged sword of localism: local empowerment can be used for desirable as well as pernicious ends.”).

172. Yates, *supra* note 17.

173. H.R. 5309 § 3.

174. *Id.* at § 4.

175. *Id.* at § 5.

176. *Id.* at § 6.

student's right to go to school should not be impeded by biological characteristics. Furthermore, this important right should be protected swiftly by the federal government, rather than relying on state and city legislatures. In the realm of hair discrimination law, Congress has one logical path to take—pass the CROWN Act and outlaw hair discrimination on the federal level.