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COMMENT

# **Are My Cornrows Unprofessional?: Title VII's Narrow Application of Grooming Policies, and its Effect on Black Women's Natural Hair in the Workplace**

*By Renee Henson\**

ABSTRACT

Employer grooming policies are ubiquitous and apply to all in the workplace, however, the hair standards within these policies do not permit women to wear a myriad of ethnic hairstyles at work. Banning ethnic hairstyles like braids, cornrows, and dreadlocks adversely and disproportionately affects black women. Banning ethnic styles because they are deemed unprofessional forces many black women to spend inordinate amounts of money and time to ensure their hair is “professional looking enough” to attain gainful employment and climb the corporate ladder. This article examines Title VII's role in allowing this practice where black women are not permitted to wear their hair in styles that are often the most healthy and natural for their hair, and the legal freedom employers have to fire employees for wearing dreadlocks, braids and twists with impunity. This article proposes several ways that Title VII's application to black hair texture and hairstyles could be improved.

## I. INTRODUCTION

You are desperately in need of a job. Imagine, in addition to writing a top-notch resume, making sure your LinkedIn account is current, searching exhaustively for your future job, ensuring you are qualified for that job, filling out an application, and receiving a call to interview—you also need to ensure that your hair is “done” and professional looking *enough* so that you actually have a chance at getting the job. It goes without saying that the need to look professional at any job interview is important, irrespective of gender, and race—however ensuring that one’s hair is “done” has a deleterious meaning for black women.

“Done” means not having a large afro, not having cornrows,<sup>1</sup> not having braids, not having twists, not having dreadlocks, all hairstyles that are equated with an “un-professional” look.<sup>2</sup> “Done” means there must be a considerable amount of time put into hairstyling to ensure that your hair is straightened, weaved,<sup>3</sup> or tied down into a bun as best as you can manage.<sup>4</sup> “Done” means that attaining a desired look will cost you, in many cases, hundreds of dollars, and hours at a salon.<sup>5</sup> “Done” means that you must not exercise, or expose your hair to water of any kind.<sup>6</sup> And this is not only a concern for the job interview itself; the next question a black woman must ask herself is the following: if she gets the job, must she maintain this look day after day, lest she open herself to risk of non-advancement, or loss of her job?

A black woman does not have the freedom to wear her hair in a large afro, cornrows, or many other ethnic hairstyles at work, which can be the easiest, healthiest, and most natural way that she could wear her hair.<sup>7</sup> It is legally permissible to institute grooming policies that do not violate Title VII’s provisions in order for employers to regulate appearance in the workplace.<sup>8</sup> Grooming policies act as a minimum threshold of what employers contend are acceptable forms of appearance

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1. “Cornrows,” for the purposes of this article, are a traditionally African hairstyle that black American women have worn from the days of slavery and into the present. The Cornrow style is when the hair is platted to the scalp. The plats are braids that can extend down from a woman’s head to be worn down or in a ponytail. Cornrows are becoming more mainstream with stars like Kim Kardashian, Beyoncé, and Rihanna wearing them.

2. Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L. J. 1079, 1097 (2010).

3. “Weaves,” for the purposes of this article, refer to hair extensions that are commonly sewn into the hair. The hair weft is sewn onto a braided plait of a person’s scalp. Weaves can take many hours to complete, and may fully encompass a woman’s head adding additional length, volume, and often uses a completely different texture than what is naturally grown on the head.

4. *See Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229, 233 (S.D.N.Y. 1981).

5. Onwuachi-Willig, *supra* note 2, at 1115.

6. Raechele Cochran Gathers et al., *African American Women, Hair Care, and Barriers*, 7(9) THE J. OF CLINICAL & AESTHETIC DERMATOLOGY 26 (2014).

7. *Rogers*, 527 F. Supp. at 232 (noting that the term “natural,” means a black woman’s hair that is not chemically straightened, and is otherwise unprocessed. Natural hair refers to the curly and kinky textures that are genetically inherent in black men and women).

8. *Id.* at 233-34.

at work.<sup>9</sup> In the seminal case on the issue of black women's hair in the workplace, *Rogers v. American Airlines*, the court dismissed Renee Roger's argument that she should be able to wear cornrows at work based on the hairstyle's historical and cultural significance to black American women.<sup>10</sup> American Airlines argued successfully that standards banning cornrows should not be considered race discrimination under Title VII because braids are an "easily changed characteristic," not tied to a specific race, and thus, employers should be free to penalize employees on the basis of wearing braids in the workplace.<sup>11</sup>

Courts have concluded that black women's hairstyle restrictions in the workplace are not based on immutable characteristics, such as race or sex, and as such do not violate Title VII.<sup>12</sup> Title VII allows for recovery based on employment discrimination on the basis of "race, color, religion, sex, or national origin."<sup>13</sup> Black women have not been able to successfully litigate having the freedom to wear their hair in ethnic and other natural hairstyles because they have not been able to penetrate the barrier that hair is not sufficiently tied to race or sex discrimination under Title VII.<sup>14</sup>

In *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, Angela Onwuachi-Willig says that Renee failed to win her case because she did not *stack* allegations of race and sex discrimination under Title VII; instead, she mainly argued that cornrow braids should be protected as tied to race because they are an outgrowth of black American history.<sup>15</sup> Onwuachi-Willig says that Renee lost out on arguing the unique experience of discrimination by being both black *and* a woman.<sup>16</sup> Part II will discuss why not allowing for certain hairstyles within the workplace is a problem, and remains such a burden on black women in particular.

Part III will discuss possible solutions to this problem, and will explore reasons why courts should expand their interpretation of "immutable characteristics," which has become one of the main bases for courts' rejection of plaintiffs' claims on this issue—arguing that hair is mutable, and thus, should not be protected under Title VII for race discrimination.<sup>17</sup> This part will also explain how banning ethnic hairstyles from the workplace is a sex based form of discrimination, that tends to disparately impact black women over white women.<sup>18</sup> Further, part III will explore how courts too narrowly interpret national origin as under Title VII, and how a broader interpretation could affect change on the issue of black women's hair in the workplace for the better.<sup>19</sup> Lastly, this part will discuss how black women not only face unique discrimination based on race and sex for their hair, but also on the

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9. Emily Jane Perkins, *Regulating Appearance In The Workplace: An Employer's Guide To Avoid Employment Discrimination Lawsuits*, THE NAT'L L. REV. (Mar. 18, 2014), <http://www.natlawreview.com/article/regulating-appearance-workplace-employer-s-guide-to-avoid-employment-discrimination->

10. *Rogers*, 527 F. Supp. at 233-34.

11. *Id.* at 232.

12. See 2 U.S.C. § 1311(a)(1) (2012).

13. *Id.*

14. Onwuachi-Willig, *supra* note 2, at 1092.

15. *Id.* at 1091-92.

16. *Id.* at 1092.

17. *E.E.O.C. v. Catastrophe Mgmt. Sols.*, 11 F. Supp. 3d 1139 (S.D. Ala. 2014), *aff'd*, 837 F.3d 1156 (11th Cir. 2016).

18. See Onwuachi-Willig, *supra* note 2.

19. Juan Perea, *Ethnicity And Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805, 807 (1994).

intersectionality of *national origin*, and that the freedom of black women to wear their hair in ethnic hairstyles could alternatively lie in the tripartite force of the extremely unique position of facing discrimination based on race, sex, and *national origin*.

## II. GETTING TO THE ROOT OF THE PROBLEM

*It is time for parents to teach young people early on that in diversity there is beauty and there is strength. Maya Angelou.*<sup>20</sup>

### A. Black Women Have Not Found Success in the Courtroom When Fighting Grooming Policies

In *EEOC v. Catastrophe Management Solutions*, Chastity Jones filed suit against Catastrophe Management Solutions (“CMS”) when the company offered her a job, but later, after realizing her hair was styled in dreadlocks, said that she would have to *cut off all of her hair* in order to retain employment with the company.<sup>21</sup> Chastity did not agree to cut her hair and the job offer was rescinded.<sup>22</sup> The court held in favor of CMS, saying that a hairstyle is not an immutable characteristic, and thus, is not protected under Title VII.<sup>23</sup> *EEOC v. Catastrophe Management* was recently upheld in the 11<sup>th</sup> Circuit.<sup>24</sup> The 11<sup>th</sup> Circuit said that Title VII only protects people with respect to race based on immutable characteristics—characteristics that cannot be changed, and not cultural practices.<sup>25</sup> The 11<sup>th</sup> Circuit concluded that a person’s hairstyle is a cultural practice, and as such is not protected under Title VII.<sup>26</sup>

The 11<sup>th</sup> Circuit conceded in part by saying that there is a fine line of distinction between mutability and immutability, saying that “discrimination on the basis of black hair texture (an immutable characteristic) is prohibited by Title VII, while adverse action on the basis of black hairstyle (a mutable choice) is not.”<sup>27</sup> The court insisted that the physical characteristics of black hair were somehow distinct from the style choices that are most appropriate based on those characteristics.<sup>28</sup> Chastity argued, *inter alia*, that dreadlocks were an “outgrowth” of black culture, meaning that the texture of black hair lends itself to ethnic hairstyles.<sup>29</sup> Blacks do not usually have the option of literally letting their hair down; instead, healthy maintenance of black hair requires some type of manipulation, and the most economical and lesser maintenance styles are dreadlocks, twists, and braids.<sup>30</sup> *EEOC v. Catastrophe Management* is a clear showing that black women can face the choice of dramatically

20. *Maya Angelou*, VOICES OF EDUC. <http://voiceseducation.org/content/maya-angelou-0> (last visited Dec. 18, 2017).

21. *Catastrophe Mgmt. Sols.*, 11 F. Supp. 3d at 1140.

22. *Id.*

23. *Id.* at 1143.

24. *Equal Emp’t Opportunity Comm’n v. Catastrophe Mgmt. Sols.*, 837 F.3d 1156 (11th Cir. 2016).

25. *Id.* at 1167.

26. *Id.*

27. *Id.*

28. *Id.* at 1168.

29. *Id.* at 1161.

30. Aline Tanus, et al., *Black Women’s Hair: The Main Scalp Dermatoses and Aesthetic Practices In Women Of African Ethnicity*, 90(4) ANAIS BRASILEIROS DE DERMATOLOGIA 450 (2015).

altering their hair to concede to the status quo of typically white hair normatives in America, or miss out on gainful employment due to their hair.<sup>31</sup>

*B. Black Women's Hairstyle Restrictions in the Workplace Contribute to a Less Diverse Workforce*

There is a broader problem: many large companies are falling short in the diversity arena.<sup>32</sup> Allowing black women to wear their hair in a natural way or in a myriad of ethnic hairstyles within the workplace would allow black women to have access to more jobs, and open the door for them to excel and climb the corporate ladder in ways that might be currently closed off.<sup>33</sup> Large companies recognize that diversity in the workplace is a thing to be desired, but many large corporations are doing poorly as they try to increase diversity among their employees.<sup>34</sup> The problem is at the top. According to Fortune, there have only been 15 black CEOs in the history of Fortune 500 companies.<sup>35</sup> As of 2015, there were only five black CEOs in the biggest 500 companies, only one of whom is a woman; worse, the number of black CEOs is on the decline.<sup>36</sup>

Blacks in corporate America face the challenge of balancing their images at work: they feel they must be “focused—but not too aggressive, hungry—but not threatening, talented—but not too talented.”<sup>37</sup> Some blacks feel additional pressure is added when they are in a corporate setting due to being viewed as the sole representative for all blacks, who are often viewed monolithically.<sup>38</sup> Such pressures contribute to black employees wanting to leave the corporate environment.<sup>39</sup> A recent ABA article said that 85% of minority women attorneys will quit big law firms within seven years of starting.<sup>40</sup>

There are many complex problems that lead to blacks not being equally represented in corporate America, but hair can certainly be one of the many pressures that especially black American women face, which compounds this problem.<sup>41</sup> Even if professional black women do not face outright bans on ethnic hairstyles, they must worry about taming their hair in order to have a “professional” look, while juggling other stressful pressures inherent in working in corporate America, as well as balancing additional pressures only faced by blacks.<sup>42</sup>

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31. See Tabora A. Johnson & Teiahsha Bankhead, *Hair It Is: Examining the Experiences of Black Women with Natural Hair*, 2 OPEN J. OF SOC. SCI. 86, 91 (2014).

32. Gregory Wallace, *Only 5 Black CEO's at 500 Biggest Companies*, CNN MONEY (Jan. 29, 2015, 2:11 PM), <http://money.cnn.com/2015/01/29/news/economy/mcdonalds-ceo-diversity/>.

33. *Catastrophe Mgmt. Sols.*, 837 F.3d at 1172.

34. Wallace, *supra* note 32.

35. Young, Black, and Left Out of Corporate America, *Big Business has a Diversity Problem*, FORTUNE, (Jan. 22, 2016), <http://fortune.com/video/2016/01/22/leading-while-black/> [hereinafter FORTUNE].

36. Wallace, *supra* note 32.

37. FORTUNE, *supra* note 35.

38. *Id.*

39. See Wallace, *supra* note 32.

40. Liane Jackson, *Minority Women are Disappearing from BigLaw—and Here's Why*, ABA J. (Mar. 2016), [http://www.abajournal.com/magazine/article/minority\\_women\\_are\\_disappearing\\_from\\_biglaw\\_and\\_heres\\_why](http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why).

41. Johnson & Bankhead, *supra* note 31, at 91.

42. Onwuachi-Willig, *supra* note 2, at 1092.

*C. Grooming Policies Are Ubiquitous and Very Burdensome on Black Women's Hair and Health*

Grooming policies for companies are commonplace, and can be very restrictive.<sup>43</sup> For example, Abercrombie, a teen retailer, was sued by Umme-Hani Khan, a store employee, based on its "Look Policy."<sup>44</sup> Umme-Hani argued that she was discriminated against for the hijab she wore on her head, and as a result, was fired.<sup>45</sup> The court held for Umme-Hani, finding that Abercrombie did not accommodate her deeply held religious beliefs that necessitated her wearing her hijab at all times, and that Abercrombie did not show that it was unduly burdened by her hijab.<sup>46</sup> The court used a two-part test, where plaintiffs must show a prima facie need for accommodation based on their religious practices, and if done successfully, the burden then shifts to the employer to show that it made a good faith effort to reasonably accommodate the person's religious practices or that it could not make the necessary accommodations due to an undue burden.<sup>47</sup> Abercrombie was unable to show an undue burden.<sup>48</sup>

Abercrombie has specifications in their look policy outlining standards ranging from permissible hairstyles to jewelry.<sup>49</sup> Some of Abercrombie's hairstyle standards specify that:

hair color and highlights must appear natural. Highlights should be blended and there should be no streaks, blocks, or chunks of contrasting colors. Highlights should appear as if hair is naturally highlighted by the sun and not manipulated by unnatural bleaching methods . . . a clean, natural, classic hairstyle is acceptable for store employees . . . [n]o associate is permitted to wear any extreme hairstyles or hair color. Hairstyles and hair color should reflect your natural beauty.<sup>50</sup>

United Airline's flight attendant grooming standards specify that hair "[m]ust be clean, neatly trimmed, and conservatively styled . . . [c]olor must complement natural hair and skin tone and should be well maintained . . . [e]xtreme styles are not permitted."<sup>51</sup>

Ostensibly, these standards do not seem overly burdensome by using words like "natural" and "classic."<sup>52</sup> However, the above policies and the laws that permit them assume that all hair textures are one and the same. But for the reality of black

43. See Sapna Maheshwari, *Exclusive: The Hairstyles Abercrombie Has Deemed "Unacceptable"*, BUZZFEED NEWS (Sept. 3, 2013, 12:34 PM), [https://www.buzzfeed.com/sapna/exclusive-bercrombie-hairstyle-rules-add-to-strict-look-pol?utm\\_term=.pf2XL8N50#.qbGXbV7Ko](https://www.buzzfeed.com/sapna/exclusive-bercrombie-hairstyle-rules-add-to-strict-look-pol?utm_term=.pf2XL8N50#.qbGXbV7Ko).

44. *Id.*

45. *Equal Emp'l Opportunity Comm'n v. Abercrombie & Fitch Stores, Inc.*, 966 F. Supp. 2d 949 (N.D. Cal. 2013).

46. *Id.* at 965.

47. *Id.* at 961.

48. *Id.* at 962.

49. Maheshwari, *supra* note 43.

50. *Id.*

51. United Inflight Servs., *Flight Attendant Uniform Appearance Standards: Your Image Is the United Brand*, UNITED 20-21, [https://unitedafa.org/docs/uniforms/appearance\\_standards.pdf](https://unitedafa.org/docs/uniforms/appearance_standards.pdf) (last visited Dec. 18, 2017).

52. Maheshwari, *supra* note 43.

women, policies like these are an implied command to change their naturally kinky hair to something that is aligned with more traditionally approved hairstyles.<sup>53</sup> Angela Onwuachi-Willig says in her essay *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*,

[a]s it is, the law is unfairly based upon an assumption that black women's hair structure and texture are the same as those of white women or, worse, an assumption that it is reasonable for an employer to make implicit demands on black women to relax or straighten their hair—in other words, to place requirements on black women to change the physical structure and texture of their hair.<sup>54</sup>

Thus, it is implied when using a term like “conservatively styled”<sup>55</sup> that a black woman's kinky natural hair styled down (without any manipulation) would likely not fit into the narrowly categorized box of “conservative”<sup>56</sup> due to its way of growing up and out, seemingly defying gravity.<sup>57</sup> Black women are forced to change the structure and texture of their hair to fit in with approved grooming standards.<sup>58</sup>

There are many other influences that give similar messages, leaving many black women feeling as though they need to hide their naturally kinky hair.<sup>59</sup> Black women are encouraged through media imagery to alter their hair, and receive the message from hair company manufacturers that there is something wrong with the original texture of black hair, and it must be changed.<sup>60</sup>

But altering the chemical structure of black hair to straighten it is harmful, chemical hair relaxer products, which permanently straighten curly hair have been linked to fibroids and hair breakage.<sup>61</sup> Yet still, many black women feel compelled to chemically straighten their hair as black women spent 131.8 million on relaxers in 2014.<sup>62</sup> As sociologist Ann DuCille points out, “[w]e have yet to see [a] Miss America or [a] Black Miss Universe with an Afro or cornrows or dreadlocks.”<sup>63</sup> In the hit show *Scandal*, the main character Olivia Pope, a put-together lawyer played by Kerry Washington, typically wears her hair “perfectly coifed” and straightened.<sup>64</sup> Only when she is kidnapped and imprisoned is her large natural hair in full view, to seemingly reflect the reality that Olivia had become undone.<sup>65</sup> Not only do

53. Onwuachi-Willig, *supra* note 2, at 1131.

54. *Id.*

55. United Inflight Servs., *supra* note 51, at 20-21.

56. *Id.*

57. Ayana Byrd & Lori L. Tharps, *When Black Hair Is Against the Rules*, N.Y. TIMES (Apr. 30, 2014), <[http://www.nytimes.com/2014/05/01/opinion/when-black-hair-is-against-the-rules.html?\\_r=0](http://www.nytimes.com/2014/05/01/opinion/when-black-hair-is-against-the-rules.html?_r=0)>.

58. *Id.*

59. Cheryl Thompson, *Black Women and Identity: What's Hair Got to Do With It?*, MICH. FEMINIST STUD., <http://quod.lib.umich.edu/cgi/t/text/text-idx?cc=mfsfront;c=mfs;c=mfs-front;idno=ark5583.0022.105;rgn=main;view=text;xc=1;g=mfs> (last visited Dec. 18, 2017).

60. *Id.* See also Nana Sidibe, *This Hair Trend is Shaking Up the Beauty Biz*, CNBC (July 1, 2015, 2:45 PM), <http://www.cnbc.com/2015/07/01/african-americans-changing-hair-care-needs.html> (noting that hair relaxer sales have been on the decline.)

61. Sidibe, *supra* note 60.

62. *Id.*

63. Thompson, *supra* note 59.

64. Clover Hope, *Scandal: The Various Stages of Olivia Pope's Prison Hair*, JEZEBEL (Jan. 30, 2015, 12:40 PM), <http://themuse.jezebel.com/scandal-the-various-stages-of-olivia-popes-prison-hair-1682770811>.

65. *Id.*



black women receive explicit and implicit demands to change their hair from the media and product manufacturers, but from their work environments too.<sup>66</sup>

#### *D. Courts Are Limited in Their Understanding of Black Hair*

Black women are left with limited options in what constitutes a work appropriate hairstyle. In *Rogers v. American Airlines*, the court speaks to afros and natural or ethnic hairstyles.<sup>67</sup> Renee Rogers, a black American woman and flight attendant, sued her employer, American Airlines, for whom she worked 11 years, when it demanded that she not wear her hair in a cornrow style, and instead asked her to style her hair in a bun.<sup>68</sup> American Airlines based its hair change requirement on its grooming policy.<sup>69</sup> Renee's argument was that the policy banning her from wearing braids at work was discriminatory based on race and sex.<sup>70</sup> The trial court quickly dismissed Renee's argument of sex discrimination because the grooming policy at issue applies to both men and women in that a man with longer hair would also not be permitted to wear an all-braided hairstyle.<sup>71</sup> Additionally, Renee argued that the policy was discriminatory on the basis of race because cornrows have a special significance for black American women because they have been "historically, a fashion and style adopted by Black American women, reflective of cultural, historical essence of the Black women in American society."<sup>72</sup>

However, the court rejected Renee's argument.<sup>73</sup> The court reasoned that Renee was not entitled to relief because the cornrow style was an "easily changed characteristic," and even if socioculturally associated with a particular race or nationality, is not an impermissible basis for distinctions in the application of employment practices by an employer.<sup>74</sup> The court bolstered its conclusion by saying that American Airlines did not ask Renee to *significantly* change her hair, only suggesting that she put it into a bun or place a hair piece around her ponytail,<sup>75</sup> and reminded Renee that she is free to do what she wants on her own time with her hair.<sup>76</sup>

The court's suggestion that Renee can simply switch back and forth between cornrows and her natural hair between work shifts and after work hours sheds light on its lack of knowledge regarding black women's hair.<sup>77</sup> For example, individual braids that fully encompass a woman's head can take more than eight hours to install, and almost as much time to remove.<sup>78</sup> Thus, the court adding this caveat is

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

67. *Id.* at 232.

68. *Id.* at 231.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 231-32.

74. *Id.* at 232.

75. Commonly available are "hairpieces" that act as a foe bun or ponytail to add volume or length. The hairpiece wraps around the natural hair and is tightening by a drawstring, or held in place by bobby pins.

76. *Rogers*, 527 F. Supp. at 233.

77. *Id.*

78. Taylor Bryant, *What You Need to Know Before Getting Box Braids*, REFINERY29 (Dec. 4, 2015, 7:50 AM), <http://www.refinery29.com/box-braids>; see also Rochelle Connery, *How to Remove Cornrows*, LEAF TV, <https://www.leaf.tv/articles/how-to-remove-cornrows/> (last visited Dec. 18, 2017).

revealing because it shows that judges may not have a basic understanding of what is required for black women to change their hair from one style to the next.

Further, suggesting that it is a fair concession that American Airlines tell Renee to just put a fake hair piece over her own natural hair betrays a similar lack of understanding about the risks of using fake hair. The court's reasoning implies that black women's hair is not acceptable in its natural form.<sup>79</sup> This is especially so given that it is very common for black women to get traction alopecia (permanent hair loss) that comes from years of using hair pieces for long periods of time.<sup>80</sup> Traction alopecia is a medical hair loss condition that arises from the constant stress and tension that hair extensions, weaves, and chemical hair straightening can cause, all of which further proves the explicit and implicit requirements placed on black women's hairstyling are not easy adjustments to accommodate.<sup>81</sup>

Moreover, this speaks to a fundamental problem: it is more acceptable and displays more of a conservative and business-like image for a black woman to place a fake, white-looking hair piece over her natural hair, than it is for her to wear her hair naturally styled in a way that has a strong historical and cultural significance to her.<sup>82</sup> Additionally, the court does not give much discussion to Renee's argument (that cornrows and other braided hairstyles are historically and culturally significant) when in fact black American women have been wearing these hairstyles for over 200 years, while white women have not.<sup>83</sup> The result of *Rogers* is that companies can demand that an employee change her braids, cornrows, and dreadlocks in order to comply with grooming policies and terminate her with impunity if she does not.<sup>84</sup>

The *Rogers* decision severely limits the hairstyles a black woman with natural, chemically unprocessed hair can wear. Under this decision, black women cannot wear braids or dreadlocks, and their natural hair, in many cases, will not conservatively fit into a bun.<sup>85</sup> As authors Byrd and Tharp put it in *When Black Hair is Against the Rules*, "because of the thickness of a lot of black women's hair, a bun is not always possible unless the hair is put into twists first."<sup>86</sup> How then are black women to wear their hair?

The *Rogers* court did concede that if the hairstyle at issue were an afro, there may have been a colorable race discrimination claim under Title VII because companies would then be banning a natural hairstyle that *does* "implicate the policies underlying the prohibition of discrimination on the basis of immutable characteristics."<sup>87</sup> But the afro introduces a different set of problems: many black women would not dare wear their hair in an afro within a corporate environment, especially a large afro because of the political and social messages that it sends to others, whether intended or not.<sup>88</sup> Black women wearing cornrows and other ethnic

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79. See *Rogers*, 527 F. Supp. at 233.

80. Tanus, *supra* note 30.

81. See generally *id.*

82. See generally *id.*

83. Cheryl Thompson, *Black Women, Beauty, And Hair As A Matter Of Being*, 38 WOMEN'S STUD. 833, 833 (2009).

84. *Id.* at 836.

85. Byrd & Tharps, *supra* note 57.

86. *Id.*

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

88. Johnson and Bankhead, *supra* note 31, at 89-90.

hairstyles are alternative options to what is sure to be discrimination, in many instances, when worn in a large afro.<sup>89</sup>

As a result of not having the freedom to wear a large afro or cornrows at work without facing discrimination, the 11<sup>th</sup> Circuit's concession that banning afro's might fit within the construct of Title VII is without much force, unless a woman is willing to wear an afro to work to be discriminated against just so that she can bring suit against her employer—an unappealing option.<sup>90</sup> This is because the afro is commonly viewed as a symbol of black power and militancy.<sup>91</sup>

In *Hair It Is: Examining the Experiences of Black Women with Natural Hair*, an article written on the problems black women face as a result of their natural hair, the authors say that just wearing an afro is a “political act within itself, since depending on the environment[,] such hair may be deemed socially and politically unacceptable,” which stems back to the political activism of blacks in the 1970s, who wore their hair in natural afros to illustrate pride in the movement towards self-acceptance.<sup>92</sup> But many contemporary black American women have no intention of making a “radical” political statement just by wearing their hair naturally, as a recent study of African American college women showed, “[black] women felt that going natural was a personal choice rather than a political statement or a rebellion against white beauty standards.”<sup>93</sup> Thus, black women are left with either chemically relaxing their hair or getting hair extensions.

Maintaining straightened chemically relaxed hair and or hair extensions is a very expensive and onerous process.<sup>94</sup> The monetary costs of a chemical straightener lie between \$60 to \$300 for each full treatment, and between \$40 to \$100 for a touch-up in between; the typical upkeep is a treatment about every four to eight weeks.<sup>95</sup>

The time costs are also substantial. In order to maintain a straightened hair appearance, a black woman may spend two hours straightening on the first day, often with two to three hours of straightening every couple of days in between.<sup>96</sup> As a result of all of the costs, time, and capriciousness of straightening kinky curly hair, a black woman cannot allow her hair to get wet, lest the curls spring back up.<sup>97</sup> The result is a constant worry about humidity and rain, and swimming becomes out of the question.<sup>98</sup> If the above was not life-altering enough, due to the fear of water or humidity affecting straightened hair, black women tend not to exercise because moisture reverts straightened hair back to its curly texture, which dramatically effects their health and well-being.<sup>99</sup> In *African American Women, Hair Care, and Barriers*, the authors discuss the reality of this problem:

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89. See generally *id.*

90. *Id.* at 91

91. *Id.* at 90.

92. *Id.*

93. Vanessa King & Dyeinaba Niably, *The Politics of Black Women's Hair*, CORNERSTONE 16, <http://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=1003&context=jur> (last visited Dec. 18, 2017).

94. Onwuachi-Willig, *supra* note 2, at 1114.

95. *Id.*

96. *Id.* at 1115.

97. Joseph Stromberg, *Why Humidity Makes Your Hair Curl*, SMITHSONIAN (Apr. 12, 2013), <http://www.smithsonianmag.com/science-nature/why-humidity-makes-your-hair-curl-21127724/?no-ist>.

98. *Id.*

99. Gathers et al., *supra* note 6, at 28.

Focus group analysis of African American women who had struggled with weight loss and body weight maintenance, the issue of hairstyle management was a major theme. Exercise avoidance was cited as a way to overcome hairstyle challenges related to physical activity. In another study, many African American women reported that they felt that they had to make a conscious decision to sacrifice their hairstyle for the sake of physical activity . . . . A recently published survey study found that nearly 40 [%] of African American women have avoided exercise secondary to hair care concerns.<sup>100</sup>

This is not an issue of vanity. Black women are the most obese and overweight in the nation,<sup>101</sup> and there is no vanity in following the ascribed standards of normed whiteness in order to retain employment.<sup>102</sup> The implicit and explicit demands that black women change their natural hair leads black American women to think that their hair is not presentable in its “natural state” and leads to disparate impact discrimination by placing an undue burden on black women to conform to white hair norms.<sup>103</sup> Disparate impact is found when a person shows that a particular practice causes a disparate effect based on race, color, religion, sex, or national origin and the employer cannot show that there is a consistent business need for the practice at issue.<sup>104</sup>

### III. SOLUTIONS TO THE RESTRICTIVE INTERPRETATIONS OF RACE DISCRIMINATION UNDER TITLE VII

Courts have continued to say that black women’s hair is not sufficiently tied to race.<sup>105</sup> In the 11<sup>th</sup> Circuit, in *EEOC v. Catastrophe Management Solutions*, Chastity Jones argued, *inter alia*, that it was discriminatory to deny her a job because she had dreadlocks, which were banned by CMS’ grooming policy.<sup>106</sup> Chastity’s argument was that this constituted race-based discrimination under Title VII, saying that dreadlocks are a “natural outgrowth of the immutable trait of black hair texture; that the dreadlock[] hairstyle is directly associated with the immutable trait of race; that dreadlocks can be a symbolic expression of racial pride; and that targeting dreadlocks as a basis for employment can be a form of racial stereotyping.”<sup>107</sup> The 11<sup>th</sup> Circuit dismissed Chastity’s argument, saying that race cannot be tied to characteristic traits such as hair and thus, cannot be protected under Title VII.<sup>108</sup>

In *Rogers v. American Airlines*, Renee Rogers argued that the right to wear a cornrow hairstyle should be protected and to ban this hairstyle is a form of race and sex discrimination under Title VII.<sup>109</sup> Renee argued that cornrows and other braided hairstyles have a special significance to black American women, and have

100. *Id.*

101. *Id.*

102. Johnson & Bankhead, *supra* note 31, at 91.

103. Onwuachi-Willig, *supra* note 2, at 1120.

104. 42 U.S.C. § 2000e-2(k) (2012).

105. Equal Emp’t Opportunity Comm’n v. Catastrophe Mgmt. Sols., 837 F.3d 1156, 1167 (11th Cir. 2016).

106. *Id.* at 1159.

107. *Id.* at 1161.

108. *Id.* at 1165.

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

historically been a part of the historical and cultural essence of black American women.<sup>110</sup> The trial court was unresponsive to this argument and said that hair is a mutable characteristic and thus not protected from racial discrimination under Title VII.<sup>111</sup> The court also said that an argument about sex discrimination under Title VII does not apply here because the grooming policy applies to both men and women.<sup>112</sup> The court concluded that black women's hairstyles do not fall under Title VII's prohibitions against race or sex discrimination.<sup>113</sup>

*A. Immutability Should not be Applied as Only to “Accidents of Birth”*

The first part of the solution to this problem is that the courts' definition of immutability with respect to black hair is outdated and must change. In Sharon Hoffman's *The Importance of Immutability in Employment Discrimination Law*, Hoffman argues that courts currently interpret immutability in ways that are hard to understand, and “no coherent theory can be developed to elucidate why some unalterable traits are awarded protection status by federal law and others are not.”<sup>114</sup> One common theory that underlies the current concept of how Title VII is applied is that it is based on traits that cannot be changed that are a result of “accidents of birth.”<sup>115</sup> Accidents of birth—*like race*.<sup>116</sup> But times are changing, and it is time to stop using such antiquated methods for determining immutability under Title VII.

Other non-discrimination acts are applied far more broadly.<sup>117</sup> The Fair Housing Act (“FHA”) protects against housing discrimination for “familial status.”<sup>118</sup> This allows for protection when a person is pregnant, has children, or adopts a child, none of which are immutable characteristics.<sup>119</sup> Many states, including Missouri, protect against credit discrimination on the basis on marital status, which is also not an immutable characteristic.<sup>120</sup> The Genetic Information Nondiscrimination Act (“GINA”) was passed in 2008, and prohibits employers from discriminating against employees with respect to genetic information.<sup>121</sup> GINA is based on immutable characteristics, but very broadly applies to anyone's DNA.<sup>122</sup>

The American with Disabilities Act Amendments Act (“ADAAA”) protects employees with disabilities from discrimination and includes protections for people with diabetes, which is not strictly an immutable characteristic.<sup>123</sup> The Age Discrimination in Employment Act (“ADEA”) protects against age discrimination of those who are 40 years old or older (not an immutable characteristic), and the Equal

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110. *Id.* at 231-32.

111. *Id.* at 232.

112. *Id.* at 231.

113. *Id.*

114. Sharon Hoffman, *The Importance Of Immutability In Employment Discrimination Law*, 52 WM. & MARY L. REV. 1483, 1488 (2011).

115. *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

116. *Id.*

117. Hoffman, *supra* note 114, at 1494-95.

118. 42 U.S.C. §§ 3604, 3609 (2012).

119. *Id.* § 3602(k).

120. MO. REV. STAT. § 314.100 (2017).

121. 42 U.S.C.A. § 2000ff-1 (West 2017); *see also* Hoffman, *supra* note 114, at 1492.

122. 42 U.S.C.A. § 2000ff-1.

123. 42 U.S.C. § 12112 (2012); *see also* Hoffman, *supra* note 114, at 1495-1500.

Pay Act (“EPA”) protects both sexes from pay discrimination on the basis of sex.<sup>124</sup> Some of the above protected classes clearly involve immutable characteristics, but many of them do not, and are applied to large groups of the American population.<sup>125</sup>

The ADAAA in fact says that the definition of disability should be interpreted as broadly as possible, and “to the maximum extent allowed by the relevant wording.”<sup>126</sup> This begs the question, why is Title VII’s “race” definition not interpreted to the maximum extent allowed by the wording—especially in light of our national history? If courts are reluctant to interpret immutability broadly because they are concerned with opening the flood gates—this did not stop these other Acts from being broadly applied, where large groups of Americans are protected from discrimination for characteristics that are mutable.

A new definition of protected immutable characteristics has been considered by scholars, one which defines immutability as a characteristic that is either “beyond the power of an individual to change or that is so fundamental to [individual] identity or conscience” that it is effectively unalterable and “ought not be required to be changed.”<sup>127</sup> In light of such Acts like the FHA, which have broad general interpretations and applications of protections for discrimination, is it not time that courts do the same in their interpretation of race and immutability under Title VII?

*B. Sexual Discrimination Under Title VII Should be Interpreted as Having a Disparate Impact on Black Women as a Result of Grooming Policies that Ban Ethnic Hairstyles*

The second solution to the problem of black women not having the ability to wear their hair in ethnic styles at work is for courts to interpret sexual discrimination under Title VII differently. Courts should begin to look at the result of not protecting black women’s hair under grooming policies as having a disparately discriminatory effect based on sex under Title VII. In *Jespersen v. Harrah’s Operating Co.*, Darlene Jespersen sued Harrah’s for sex discrimination based on the company’s grooming policy that she alleged required much more onerous standards for women than men.<sup>128</sup> In order to establish a prima facie case of sex discrimination under Title VII, a plaintiff must show that they were intentionally discriminated against, or show that the act at issue had a discriminatory effect.<sup>129</sup>

Notably, the sexual discrimination standard is lower than what is required to show a prima facie case for race discrimination, where a plaintiff must show “(1) he [or she] belongs to a protected class; (2) he [or she] was qualified to do the job; (3) he [or she] was subjected to adverse employment action; and (4) his [or her] employer treated similarly situated employees outside his [or her] class more favorably.”<sup>130</sup> In the case at issue, Darlene argued that the grooming policy violated Title VII because it required women bartenders to wear makeup.<sup>131</sup> The court held that

124. 29 U.S.C.A. § 623 (West 2016); see also Hoffman, *supra* note 114, at 1490.

125. Hoffman, *supra* note 114, at 1489.

126. *Id.* at 1494.

127. *Id.* at 1517.

128. *Jespersen v. Harrah’s Operating Co., Inc.*, 444 F.3d 1104, 1105-06 (9th Cir. 2006).

129. *Id.* at 1108.

130. Baldwin v. Hyundai Motor Mfg. Ala., LLC, No. 2:08-cv-13-MEF (WO), 2009 U.S. Dist. LEXIS 30921, at \*20 (M.D. Ala. Apr. 10, 2009).

131. *Jespersen*, 444 F.3d at 1107.

there was no sex discrimination because Harrah's placed equal and opposite burdens on men because men could not wear makeup and could not have their hair below their shoulders.<sup>132</sup> Black women's hairstyles can be distinguished from *Jesperson*, because grooming policies that only affect black women have an actual unequal and disparate impact on them, this is because black women are much more likely to be affected by hair bans on braids and other ethnic hairstyles than white women.<sup>133</sup>

Disparate impact is shown when "a specific employment practice produced an adverse effect on the basis of a protected status, such as race."<sup>134</sup> An adverse effect can be shown when courts are confident that the disparity affects the protected class at a level of 95%.<sup>135</sup> Black women should be protected under Title VII sex discrimination and be permitted to wear ethnic hairstyles because grooming policies that are facially neutral have a greater effect on black women, such that it is a legal fiction to argue that standards such as hairstyle requirements banning ethnic hairstyles apply equally to all women in the same way. The result is that grooming policies that do not allow women to wear braids and dreadlocks force many black women to resort to hair extensions and wigs to maintain the neat and professional look many companies urge.<sup>136</sup>

Within the 12 months preceding the survey's date, 44% of black women have worn weaves, wigs or hair extensions, and 38% plan on getting either a weave, wig, or hair extensions within the next 12 months.<sup>137</sup> The author of *A Comprehensive Guide for Hair Extensions for a White Girl* says that hair extensions are "perfect for a wedding look," suggesting that on the rare occasion when white women do wear extensions, it is for a special event, and not a daily requirement.<sup>138</sup> There is a disparate impact on black women because in order to comply with grooming standards, black women spend an inordinate amount of time, and money in order to maintain a more acceptable look, which white women in reality are not subjected to, even if the grooming policies are facially neutral.<sup>139</sup>

### C. National Origin Under Title VII Should be More Broadly Applied to Characteristics That are Perceived Ethnic Traits

A third solution to the problem of black women's ethnic hairstyles in the workplace lies in a broader interpretation and application of national origin under Title VII.<sup>140</sup> National origin, as outlined by the legislatures who passed Title VII, is defined as the nation of a person's birth or of their ancestor's birth.<sup>141</sup> Courts should expand their interpretation of national origin to include ethnic traits that are

132. *Id.* at 1106.

133. Onwuachi-Willig, *supra* note 2, at 1090.

134. *Id.* at 1120.

135. *Id.* at 1120-21.

136. *See generally id.*

137. *Natural Hair Movement Drives Sales Of Styling Products In US Black Haircare Market*, MINTEL (Dec. 17, 2015), <http://www.mintel.com/press-centre/beauty-and-personal-care/natural-hair-movement-drives-sales-of-styling-products-in-us-black-haircare-market>.

138. Jenny, *A Comprehensive Guide for Hair Extensions for White Girl*, EVERAFTERGUIDE, <http://www.everafterguide.com/hair-extensions-for-white-girl.html> (last visited Dec. 18, 2017).

139. Onwuachi-Willig, *supra* note 2, at 1123.

140. 2 U.S.C. § 1311(a)(1) (1996).

141. Perea, *supra* note 19, at 807.

intertwined with a particular ethnicity. The prohibition against discrimination based on national origin has been dominantly interpreted very narrowly by courts under Title VII and has therefore become ineffective as a tool against discrimination.<sup>142</sup> National origin protections under Title VII often do not cover discrimination based on race-related traits.<sup>143</sup> For example, Title VII does not protect Mexican Americans from being called slurs like “wetbacks,” nor does it protect people speaking another language at work from discrimination.<sup>144</sup>

Notably, some of what *is* protected under national origin under Title VII can actually be labeled as discrimination based on an employee’s *perceived ethnic traits*.<sup>145</sup> Typically it is just not apparent to an employer what nation a person or their ancestors are from, but they discriminate just the same.<sup>146</sup> Thus, some courts have held that national origin discrimination more commonly occurs based on *perceived* ethnic markers such as: skin color, features, dress, food habits, and names.<sup>147</sup>

In *Janko v. Ill. State Toll Highway Authority*, plaintiff Loretta Janko filed a claim of national origin discrimination under Title VII against her employer, claiming she was discriminated against because she is a Gypsy.<sup>148</sup> This case is notable because Gypsies are defined as not coming from any one particular country, but instead are known simply as an ethnic group of people who are not originally from America.<sup>149</sup> The court held in Loretta’s favor, denying Defendant’s motion to dismiss, saying that national origin under Title VII *was* intended to help those who are discriminated against because of *ethnic characteristics*.<sup>150</sup> Some courts have agreed with the reasoning in *Janko*, and have held that national origin protects against discrimination for Serbians, Ukrainians, and Acadians, although these can be more appropriately described as ancestries, not places of national origin.<sup>151</sup> Black American women’s ethnic hairstyles fall into the vein of ethnic characteristics or traits that have been the basis for discrimination, yet these hairstyles receive no protection because courts have more dominantly interpreted national origin under Title VII as narrowly as possible.<sup>152</sup>

*Janko v. Ill. State Toll Highway Authority*, and the unusual ancestry protections listed are the exceptions to how Title VII is generally interpreted, and several commentators have said “the Supreme Court of the 1980s was almost never willing to interpret statutes to effectuate the rights of African Americans and other racial minorities to be free of workplace discrimination when their interests were opposed by employer and union groups.”<sup>153</sup> Instead of the majority of courts interpreting national origin by its plain meaning, courts should begin to explicitly and commonly recognize discrimination based on perceived ethnic traits, which would then be

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142. *Id.*

143. *See id.* at 807-08.

144. *Id.*

145. *Id.* at 809.

146. *Id.* at 835.

147. *Id.*

148. *Janko v. Ill. State Toll Highway Auth.*, 704 F. Supp. 1531 (N.D. Ill. 1989).

149. Perea, *supra* note 19, at 826; *see also Janko*, 704 F. Supp. at 1532-33.

150. *Janko*, 704 F. Supp. at 1532.

151. Perea, *supra* note 19, at 825-27.

152. *Id.* at 840, 860.

153. *Id.* at 840.



analyzed as any prima facie case of national origin discrimination: by either proving direct or circumstantial evidence of discrimination.<sup>154</sup>

A prima facie case of discrimination is shown by “evidence, which if believed, proves [the] existence of [a] fact in issue without inference or presumption.”<sup>155</sup> To prove national origin discrimination based on circumstantial evidence, there needs to be a showing that “(1) he [or she] is a member of a protected class; (2) he [or she] was qualified for the position; (3) he [or she] suffered an adverse employment action; and (4) he [or she] was replaced by a person outside of his [or her] protected class or was treated less favorably than a similarly-situated individual outside his [or her] protected class.”<sup>156</sup> Once the showing is made, the burden shifts to the employer to show that there is a non-discriminatory reason for the action, then if successful, the burden shifts back to the plaintiff to show that the given pretext is not the actual reason for the action.<sup>157</sup> Using either of the two tests for a prima facie case of national origin discrimination would necessitate black American women showing statistical proof that they are more affected by grooming policy hair standards than any other group of people.<sup>158</sup> Additionally, black women must show that this type of discrimination arises out of a perceived ethnic trait that arises from one ethnic group—African hair texture that leads to the ubiquity of ethnic hairstyles that are the least burdensome for them to wear; and an ethnic trait that is now a bedrock of the African American community because of the tradition of wearing ethnic hairstyles for over 200 years.<sup>159</sup>

An ethnic hairstyle is an obvious marker that a person belongs to a certain ethnic group where discrimination arises not so much from national origin itself, but rather “perceptible manifestation[s] of ethnic distinction, [and] ethnic traits.”<sup>160</sup> If the courts wish to effectuate the protection of Title VII for a large group of those who are under its protection, it should broaden its interpretation and application of national origin to include black American women who face discrimination in their work environments due to ethnic hairstyles.<sup>161</sup>

#### *D. Courts Should Consider Stacking Race, Sex, and National Origin as Applied to Title VII and Grooming Policies*

In the alternative, courts should interpret the issue of black women wearing ethnic hairstyles in the workplace through the stacked lens and an expanded view of discrimination based on race, sex, and national origin under Title VII. The intersectionality of overlapping traits that disadvantage some and lead to a lack of power in the workplace is a reality for many.<sup>162</sup> According to Professor Kimberle

154. *Id.* at 862-63; *see also* Short v. Mando Am. Corp., 805 F. Supp. 2d 1246, 1263 (M.D. Ala. 2011).

155. *Short*, 805 F. Supp. 2d at 1263 (citing Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1086 (11th Cir. 2004)).

156. *Id.* (quoting Maynard v. Bd. of Regents of the Div. of Univ. of Fla. Dep’t of Educ., 342 F.3d 1281, 1289 (11th Cir. 2003)).

157. *Id.*; *see also* McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 804 (1973).

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

159. *Id.* at 229; Thompson, *supra* note 83, at 835.

160. Perea, *supra* note 19, at 835.

161. *Id.* at 820 n.81 (“President Kennedy, in his Special Message to Congress of June 19, 1963, addressed only the problems of racial discrimination against African Americans as the problems in need of redress.”).

162. Onwuachi-Willig, *supra* note 2, at 1104-05.

Crenshaw, “overlapping dynamics of class, race, and gender, among others, can create a specific vulnerability, insight, and social disenfranchisement based on situated identities and social locations, dependent on the interaction of each structural dynamic.”<sup>163</sup> In *Rogers v. American Airlines*, Renee Rogers argued that her ethnic braids should be protected based on race and sex, but the courts did not find that persuasive.<sup>164</sup>

National origin protection would give recognition to the nuanced and complex disadvantage that black American women face in their work environment for wearing their hair in ethnic styles.<sup>165</sup> History has shown that neither the protection based on the classification of race nor sex are successful on their own for protecting black women from employers who will not allow them to wear ethnic hairstyles; but if courts interpret immutability more broadly, consider sex as contributing to a disparate impact on black women, and expand their interpretation of national origin to include ethnic traits, then black women could find a successful outcome.

#### IV. CONCLUSION

Due to the unique texture of black women’s kinky hair, employers’ grooming policies that restrict black women from wearing braids, cornrows, and other ethnic hairstyles at work leads to an incredible burden on black women.<sup>166</sup> Black women are faced with the temporal, financial, and life-limiting costs that result from grooming policies that do not allow for styles that are the healthiest for black hair.<sup>167</sup> Title VII is the main legal tool for pursuing discrimination claims, yet it is without teeth for black women who are fired because their hair does not fit within acceptable notions of professionalism.<sup>168</sup> Black women have argued that they should not be discriminated against due to their ethnic hairstyles using a race-based discrimination theory alone, and a theory of race and sex based discrimination together, but they have not yet argued on the basis of an expanded interpretation of race, sex, and national origin-based discrimination—or, alternatively, stacking all three.<sup>169</sup>

Race has been an unsuccessful category for protection of black women’s hair because courts have said that there are no protections for mutable characteristics like hair, but these interpretations should change to fit with current understandings of immutability.<sup>170</sup> Courts should protect black women under sex discrimination under Title VII because when braids, cornrows, and other ethnic hairstyles are banned from the workplace, those bans disparately impact the black women who wear them—not all women.<sup>171</sup>

Courts should expand their interpretation and application of national origin to protect black American women under Title VII because often discrimination occurs based on perceived ethnic traits and hairstyles that arise out of national origin, and

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163. *Id.*

164. *Rogers*, 527 F. Supp. at 229.

165. Perea, *supra* note 19, at 862.

166. Onwuachi-Willig, *supra* note 2, at 1131.

167. *Id.*

168. *Equal Emp’t Opportunity Comm’n v. Catastrophe Mgmt. Sols.*, 837 F.3d 1156, 1167 (11th Cir. 2016).

169. *See id.* at 1158; *Rogers*, 527 F. Supp. at 229.

170. Hoffman, *supra* note 114, at 1524.

171. Onwuachi-Willig, *supra* note 2, at 1112.

should be protected as such.<sup>172</sup> And finally, in the alternative, courts should look at the unique intersectionality of race, sex, and national origin stacked together to understand the disadvantage and lack of privilege that black American women face in their employment environments due to their hair.<sup>173</sup> Admittedly, the above arguments ask much of the courts, but Title VII was intended to be a strong tool, as was said when courts first discussed the purpose of Title VII: “I do not emphasize the word ‘equality’ standing by itself . . . . It means equality of *opportunity* in the field of employment.”<sup>174</sup>

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172. Perea, *supra* note 19, at 810, 869.

173. Onwuachi-Willig, *supra* note 2, at 1120.

174. *United Steelworkers v. Weber*, 443 U.S. 193, 254 (1979) (emphasis added).