



STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

March 6, 2020

TO: The Honorable Shane E. Pendergrass
Chair, Health and Government Operations Committee

FROM: Office of the Attorney General

RE: House Bill 1444: Discrimination – Definition of Race – Hair Texture and
Hairstyles (SUPPORT)

The Office of the Attorney General submits this position paper in support of House Bill 1444, which expands the definition of “race,” for certain laws prohibiting discrimination, to include traits historically associated with race, such as hair texture, afro hairstyles, and protective hairstyles. The bill also defines the term “protective hairstyle” to include “braids, twists, and locks.” Ultimately, HB 1444 seeks to ban discrimination against individuals based on their natural hair texture and cultural hairstyles.

While there are a range of hair textures that are common among people of African descent,¹ natural hair textures—hair that is tightly-coiled or tightly-curled—is most closely associated with people of African descent.² Furthermore, natural hairstyles like braids, twists, and locks, are often worn by Black people.³ The decision to wear a natural “protective hairstyle” may be due to a desire to maintain hair-health or may be the result of other financial, medical, religious, or personal reasons, including maintaining one’s cultural identity.⁴

For decades, natural hair textures, afro hairstyles, and protective styles worn by Black people have been described as messy,⁵ matted,⁶ and unkempt⁷—styles that are not suited for professional settings, such as schools and the work place.⁸ Educational institutions and employers

¹ This support letter will use the terms African descendant, African American, and Black, as well as the phrase “people of African descent” interchangeably to describe individuals who identify as having African ancestry.

² NYC Comm’n on Human Rights, *Legal enforcement Guidance on Race Discrimination on the Basis of Hair*, NYC 1, 3 (2019), <https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>.

³ *Id.*

⁴ *Id.* at 3-4.

⁵ *Equal Employment Opportunity Comm’n v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018, 1021 (11th Cir. 2016).

⁶ Helene Cooper, *Army’s Ban on Some Popular Hairstyles Raises Ire of Black Female Soldiers*, N.Y. TIMES (Apr. 20, 2014), <https://www.nytimes.com/2014/04/21/us/politics/armys-ban-on-some-popular-hairstyles-raises-ire-of-black-female-soldiers.html>.

⁷ *Id.*

⁸ *Supra* note 2, at 4.

throughout the United States have routinely instituted policies that prohibit common hairstyles worn by Black children and adults alike.

In 2014, the Army adopted new grooming regulations banning twists, dreadlocks, and large cornrows, which are styles that are popular amongst Black women.⁹ After receiving backlash from thousands of servicewomen, the Army reversed its ban in 2017.¹⁰ Many viewed the prohibition of these protective styles as an outright rebuke against Black women and a mechanism used to deter Blacks from joining the Army.¹¹ Underlying the Army's regulations and similar policies is the lack of understanding about African American hair and the validation of negative stereotypes associated with natural hair and protective hairstyles.¹²

These restrictive policies have not only affected Black women, but also harm Black men and children. For example, in 2018, A Brook's Christian Academy—a private Christian school in Florida—denied entry to a 6-year-old African American boy because of his dreadlocks.¹³ The School cited its student handbook which prohibited boys from wearing “dreads” as justification for its actions.¹⁴ Likewise, in 2019, a high school student in New Jersey was forced by a Caucasian referee to cut his dreadlocks prior to participating in a wrestling match.¹⁵

Unfortunately, this type of race-based hair discrimination has become prevalent in our society, particularly in schools and workplaces. It is unjust for Black people to be penalized for the natural texture of their hair (i.e. the way in which their hair naturally grows) or for deciding to wear a protective style consistent with their cultural identity. The harm caused by race-based hair discrimination places undue burdens on an already vulnerable population. Given the United States history of disenfranchising the Black community, such discriminatory practices should be expressly prohibited by law.

An express statutory prohibition is necessary because courts have not interpreted current laws to preclude race-based hair discrimination. Maryland's higher courts have not issued an opinion concerning the matter. However, courts in other jurisdictions have allowed race discrimination based on hair and hairstyles closely associated with Black people. In 1981, the United States District Court for the Southern District of New York determined that American

⁹ *Supra* note 6.

¹⁰ Zeba Blay, *U.S. Army Lifts Ban On Dreadlocks*, HUFF POST (Feb. 21, 2017, 4:31 PM), https://www.huffpost.com/entry/us-army-lifts-ban-on-dreadlocks_n_589e1cfee4b03df370d64723.

¹¹ *See supra* note 6.

¹² *Id.*

¹³ Nicquel Terry Ellis & Charisse Jones, *Banning ethnic hairstyles 'upholds this notion of white supremacy.' States pass laws to stop natural hair discrimination*, USA TODAY (Oct. 14, 2019, 2:20 PM), <https://www.usatoday.com/story/news/nation/2019/10/14/black-hair-laws-passed-stop-natural-hair-discrimination-across-us/3850402002/>.

¹⁴ N'dae Yancey-Bragg, *Florida school receiving death threats after turning away 6-year-old with dreadlocks*, USA TODAY (Aug. 16, 2018, 5:41 PM), <https://www.usatoday.com/story/news/nation-now/2018/08/16/florida-school-faces-backlash-rejecting-6-year-old-dreadlocks/1010132002/>; Both the NAACP Legal Defense and Educational Fund, Inc. and the American Civil Liberties Union filed suit against the Florida Department of Education on behalf of the student's family, arguing that the ban on dreadlocks violates the nondiscrimination requirements in the Civil Rights Act.

¹⁵ Roman Stubbs, *A wrestler was forced to cut his dreadlocks before a match. His town is still looking for answers*, WASHINGTON POST (Apr. 1, 2019, 11:28 AM), <https://www.washingtonpost.com/sports/2019/04/17/wrestler-was-forced-cut-his-dreadlocks-before-match-his-town-is-still-looking-answers/>

Airlines' grooming policy, which prohibited cornrows, was not racially discriminatory.¹⁶ Similarly, in 2014, the United States District Court for the Southern District of Alabama, upheld a Company's decision to rescind a job offer because the plaintiff refused to cut her locks.¹⁷ The plaintiff was an African American woman from Alabama.¹⁸ The Company's grooming policy stated:

All personnel are expected to be dressed and groomed in a manner that projects a professional and businesslike image while adhering to company and industry standards and/or guidelines...hairstyles should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable.¹⁹

The Company interpreted its grooming policy to preclude dreadlocks in the workplace.²⁰ The Company's actions were upheld by the federal district court and was affirmed on appeal by the United States Court of Appeals for the Eleventh Circuit.²¹ The U.S. Supreme Court declined to review the case.²²

Past precedent demonstrates that courts are reluctant to interpret broad prohibitions against race discrimination to include race-based hair discrimination. Consequently, the General Assembly should act to preclude this discriminatory practice. Both California and New York have enacted legislation banning such discrimination.²³ New Jersey, Michigan, Wisconsin, Illinois, and Kentucky have proposed similar legislation.²⁴ Last year, Montgomery County became the first jurisdiction in the Washington region to ban discrimination based on natural hair.²⁵ Maryland should join this movement and protect the African American community from race-based hair discrimination.

For these reasons, we strongly support HB 1444 and ask that the Committee favorably report this bill.

¹⁶ *Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229, 231 (S.D.N.Y. 1981).

¹⁷ *E.E.O.C. v. Catastrophe Mgmt. Sols.*, 11 F. Supp. 3d 1139 (S.D. Ala. 2014).

¹⁸ *Id.* at 1140.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Equal Employment Opportunity Comm'n v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016).

²² *E.E.O.C. v. Catastrophe Mgmt. Sols.*, 138 S. Ct. 2015 (2018).

²³ *Supra* note 13.

²⁴ *Id.*

²⁵ Rebecca Tan, *Montgomery passes first-in-region law banning discrimination based on natural hair*, WASHINGTON POST (Nov. 6, 2019, 9:48 AM), https://www.washingtonpost.com/local/md-politics/montgomery-passes-first-in-region-law-banning-discrimination-based-on-natural-hair/2019/11/06/2eb60c5a-001e-11ea-9518-1e76abc088b6_story.html