Florida A & M University Law Review

Volume 17 | Number 2 Article 10

2023

The Roots of the Problem: How the Crown Act Could Remedy the Inadequacies of Title VII Hair Discrimination Protections in the Entertainment Industry

The Roots of the Problem: How the Crown Act Could Remedy the Inadequacies of Title VII Hair Discrimination Protections in the Entertainment Industry

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Introduction

Today, the fight to protect natural hair textures and protective styles continues. High-profile citizens like Supreme Court Justice Ketanji Brown, Representative Ayanna Pressley, and Stacey Abrams

1. Daniel Jefferson III, J.D. Candidate, Florida A&M University College of Law, 2023; B.A. Texas A&M University, 2019. The author would like to thank his parents Daniel & Cynthia Jefferson, his sister Jalisa Jefferson, his niece Janiyah Evans, and his partner Tairan Joyner for their continued support.

have helped pave the way to demanding respect and acceptance in professional settings. Representative Pressley even explained that "she was prepared for some people to perceive her hairstyle as a political statement, possibly thinking she was "militant" or angry."[2] However, despite this possibility, she chose to push forward in her journey to prove to children across the United States of America that it is possible to achieve without assimilating or falling under the pressure of what society may perceive as acceptable.[3] The Creating a Respectful and Open World for Natural Hair Act of 2022, The CROWN Act, is the latest attempt to cure the plague of hair discrimination on a federal level.[4]

This article will examine the inadequacies of Title VII of the Civil Rights Act of 1964 ("Title VII") as it relates to hair discrimination in the entertainment industry and how the "Create a Respectful and Open Workplace for Natural Hair" ("CROWN") Act could help to alleviate those inadequacies. Title VII fails to acknowledge the connection between hair texture/ protective styles and race. The entertainment industry exploits the failures of Title VII when casting African American women for television and film roles. Industry executives have been known to ask actresses to mute or exaggerate their blackness through different requests for their hairstyles.

The CROWN Act prohibits race-based hair discrimination based on hair texture or protective hairstyles, including braids, locs, twists, or Bantu knots.[5] The CROWN Act was first introduced in California in January 2019 and was enacted in July of the same year.[6] Since the California legislation was passed, 19 other states have passed their own versions.[7] The initial act "expanded the definition of race" within the Fair Employment and Housing Act of California to include "a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin."[8]

In this article, I argue in favor of adopting a federal version of the "Creating a Respectful and Open Workplace for Natural Hair" Act.

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2. Madeleine Carlisle, *Rep. Ayanna Pressley Reveals Her Hair Loss as She Share Her 'Very Personal' Alopecia Diagnosis*, TIME (Jan. 16, 2020, 5:49 PM), https://time.com/5766811/ayanna-pressley-hair-loss-alopecia/.

3. *Id.*

4. *Id.*

5. Creating a Respectful and Open World for Natural Hair Act of 2022, H.R. 2116, 117th Cong. § 3(a) (2022).

6. S.B. 188, 2019 Leg., Reg. Sess. (Cal. 2019).

7. *About*, THE CROWN ACT, https://www.thecrownact.com/about (last visited May 19, 2022).

8. S.B. 188, 2019 Leg., Reg. Sess. (Cal. 2019).

I argue that a federal law prohibiting hair discrimination based on hair texture or protective styles will provide additional protections for African American women in the entertainment industry. The ability to work without having to mute or exaggerate your hair texture or hairstyle to fit the industry's narrative could help to knock down the entrance barriers of the industry.

First, I will examine the relevant legal and historical background of Hair Discrimination in America and how it manifests in the entertainment industry. Next, I will examine the problem with how Title VII handles hair discrimination and how those failures have been exploited in film and television across the country. Finally, I will discuss how the CROWN Act is the solution to the issue and how it can address hair discrimination in the entertainment industry.

I. Historical Background: Fighting Hair Discrimination through the Eras

To understand the importance of the legislation regarding hair discrimination, we must examine how it has evolved throughout the years. The sub-sections below will outline how the discrimination has evolved over the years and the history of the relevant legislation. Subsection a will follow the history of hair discrimination in general, subsection b will examine hair discrimination in the entertainment industry, subsection c will break down how Title VII applies, and subsection d will examine the CROWN Act.

A. The History of Hair Discrimination

Hair Discrimination in the United States can be traced all the way back to the early 1700s.[9] Women of Creole descent were forced to cover their hair with a tignon (scarves/handkerchief) to symbolize that they were a part of the "slave class" even though many of them were "free."[10] The "Tignon Laws" were enacted because many Creole women

9. Jameelah Nasheed, *When Black Women Were Required By Law to Cover Their Hair*, VICE (Apr. 10, 2018, 3:39 PM), https://www.vice.com/en/article/j5abvx/black-womens-hair-illegal-tignon-laws-new-orleans-louisiana (to address this "problem," in 1786, Spanish colonial Governor Don Esteban Miró enacted the Edict of Good Government, also referred to as the Tignon Laws, which "prohibited Creole women of color from displaying 'excessive attention to dress' in the streets of New Orleans." Instead, they were forced to wear a tignon [scarf or handkerchief] over their hair to show that they belonged to the slave class, whether they were enslaved or not).

10. *Id.*

wore their hair in elaborate styles that caught the attention of many white men.[11]

Additionally, in an attempt to create distance between African Americans and their cultural roots, Europeans began categorizing them by their hair.[12] Those with "African hair" were considered unattractive and inferior to their European counterparts.[13] Insisting on the use of wigs instead of their natural hair, often referring to it as "wool" in a derogatory manner.[14] This would continue into the 20th century when straight hair became a socially acceptable texture for the working class.[15] These standards led to discrimination against African American women by those who did not conform.[16]

The Civil Rights Act of 1964 brought hope that there would be a change in the discrimination that people of color were experiencing at the hands of other American citizens. This act was seen as a major landmark for the fight to remedy the widespread discrimination based on race, color, religion, and national origin.[17] *Jenkins v. Blue Cross Mutual Hospital Insurance* made the law loosely applicable to hair discrimination.[18] Title VII of the Civil Rights Act could now be used to protect "Afros" in cases of racial discrimination.[19] However, this win was short-lived because federal courts around the country have maintained the stance that hair discrimination was excluded from Title VII protection.[20]

B. Hair Discrimination in The Entertainment Industry

Hair discrimination in the entertainment industry has been a long-standing problem; actresses have "all cried in [their] trailers" because of the lack of support for African American women.[21] Those who

11. *Id.*

12. Brenda A. Randle, *I Am Not My Hair: African American Women and Their Struggle with Embracing Natural Hair!*, 22 JEAN AIT BELKHIR, RACE, GENDER & CLASS J. 114, 188 (2015).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 119.

17. PLC LABOR & EMPLOYMENT, TITLE VII HISTORY (2013), Westlaw.

18. Jenkins v. Blue Cross Mut. Hosp. Ins., 528 F.2d 164, 165 (7th Cir. 1976).

19. *Id.*

20. PLC LABOR & EMPLOYMENT, *supra* note 17.

21. Russell K. Robinson, *Casting and Caste-ing: Reconciling Artistic Freedom and Antidiscrimination Norms*, 95 CALIF. L. REV. 1, 17 (2007) ("These general employer preferences incentivize people of color to discard or mute cultural aspects of their identity, such as hairstyles and accents that might reveal divergence from a white norm . . . .").

pursue careers in film and television are subjected to identity harms at the hands of the "stereotypical or marginal depictions" of women of color.[22] These problems manifest primarily through the "not too black" and "black up" phenomenon.[23]

UCLA Law Professors Devin Carbado and UVA Law Professor Mitu Gulati assert that the entertainment industry has replicated many of the identity harms of the American workplace.[24] African Americans who assimilate and portray a "not too black" identity is considered "racially palatable."[25] In other words, African American actresses willing to mute characteristics commonly associated with their race, such as their hair texture or protective styles, may receive additional opportunities.[26] However, when actresses are unwilling to portray a "not too black" identity, adverse employment actions may follow.[27] For example, actress Gabrielle Union was pressured to leave NBC's America's Got Talent after being told several times that the hairstyles she wore were "too black."[28]

Additionally, "Black Up" is the request that actors portray stereotypical characteristics in many non-white roles within the film and television spaces instead of muting their culture.[29] A prime example of this phenomenon comes from the character Annalise Keating, played by Viola Davis, in ABC's "How to Get Away with Murder."[30] Mrs. Keating was a renowned attorney with substandard morals, known for her ability to get desired results for each of her clients no matter what.[31] To show her down on her luck and "rough," producers asked that she remove her wig to expose her cornrows.[32] Although some may argue

22. *Id.*

23. *Id.*

24. *See* Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1290 (2000).

25. Robinson, *supra* note 21 at 17.

26. *Id.*

27. *See* Neha Prakash, *Gabrielle Union Speaks Out Amid America's Got Talent Controversy*, GLAMOUR (Dec. 1, 2019), https://www.glamour.com/story/gabrielle-union-americas-got-talent.

28. *Id.*

29. Robinson, *supra* note 21 at 17 ("These general employer preferences incentivize people of color to discard or mute cultural aspects of their identity, such as hairstyles and accents that might reveal divergence from a white norm . . . .").

30. Shamar Toms-Anthony, *Annalise Keating's Portrayal as a Black Attorney is the Real Scandal: Examining How the Use of Stereotypical Depictions of Black Women can Lead to the Formation of Implicit Biases*, 27 UCLA NAT'L BLACK LAW J. 59, 59 (2018).

31. *See id.* at 72.

32. *See id.* at 73.

that this is a fantastic moment for the representation of Black Women in television, this is a prime example of the "Black Up" phenomenon.[33]

Actors in these situations are often forced to deal with the identity harms these phenomena cause; if they do not, economic harms may be heightened.[34] Accepting roles that actively portray stereotypes prevents economic harm but creates a lasting effect on the actresses.[35]

C. Title VII Unwrapped

Title VII of the Civil Rights Act of 1964 banned employment discrimination based on race, color, religion, sex, and national origin.[36] Title VII was passed as part of the Civil Rights Act of 1964, first proposed by President John F. Kennedy but was signed into law by his successor, President Lyndon B. Johnson, after the assassination of President Kennedy.[37] The CRA of 1964 was considered the first significant civil rights law since reconstruction by many.[38] It hosts a myriad of different coverages, protections, and remedies for individuals.[39]

Today, Title VII is arguably the most important employment protection for the working class in the United States.[40] Title VII applies to most private employees, state/local governments, federal government agencies, employment agencies, and labor unions with 15 or more employees.[41] This encompasses a large majority of organizations in the country.[42]

Title VII has provided a myriad of coverages, protections, and remedies to many working Americans; however, statistics show that many people are still experiencing discrimination in the workplace.[43]

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33. Robinson, *supra* note 21 at 17.
34. *Id.*
35. *Id.* at 27.
36. PLC Labor & Employment, *supra* note 17.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. PLC Labor & Employment, *supra* note 17.
43. Scott Horton, *Horton Law LLC, 2021 EEOC charges show decline in most categories*, JD *supra* (Mar. 31, 2022), https://www.jdsupra.com/legalnews/2021-eeoc-charges-show-decline-in-most-2908690/ (last visited May 24, 2022). The latest annual data refer to the 12-month fiscal year ending September 30, 2021. The EEOC received 61,331 charges of employment discrimination during this period. The charges span several federal laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Equal Pay Act, and the Genetic Information Non-Discrimination Act (GINA). To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief

In 2021, 20,908 complaints were filed with the Employment Opportunity Commission for race discrimination.[44] Nearly 34.1% of the total complaints were filed with the commission that year.[45] Additionally, a study by the Gallup Center for Black voices shows that 23% of black women report experiencing workplace discrimination against their race and ethnicity.[46] These statistics show that African Americans experience workplace discrimination at higher rates than many racial and ethnic groups.[47] While Title VII makes discrimination based on race illegal under federal law, about twenty-five percent of black employees report experiencing it over the past twelve months.[48] In a 2019 survey of women, it was found that Black women were 80 percent more likely to feel the need to "alter their hair" to fit in at their workplace.[49] Statistics like this help support the idea that hair discrimination is one of the ways that discrimination still surfaces in the workplace.[50]

The Civil Rights Act of 1964 prohibits discrimination in employment based on race, color, sex, national origin, and religion.[51] However, Title VII does not directly prohibit discrimination on hair texture or hairstyles.[52] Under the current version of Title VII of the Civil Rights

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against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

44. *Id.*

45. *Id.*

46. Camille Lloyd, *One in Four Black Workers Report Discrimination at Work*, GALLUP (Jan. 12, 2021), https://news.gallup.com/poll/328394/one-four-black-workers-report-discrimination-work.aspx. These findings, derived from a large-scale Gallup web survey conducted in English Nov. 6-Dec. 1, 2020, reveal that workplace discrimination reported by Black and Hispanic workers exceeds reports of such experiences among White employees (15%) by a substantial margin. More than 8,000 respondents were surveyed, including more than 3,500 White workers, more than 2,000 Black workers and more than 2,000 Hispanic workers. Experiences of workplace discrimination are similar between Black men (27%) and Black women (23%), as well as between Black employees in households earning less than $90,000 annually (24%) and those in households earning $90,000 or more (25%).

47. *Id.*

48. *Id.*

49. Toella Pliakas, *Opinion — Yes, we need a law protecting black people against hair discrimination*, WASHINGTON POST (Apr. 11, 2022, 1:59 PM), https://www.washingtonpost.com/opinions/2022/04/11/crown-act-protections-black-hair-discrimination. "According to the results of a 2019 survey of over 2,000 women, Black women were 80 percent more likely than non-Black women to say they'd had to alter their hair to fit in at work. The same study found that Black women whose hair was natural or braided were consistently rated as "less ready" for job performance. These biases can threaten the livelihoods of Black people, who have reported being passed up for promotions or even fired because of their hair."

50. *Id.*

51. Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2 (2010).

52. *Id.*

Act, the following actions are unlawful employment practices by an employer:

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual concerning his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[53]

To establish a prima facie case in an employment discrimination action, the plaintiff must be able to satisfy the following elements: (1) that they are a member of a protected class; (2) that they were subjected to an adverse employment action; (3) that the employer treated similarly situated employees outside of the protected class more favorably; and (4) that they were qualified to do the job at hand.[54] To succeed in a Title VII claim, the plaintiff must prove she is a member of a protected class.[55] Protected classes are limited to race, color, sex, religion, and national origin.[56]

Some attempt to use a disparate impact approach to tackle hair discrimination in the form of grooming policies.[57] Although these grooming practices appear to be neutral, they have a disproportionate impact on African Americans.[58] A disparate impact claim must be supported by an allegation that allows the court to draw a reasonable inference that the employer is liable for the misconduct; simple allegations that are consistent with the employer's liability will not suffice.[59] For example, in *Carswell v. Peachford Hospital*, an African American woman was fired for violating the company grooming standards.[60] The grooming standards prevented her from wearing beads at the end of

53. *Id.*

54. Tressler v. AMTRAK, 819 F. Supp. 2d 1, 5 (D.D.C. 2011).

55. Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2 (2010).

56. *Id.*

57. Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis under Title VII*, 98 GEO. L.J. 1079, 1082-83 (2010). ("Antidiscrimination law imposes just such a requirement on black women by upholding implicit demands that they straighten their hair and then maintain that hairstyle through various processes. This case law not only reinforces gender expectations about hair length, but also is based upon an invisible white and gendered norm that presupposes that black women can wear their hair straight and hanging down-in other words, fit within the gendered ideal for women.").

58. *Id.*

59. Carswell v. Peachford Hosp., No. C80-222A., 1981 U.S. Dist. LEXIS 14562 (N.D. Ga. May 26, 1981).

60. *Id.* at 4.

her cornrows.[61] She argued that the standards had a disparate impact against African Americans, but the court disagreed.[62] The court held that the grooming standards were valid and focused on mutable characteristics.[63] *Carswell v. Peachford Hospital* shows the disparate impact approach to tackling grooming standards.[64] Courts have held that "an even-handed application of reasonable grooming standards" does not constitute racial discrimination.[65] Since grooming standards are typically applied to all employees, they are upheld, despite their effect on a particular group.[66]

However, in most hair-style discrimination cases, the issue becomes whether the discrimination the employee experienced was a result of being a part of a protected class.[67] Some courts have recognized that hair discrimination can constitute racial discrimination, while others do not.[68] *Jenkins v. Blue Cross Mutual Hospital Insurance* applied the law to hair discrimination.[69] An employee filed suit individually and on behalf of a class, alleging that her employer denied her promotions and terminated her because of her Afro hairstyle, which had an "arguable connection to race by the allegation of hair discrimination."[70] The court held that a charge alleging discrimination derived from "grooming requirements which applied particularly to black persons constituted a sufficient charge of racial discrimination when accompanied by substantially the same general allegation of racial discrimination as here."[71]

The courts would further limit the law's applicability in EEOC v. Catastrophe Mgmt.[72] Sols. Chastity Jones, a black woman, refused to remove her dreadlocks when CMS informed her that they do not hire anyone who uses an "excessive hairstyle," a category that includes dreadlocks.[73] CMS rescinded her employment offer upon her refusal,

61. *Id.* at 3.
62. *Id.* at 6-7.
63. *Id.* at 5-6.
64. See Carswell, 1981 U.S. Dist. LEXIS 14562.
65. *Id.* at 4.
66. *Id.* at 7-8.
67. Jenkins v. Blue Cross Mut. Hosp. Ins., Inc., 538 F.2d 164 (7th Cir. 1976).
68. *Id.*
69. *Id.*
70. *See id.* at 165.
71. *Id.* at 168.
72. EEOC v. Catastrophe Mgmt. Sols., 837 F.3d 1156 (11th Cir. 2016), withdrawn and revised by EEOC v. Catastrophe Mgmt. Sols., 852 F.3d 1018 (11th Cir. 2016).
73. *Id.* at 1021-22.

and the EEOC sued on her behalf.[74] The EEOC's lawsuit attempted the expand the definition of "race" in Title VII to "include anything purportedly associated with the culture of an unprotected group.[75] The court dismissed the case on the premise that the complaint failed to allege that "dreadlocks are an immutable characteristic of black individuals."[76] Additionally, the court stated, "under our precedent, banning dreadlocks in the workplace under a race-neutral grooming policy – without more – does not constitute intentional race-based discrimination."[77]

Today, courts have adopted an immutability standard to Title VII categories of protections.[78] Immutability is the characteristics of an individual, not their culture.[79] Any hairstyle that can be changed is considered mutable and is not eligible for Title VII protection.[80] Despite the argument that dreadlocks grow naturally for African American descent, the court still fails to recognize hairstyles of this nature as immutable.[81]Additionally, the Supreme Court has yet to establish the connection between hair type or style and race, but legislation like the CROWN Act seeks to change that.[82]

D. The Origin of the Crown Act

California senator Holly Mitchell made history on June 27, 2019, when the bill she introduced passed the state assembly unanimously and was signed into law by Governor Gavin Newsom.[83] This legislation, titled "Create a Respectful and Open Workplace for Natural Hair" or CROWN Act, made it illegal to discriminate against an individual based on their natural hairstyles.[84] The act amends Section 212.1 (b),(c) of the Education Code is amended to read: "Race" is inclusive of traits historically associated with race, including, but not

74. *Id.* at 1020.

75. EEOC v. Catastrophe Mgmt. Sols., 852 F.3d 1018 (11th Cir. 2016), reh'g denied, 876 F.3d 1273, 1274 (11th Cir. 2017).

76. *Id.* at 1023.

77. *Id.* 1274.

78. Kate E. Britt, Uneasy Lies The Head: Tracking a Loophole in Racial Discrimination Law, MICH. B. J 100, no. 1 46, 47 (2022).

79. Rogers v. Am. Airlines, Inc., 527 F. Supp. 229, 232 (S.D.N.Y. 1981).

80. *Id.* at 233.

81. *Id.* at 231; *see also* EEOC v. Catastrophe, 876 F.3d at 1288.

82. Rogers, 527 F. Supp. at 232.

83. S.B. 188, 2019 Leg., Reg. Sess. (Cal. 2019).

84. *Id.*

limited to, hair texture and protective styles."[85] "Protective hairstyles" include, but are not limited to, such hairstyles as braids, locks, and twists."[86]

Since the legislation passed in California, 19 other states have passed the CROWN Act, including New York and New Mexico.[87] Additionally, in September 2020, the CROWN Act was passed in the United States House of Representatives but was never passed in the Senate. This put the bill on pause until it was reintroduced in March 2021.[88]

On March 16, 2022, the "Create a Respectful and Open Workplace for Natural Hair" updated version of the act passed the United States House of Representatives.[89] Section six of the act proposes a remedy to the long-standing tradition of discrimination based on hair texture and protective styles.[90] Specifically stating that the law would make it an illegal employment practice "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."[91]

When the act passed in the House of Representatives, Congresswoman Ayanna Pressley provided content about why the act is so pivotal to remedying constant discrimination against people of color:

> For centuries, Black folks' hair—particularly that of Black women—has been politicized and weaponized to discriminate and reject the dignity and beauty of our people. Natural hair is beautiful hair, and no amount of racism or ignorance from the other side of the aisle will stop the power of our movement, said Rep. Pressley. By passing the CROWN Act out of the House today, we're taking a bold step toward ending race-based hair discrimination and affirming the right for all of us to show up in the world as our full and authentic selves, no matter where we work or go to school. I'm so grateful to Reps.[92]

85. CAL. EDUC. CODE § 212.1 (Deering, Lexis Advance through Chapter 425 of the 2022 Regular Session).

86. *Id.*

87. *About*, THE CROWN ACT, https://www.thecrownact.com/about (last visited May 21, 2022).

88. *Id.*

89. Creating a Respectful and Open World for Natural Hair Act, H.R. 2116, 117th Cong. (2022).

90. *Id.*

91. *Id.*

92. Rep. Ayanna Pressley, *Rep. Ayanna Pressley Calls for House Passage of the CROWN Act to Ban Hair Discrimination*, YOUTUBE (Mar. 18, 2022), https://youtu.be/TNuCTT_nAUg.

Her words describe the harm hair discrimination has caused many African American women across the country.[93] She reaffirms that the act's passing was a decisive step toward resolving the long-standing tradition.[94]

However, the politicization of the CROWN Act and its mission has become a barrier to the bill's approval.[95] Some lawmakers argue that the Civil Rights Act of 1964 provides adequate protection against racial discrimination.[96] Passing the CROWN Act would create redundant legislation when the court should focus on more significant issues like "gas prices" or "inflation."[97] The critics of the act feel that there are "things that matter to the American people" and that hair discrimination is not one of them.[98]

93. *Id.*

94. *Id.*

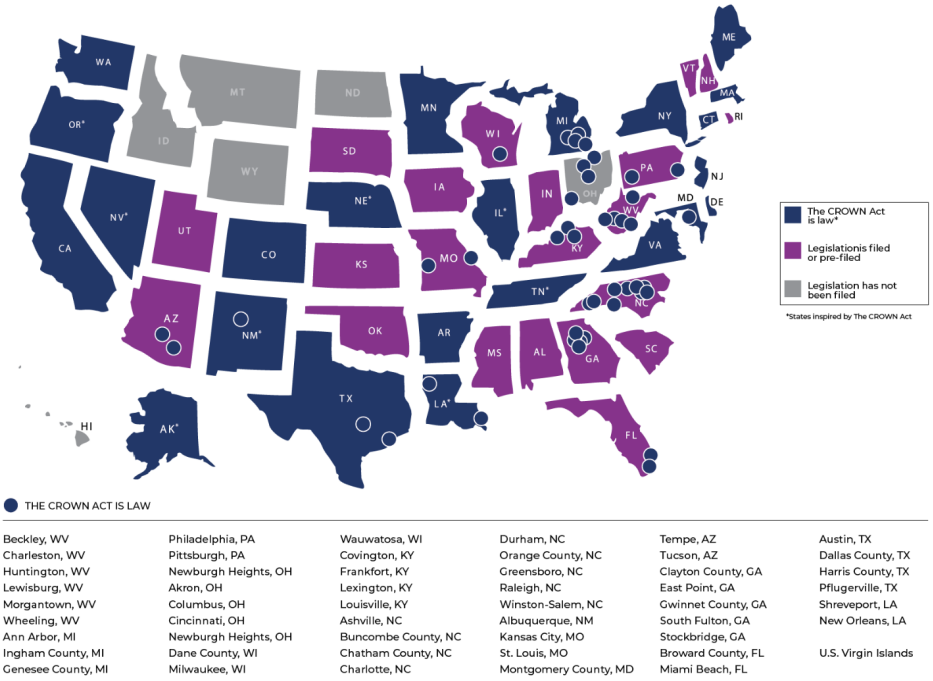
95. Toella Pliakas, *Yes, We Need a Law Protecting Black People Against Hair Discrimination*, WASH. POST (April 11, 2022), https://www.washingtonpost.com/opinions/2022/04/11/crown-act-protections-black-hair-discrimination.

96. *Id.*

97. *Id.*

98. *Id.*

II. Analysis: How the Crown Act Will Provide Additional Protections for African American Women In The Entertainment Industry



Beckley, WV	Philadelphia, PA	Wauwatosa, WI	Durham, NC	Tempe, AZ	Austin, TX
Charleston, WV	Pittsburgh, PA	Covington, KY	Orange County, NC	Tucson, AZ	Dallas County, TX
Huntington, WV	Newburgh Heights, OH	Frankfort, KY	Greensboro, NC	Clayton County, GA	Harris County, TX
Lewisburg, WV	Akron, OH	Lexington, KY	Raleigh, NC	East Point, GA	Pflugerville, TX
Morgantown, WV	Columbus, OH	Louisville, KY	Winston-Salem, NC	Gwinnet County, GA	Shreveport, LA
Wheeling, WV	Cincinnati, OH	Ashville, NC	Albuquerque, NM	South Fulton, GA	New Orleans, LA
Ann Arbor, MI	Newburgh Heights, OH	Buncombe County, NC	Kansas City, MO	Stockbridge, GA	
Ingham County, MI	Dane County, WI	Chatham County, NC	St. Louis, MO	Broward County, FL	U.S. Virgin Islands
Genesee County, MI	Milwaukee, WI	Charlotte, NC	Montgomery County, MD	Miami Beach, FL	

Source: www.thecrownact.dom/about[99]

A. New Growth: How the Crown Act Can Remedy Lapses in The Protection Of Title VII Of The Civil Rights Act Of 1964.

The "Creating a Respectful and Open Workplace for Natural Hair" Act can remedy the lapses in Title VII protection for African American women against hair discrimination in the entertainment industry. Title VII of the Civil Rights Act protects the following employment practices:

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual concerning his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise

99. 22 States Down, 28 to Go (illustration) in *About*, THECROWNACT.COM (last visited Jun. 28, 2023), https://www.thecrownact.com/about.

> adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[100]

To establish a prima facie case in an employment discrimination case, the plaintiff must be able to satisfy the following elements: (1) that they are a member of a protected class; (2) that they were subjected to an adverse employment action; (3) that the employer treated similarly situated employees outside of the protected class more favorably; and (4) that they were qualified to do the job at hand.[101] When analyzing hair discrimination cases, the primary issue is establishing whether the employee experienced discrimination resulted from their membership to a protected class.[102] The United States does not recognize a connection between hair texture/ protective styles and race.[103] Without formal recognition, African American women may continue to be subjected to hair discrimination in the workplace.[104]

For example, if an employer creates a grooming policy that states that "all employees with hair that is longer than the collar on their shirt must wear their hair straightened during the shift."[105] On its face, the policy does not directly target African American women.[106] Even if the policy was created to limit the number of black employees, the plaintiff is unlikely to succeed without more evidence of the employer's intent.[107] Further, even if the plaintiff challenged the policy as having a disparate impact, the defendant still may prevail on African Americans if the hairstyle is considered mutable.[108] We see this in cases such as *McNeil v. Greyhound Lines, Inc.*, where the plaintiff wore his dreadlocks as a bus driver but was terminated because of the grooming policy the company adopted.[109] He attempted to bring a disparate impact race discrimination claim; however, the court dismissed that claim.[110] The court dismissed this claim because the plaintiff could not prove that the policy affected African American workers in "substantially disproportionate numbers" compared to employees from

100. Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e-2.
101. Tressler v. AMTRAK, 819 F. Supp. 2d 1, 5 (D.D.C. 2011).
102. Jenkins v. Blue Cross Mut. Hosp. Ins., Inc., 538 F.2d 164, 165 (7th Cir. 1976).
103. *Id.*
104. *Id.*
105. Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEORGETOWN LAW JOURNAL 1079, 1080 (2010).
106. *Id.* at 1082-83.
107. *Id.*
108. McNeil v. Greyhound Lines, Inc., 982 F. Supp. 2d 447, 450 (E.D. Pa. 2013).
109. *Id.* at 449.
110. *Id.* at 451.

other races.[111] Additionally, dreadlocks are mutable because hair does not naturally grow into locks without manipulation.[112] Since the act does not recognize natural hair and protective styles as a characteristic directly associated with race; the grooming policy will likely be upheld, as we see here.[113]

Here, the CROWN Act could establish the necessary connection between hair texture, protective styles, and race.[114] Title VII makes it an illegal employment practice "to fail or refuse to hire or to discharge any individual, or to otherwise to discriminate against any individual concerning his compensation, terms, conditions, or privileges of employment because of such individual's race."[115] To establish a prima facie employment discrimination case under the legislation, you must prove that you are a member of a protected class.[116] However, as the legislation stands today, the connection between discrimination based on hair texture and protective styles and race discrimination has not been established.[117] The latest edition of the federal CROWN Act remedies this by prohibiting employers from failing or refuse to hire or discharge any individual, or otherwise to discriminate against an individual, based on hair textures or hairstyles that are commonly associated with a particular race (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).[118]

The CROWN Act would have provided the necessary protections to actresses like Gabrielle Union, who left NBC's America's Got Talent in 2019 after alleging she was subjected to hair discrimination.[119] Union asserted that she "received excessive notes on [her] physical appearance, and that the show's producers told her that her hairstyles were 'too black' for the show."[120] The CROWN Act makes it an illegal practice for an employer to discriminate against an individual based on hair textures or hairstyles that are commonly associated

111. *Id.*
112. *Id.*
113. *Id.*
114. S.B. 188, 2019 Leg., Reg. Sess. (Cal. 2019).
115. Civil Rights Act of 1964 § 703; 42 U.S.C. § 2000e-2 (2010).
116. Tressler v. AMTRAK, 819 F. Supp. 2d 1, 5 (D.D.C. 2011).
117. McNeil v. Greyhound Lines, Inc., 982 F. Supp. 2d 447, 451 (E.D. Pa. 2013).
118. S.B. 188, 2019 Leg., Reg. Sess. (Cal. 2019).
119. Neha Prakash, *Gabrielle Union Speaks Out Amid America's Got Talent Controversy*, GLAMOUR (Dec. 1, 2019), https://www.glamour.com/story/gabrielle-union-americas-got-talent.
120. *Id.*

with their particular race.[121] Title VII makes it an illegal employment practice "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual concerning his compensation, terms, conditions, or privileges of employment, because of such individual's race."[122]

Here, the actions of the producers toward Mrs. Union would be deemed illegal when analyzed under the CROWN Act.[123] By discriminating against her based on hairstyles commonly associated with her race, like the braids pictured above, the producers directly violate the Act.[124] However, when you analyze the situation under a Title VII lens, the actions of the producers would not have been illegal.[125] Without recognizing the connection between hair texture/protective styles and race, the producers can set "grooming standards" that create discriminatory practices.[126] Since the hairstyles Mrs. Union typically wore on set were things that she could change; they would be considered mutable by definition. Since the "grooming standards" did not attempt to regulate immutable characteristics and were applied to all employees equally, they would like to be considered valid by the court.

B. Dead Ends: What Is the Problem With the CROWN Act? Why Has It Had Trouble Being Passed Federally?

The most prominent critique of the CROWN Act is that the issue of hair discrimination is not major; states have the authority to draft legislation as they see fit.[127] Representatives feel that since acts like the CROWN Act do not benefit the majority population, they are unnecessary.[128] For example, during a legislative session to pass the 2022 version of the "Creating a Respectful and Open World for Natural Hair" Act, Representative Jim Jordan of Ohio said, "How about a world where gas prices aren't five dollars a gallon," while discussing the act.[129] Representative Jordan continued by asserting that hair discrim-

121. Creating a Respectful and Open World for Natural Hair Act of 2022, H.R. 2116, 117th Cong. § 6 (2022).

122. Civil Rights Act of 1964 § 703; 42 U.S.C. § 2000e et seq. (1964).

123. H.R. 2116.

124. *Id.*

125. Civil Rights Act of 1964 § 703; 42 U.S.C. § 2000e et seq. (1964).

126. Civil Rights Act of 1964 § 703; 42 U.S.C. § 2000e et seq. (1964).

127. *See* Britney Pitts, *"Uneasy Lies the Head that Wears a Crown": A Critical Race Analysis of the CROWN Act*, 52 J. BLACK STUDIES 716, 722 (2021).

128. Erin Brady, *Rep. Jim Jordan Calls CROWN Act a Distraction From Issues People Care About*, NEWSWEEK (Mar. 18, 2022), https://www.newsweek.com/rep-jim-jordan-calls-crown-act-distraction-issues-people-care-about-1689535.

129. *Id.*

ination is not a prominent issue that Americans should care about; instead, they should focus on more important things like gas prices and the rate of inflation.[130] Meanwhile, Texas Representative Al Green shared his sentiment that hair discrimination against African Americans is a "kitchen table issue in Black households."[131]

Additionally, some Americans feel that the CROWN Act will shift the level of competition in the workforce by creating barriers in the pathway to power at corporations for non-black employees.[132] Eliminating employment practices, like grooming guidelines, that disparately impact African American women will increase the competition for executive positions.[133] These grooming guidelines force those women to live with "the psycho-emotional demands. . . to anticipate. . . and hopefully dismiss attacks on their aesthetics."[134] These attacks are prominent in the entertainment industry within the "not too black" and "black up" phenomenon.[135] Both of these phenomena subject African American women to attacks on their aesthetics.[136] The "psycho-emotional demands" are the reason actresses like Laci Mosley asserted that "[they've] all cried in [their] trailers."[137] By failing to recognize the connection between hair texture, protective styles, and race by passing the CROWN Act, you eliminate the avenues to legal discrimination that the current version of Title VII legislation creates.[138]

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130. *Id.*

131. Janelle Griffith, *House passes CROWN Act Banning discrimination against Black hairstyles*, CNBC (Mar. 18, 2022), https://www.cnbc.com/2022/03/18/house-passes-crown-act-banning-discrimination-against-black-hairstyles.html.

132. J. Roberts, *Update: CROWN Act 'dethroned' in West Virginia, bill ban-ning hair discrimination in the schools and workplace*, WVVA (2020), https://wvva.com/2020/02/27/beckley-student-motivation-for-crown-act-bill-banning-hair- discrimination-in-schools-and-workplace/ (last visited Apr 19, 2022).

133. Pitts, *supra* note 130, at 716.

134. *Id.*

135. Russell K. Robinson, *Casting and Caste-ing: Reconciling Artistic Freedom and Antidiscrimination Norms*, 95 CALI. L.J. 1, 18 (2007).

136. *Id.* at 48.

137. *See* Sharareh Drury, *Hollywood's Black Hair Problem on Set: We've All Cried in Our Trailers"*, HOLLYWOOD REP. (Feb. 7, 2020), https://www.hollywoodreporter.com/movies/movie-news/hollywood-s-black-hair-problem-set-we-ve-all-cried-trailers-1274876/.

138. Christine Kennedy, *The Strained Relationship Between Hair Discrimination and Title VII Litigation and Why It Is Time To Use a Different Solution*, 35 ND J. L. ETHICS & PUB. POL'Y 402, 411 (2021).

Conclusion – The Crown Act Is the Catalyst For Necessary Change In The Entertainment Industry, specifically Television, and Film

As it stands today, Title VII of the Civil Rights Act of 1964 does not provide the necessary protections to prevent hair discrimination against African American women in television and film.[139] By failing to recognize the connection between hair texture, protective styles, and race, you allow the opportunity to perpetuate discrimination.[140] Twenty-three percent of African American women in the United States report experiencing workplace discrimination based on their race and ethnicity.[141] The same applies to the entertainment industry. Celebrities like Shonda Rhimes, Gabrielle Union, and Laci Mosley have spoken out about the horror stories associated with their hair in Hollywood.[142] Commentary about these situations has also come in the form of film with a short story called "Hair Love" directed by Matthew A. Cherry.[143] If we continue to rely solely on the protections provided by Title VII of the Civil Rights Act of 1964, the discrimination they are working to bring light to will continue throughout the entertainment industry. By adopting the "Creating a Respectful and Open World for Natural Hair" Act, the government can do its part in fighting the ongoing discrimination that African American women experience in Hollywood because of their hair textures and protective styles.[144]

For these reasons, I argue for the federal adoption of the "Creating a Respectful and Open World for Natural Hair" act of 2022. A federal law expressly prohibiting discrimination based on hair texture or protective styles will provide the necessary protections to protect African American actresses in film and television. These actresses are constantly subjected to identity harm and economic losses at the hands of requests from producers and directors to change their hairstyles to fit the industry's narrative. Passing this legislation will allow them to perform their roles being subjected to these requests.

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139. *Id.* at 403.

140. *Id.* at 417.

141. Camille Lloyd, *One in Four Black Workers Report Discrimination at Work*, GALLUP (Jan. 12, 2022), https://news.gallup.com/poll/328394/one-four-black-workers-report-discrimination-work.aspx.

142. Drury, *supra* note 140.

143. *See* Victoria Uwumarogie, *Matthew A. Cherry On Dove's New Kids Collection Inspired By 'Hair Love' And The Film's Continued Impact*, ESSENCE (Nov. 11, 2021), https://www.essence.com/lifestyle/dove-hair-love/.

144. Pitts, *supra* note 130.