February 24, 2020

Re: Support for HB-1048

Members of the Committee,

Thank you for providing the Sam Cary African-American Bar Association this opportunity to support House Bill 1048, the *Creating a Respectful and Open World for Natural Hair Act (CROWN) of 2020.*

HB1048 specifies that, for purposes of Colorado's anti-discrimination laws — in the context of public education, employment practices, housing, public accommodations, and advertising — protections against discrimination on the basis of one's race would be expanded to include those traits historically associated with race, such as hair texture, hair type, and hair styles.

As we all know, there are existing State and Federal laws that designate "race" as a protected class. The Colorado Anti-Discrimination Act (CADA), enforced by our Department of Regulatory Agencies (DORA) through its Colorado Civil Rights Division (CCRD), handles discrimination complaints filed by members of protected classes in matters involving employment, housing, and places of public accommodation. Likewise, at the federal level the Civil Rights Act of 1964 also prohibits employer discrimination, retaliation, and harassment against applicants and employees on the basis of race.[1]

However, **these laws don't go far enough**, as the category of "race" is most often limited to the color of one's skin while **neglecting to consider the cultural particulars that also define one's race.** Hair is one such identifier. Black hair is unique; it is beautiful; but it is also very fragile.

HAIR, HEALTH & HERITAGE

Hair loss among Black females, including the very young, is painfully common. In fact, a 2016 study on nearly 5,500 Black women resulted in a staggering 48% reporting hair loss on the crown of the scalp.[2]

Furthermore, straightening the hair on a regular basis, with dangerously toxic chemicals, is a way of life for millions of Black women. Yet, according to the National Institutes of Health: *"Women who used hair straighteners at least every 5 to 8 weeks were about 30% more likely to develop breast cancer."*[3]

The unfortunate reality is that. historically. Black people — particularly women — have felt obligated to manipulate their hair, chemically or otherwise, in an effort to "fit in" to an artificial societal standard of "acceptable appearance." Allowing Black hair to exist in its natural state, such as an afro; or adopting a protective hair style like cornrows, braids, or locs is not only a way to **avoid hair damage and serious health risks** but it is also a beautiful expression of remaining connected to Black heritage.

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[1] Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e and following).

[2] https://www.headcovers.com/resources/hair-loss/hair-loss-african-american-black-women/ February 2020.

[3] https://www.nih.gov/news-events/news-releases/permanent-hair-dye-straighteners-may-increase-breast-cancer-risk (December 2019).

A Native American Indian should proudly be able to wear tribal braids; just as red-headed people of Irish decent can proudly display their locks; and Black people should also be unrestricted in presenting themselves with hair that is central to their cultural identity.

This expression should happen without fear of gaining or keeping a job; without fear of rejection from attending a school; or fear of not being provided admission to or service at a hotel, restaurant, or sports venue. **Black hair is not a threat and should not be treated as a deviation from any norm.** That sort of discrimination harkens to an ugly period in our country's history and, frankly, Colorado is better than that.

NECESSITY OF HB1048

Hair does not determine skill or qualification for a job; it is not an indicator of whether someone is fit to be a tenant or neighbor or student or customer.

This legislation is necessary as there is a disturbing trend across the nation involving incidents of hair discrimination that have no place in a 21st century society. The passing of HB1048 in Colorado would serve as a preempting mechanism to deter this behavior.

- In Florida, a 6-year old child excited for his first day of first grade was literally turned away at the door of the school while the boy's father was told the child couldn't attend until he cut his dreadlocks.
- In New York, a young woman was fired from a well-known clothing store after being told her braids were "too urban."
- In Alabama, a young woman's job offer as a phone representative *(a position in which she would have had no in-person customer contact)* was rescinded after she refused to cut her locs.
- In Texas, a high school senior was recently told by school administrators that he is not allowed in school and cannot walk at his upcoming graduation unless he cuts his dreadlocks.

The current State and Federal laws are too general and, therefore, do not help in addressing hair-based discrimination. As more incidents arise, so does the need for the specificity and expanded protection provided by HB1048.

<u>Cases illustrating lack of protection under federal anti-discrimination law for hair-based discrimination:</u>

Eatman v. United Parcel Service, 194 F.Supp.2d 256 (S.D.N.Y) (Employer's appearance policy which required all of its drivers with "unconventional" hairstyles, including dreadlocks, to wear hats, was not facially discriminatory against African-Americans on the basis of a characteristic unique to African-Americans; African-Americans were not the only persons who locked their hair, and there was no evidence that employer differentiated between locked hair on African-Americans and "imitation" locked hair on non-African-Americans. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.)

McNeil v. Greyhound Lines, Inc., 982 F.Supp.2d 447 (E.D. Penn. 2013) (In his Complaint, McNeil fails to allege either a "racially unequal result" in Greyhound's employment patterns or a "causal connection" between Greyhound's grooming policy and that result. The Complaint contains no allegations that Greyhound hires, promotes, or fires African American employees in substantially disproportionate numbers compared to employees from other racial groups or that Greyhound's grooming policy caused such a "racially unequal result." McNeil alleges only that the policy "prevents employees of Defendant Greyhound from wearing ethnically African–American hairstyles." Compl. ¶ 121. Accordingly, I will dismiss McNeil's disparate impact race discrimination claims without prejudice to amend his complaint. In summary, I will grant Defendant Greyhound's motion to dismiss with respect to McNeil's Title VII and PHRA disparate impact discrimination claims with leave for McNeil to amend only his disparate impact race discrimination claims. I will deny the motion to dismiss with respect to McNeil's Title VII and PHRA disparate treatment gender and race discrimination claims and retaliation claim without prejudice to raise the same issues at a later stage in the litigation.)

Pitts v. Wild Adventures, Inc., 2008 WL 1899306 (M.C. Ga 2008) (The former Fifth Circuit concluded that Title VII's objective was to achieve equal employment opportunities for members of protected groups, and "[e]qual employment opportunity may be secured only when employers are barred from discriminating on the basis of immutable characteristics, such as race and national origin ." Id. at 1091. Hair length is not an immutable characteristic, and therefore, the court held that the employer's grooming policy did not constitute sex discrimination. Id. While the court recognized that Title VII also prohibited employers from discriminating on the basis of certain fundamental rights, the court concluded that a policy prohibiting male employees from wearing long hair does not implicate a fundamental right. Id. Such a policy relates "more closely to the employer's choice of how to run his business than to equality of employment opportunity." Id.)

Campbell v. Alabama Dept. of Correction, 2013 WL 2248086 (N.D. Ala 2013) ("Grooming policies are typically outside the scope of federal employment discrimination statutes because they do not discriminate on the basis of immutable characteristics." Pitts v. Wild Adventures, Inc., 2008 WL 1899306 * 5 (M.D.Ga.2008) (citing Willingham v. Macon Tel. Pub. Co., 507 F.2d 1084 (5th Cir.1975)). A dreadlock hairstyle, like hair length, is not an immutable characteristic. Therefore, policies allowing such hairstyles for one gender but not another are not actionable under federal anti-discrimination laws. Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir.1998).)

NATIONAL ENACTMENT

The CROWN Act has become state law in New Jersey, California, and New York as well as local law in counties of Maryland and Ohio. And there are currently 27 states, including Colorado, which have introduced this important legislation.

IMPACT ON INTERNAL EMPLOYER PRACTICES

With respect to any concerns of whether passing HB1048 would affect grooming policies imposed by employers, the answer is No. Those internal policies could still exist, as long as they're applied in a non-discriminatory manner. Furthermore, HB1048 would not remove the burden of proof for anyone filing a claim of hair discrimination. They would still have to demonstrate they had suffered race-based disparate treatment or disparate impact.

CONCLUSION

We implore this Committee to vote in favor of HB1048, as the expanded protections are essential to deterring discriminations based on personal appearance.

Most Respectfully,

SAM CARY BAR ASSOCIATION

CWBA
COLORADO WOMEN'S BAR ASSOCIATION
Advancing Women