No. 01-24-00789-CV

IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS

DARRYL GEORGE AND DARRESHA GEORGE,

Appellants,

v.

BARBERS HILL INDEPENDENT SCHOOL DISTRICT,

Appellee.

On Appeal from the
253rd Judicial District Court, Chambers County, Texas
Hon. Chap B. Cain, III, Judge Presiding
Cause No. 23-DCV-0776

AMICI CURIAE BRIEF OF THE BLACK PARENTS AND FAMILIES COLLECTIVE, NATIONAL CONGRESS ON AMERICAN INDIANS, STUDENTS ENGAGED IN ADVANCING TEXAS, THE TEXAS STATE CONFERENCE OF NAACP BRANCHES, IDRA, AND ACLU OF TEXAS IN SUPPORT OF APPELLANTS' BRIEF

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STATEMENT OF INTEREST OF *AMICI*

The **Black Parents and Families Collective** is a community engagement and empowerment network that unifies, mobilizes, and uplifts Black parents and families to be agents of change in schools to improve the outcomes and experiences of Black students. The Collective is committed to advancing racial equity and cultural empowerment in education, ensuring that every child has the freedom to learn and thrive in an environment that respects their identity. As advocates for Black students and families, the Collective works to dismantle discriminatory practices, including race-based hair discrimination, that harm children's sense of belonging, dignity, and academic success.

The **National Congress of American Indians (NCAI)** is the oldest and largest national organization comprised of Tribal Nations and their citizens. Since 1944, NCAI has advised and educated Tribal Nations, states, and the federal government on a range of issues, including cultural, free speech, and religious freedom issues impacting Tribal Nations and their citizens. NCAI works daily to support Native peoples' rights to practice and preserve their cultural traditions.

Students Engaged in Advancing Texas (SEAT) is a statewide movement of young people dedicated to increasing youth visibility in law and policymaking. SEAT's mission is to center student narratives, promote student rights, and shape a future where students hold agency in education. SEAT's members represent a diverse

coalition of students committed to bettering our communities and dismantling oppressive power structures, including eliminating discriminatory policies that undermine safe, affirming, and inclusive schools for historically marginalized students.

The **Texas State Conference of NAACP Branches (Texas NAACP)** is the oldest and one of the largest organizations promoting and protecting the civil rights of persons of color in Texas. The Texas NAACP's mission is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. To achieve its mission, the Texas NAACP engages in ongoing and perennial civic engagement activities and civil litigation to educate the community and eliminate discriminatory practices that occur in all aspects of life, including education.

IDRA (Intercultural Development Research Association) is an independent, nonprofit organization dedicated to achieving equal educational opportunity for every child through strong public schools. Since its founding in 1973, IDRA has worked with students, families, and school leaders to advocate for equal and equitable schools for all students, with a focus on advancing the civil rights of Black, Latino, and other historically marginalized students. IDRA seeks to create

culturally sustaining schools that do not push students out of the classroom through exclusionary discipline, which disproportionately harms students of color.[1]

The **American Civil Liberties Union Foundation of Texas (ACLU of Texas)** is a nonpartisan, nonprofit organization that works with communities, at the State Capitol, and in the courts to protect and advance civil rights and civil liberties for every Texan, no exceptions. As an organization dedicated to protecting freedom of speech and expression, the ACLU of Texas seeks to ensure that students of all races, genders, religions, and backgrounds can show up to school as their authentic selves, free from discriminatory dress codes. The ACLU of Texas also specifically works to advance Indigenous justice, including by opposing discriminatory practices, such as school dress codes, that prohibit Indigenous children from styling their hair in culturally and religiously significant ways.

Amici have no direct financial interest in the outcome of this litigation and are the only source of funding for this brief. No counsel for a party in these proceedings wrote this brief in whole or in part, and no party made a monetary contribution intended to fund the preparation or submission of this brief.

[1] Tionna Ryan, (J.D. Expected May 2025, an IDRA intern and 3L at the University of Texas School of Law) and Nia Prince (J.D., an ACLU of Texas Intern) substantially assisted in drafting this brief.

INTRODUCTION

All children deserve to feel welcome and supported in schools. Building positive school climates free from discrimination is essential to ensuring school safety and student wellbeing.[2] Not only does discriminatory policing of students' dress and grooming—including their cultural and protective hairstyles—unnecessarily punish students and push them out of school, but it also causes severe mental and emotional distress. This creates a hostile educational environment that denies equal educational opportunity to Black, Native American, and other students of color by enforcing discriminatory, Euro-centric standards of acceptable appearance and identity.

Lawmakers enacted the Texas CROWN Act (the "Act") to prevent these severe harms. Following and motivated by Barbers Hill ISD's discrimination against two Black male students with long locs, legislators drafted and passed the Act to prevent schools from requiring students to "divest themselves of their cultural identit[ies]" and to prohibit discrimination against hair styles and textures commonly

[2] The Leadership Conference on Civil and Human Rights et al., *Civil Rights Principles for Safe, Healthy, and Inclusive School Climates* (Jun. 14, 2020), https://civilrights.org/wp-content/uploads/2021/02/Civil-Rights-Principles-for-Safe-Healthy-and-Inclusive-School-Climates_2.pdf; Morgan Craven, *What Safe Schools Should Look Like for Every Student – A Guide to Building Safe and Welcoming Schools and Rejecting Policies that Hurt Students*, IDRA (Jun. 16, 2022), https://www.idra.org/wp-content/uploads/2022/06/Safe-Schools-IDRA-Issue-Brief-2022-June.pdf.

or historically associated with race.[3] Against this background and the Act's plain text, it is apparent that both Barbers Hill ISD and the district court have failed to give full effect to the Act by permitting continued discrimination against Darryl George's long locs.

First, hair length and long protective hair styles like those worn by Darryl George are "commonly and historically associated with race" and cultural identities. Second, "protective hairstyles," are used, in large part, to facilitate healthy hair growth and retention of hair length, so any interpretation of the Act that would permit the destruction of the length of these styles would thwart the Act's inherent meaning and underlying legislative intent. Third, the Act was adopted to prevent the exact discrimination and harm BHISD is perpetuating against Darryl George. Indeed, there is a vast body of historical, sociological, and legal evidence that discrimination against the length of protective hairstyles has a legally cognizable discriminatory impact on Black students, Native American students, and other students of color.

Consistent with the principle of separation of powers, courts must interpret legal mandates "within the context of the statute." *Tex. HHS Comm'n v. Est. of Burt*, 689 S.W.3d 274, 280 (Tex. 2024). As the Texas Supreme Court recently observed, "Context also includes common sense," and the "notion that some things 'go without

[3] House Comm. on State Affs., Bill Analysis, Tex. H.B. 567, 88th Leg., R.S. (2023) (hereinafter "Bill Analysis"); Tex. Educ. Code § 25.902(b).

saying' applies to legislation just as it does to everyday life." *Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725, 738 (Tex. 2024). It should go without saying that no school should be allowed to push out Darryl George for wearing a culturally significant hairstyle and force him to destroy his ancestral connections, spiritual strength, and cultural identity. *Amici* respectfully submit this brief in support of Appellants Darryl and Darresha George and urge this Court to end BHISD's discrimination and retaliation against the George family.

FACTUAL BACKGROUND RELEVANT TO *AMICI*'S ARGUMENT

I. Barbers Hill ISD has a history of discrimination and retaliation against its Black and Indigenous male students for refusing to cut their hair.

In 2019, two Black male students with locs sued Barbers Hill Independent School District ("Barbers Hill ISD" or "BHISD") in the United States District Court for the Southern District of Texas to enjoin the school district from enforcing its hair-length policy and retaliating against the students. *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020).

In the beginning of the 2019-2020 school year, the BHISD dress code had a boys-only hair length policy that read as follows: "Boys' hair will not extend, at any time, below the eyebrows, below the earlobes, or below the top of a t-shirt collar. Corn rows and/or dreads are permitted if they meet the aforementioned lengths." *Id.* at 516. Kaden Bradford, one of the plaintiffs in the *Arnold* case, "wears his hair in

locs 'because it is part of [his] Black culture and heritage' and because he wants to emulate '[his] loved ones, including extended family members with West Indian roots, [who] have locs.'" *Id*. Kaden had been growing his locs since the seventh grade and had not cut them once. *Id.* He "testified that 'locs are meant to grow long' and that 'you don't cut locs' because 'they would unravel,' undoing 'all the hair process and growth' the wearer spends years cultivating." *Id.* (cleaned up).

Kaden kept his locs tied back and up to comply with BHISD's dress code but was singled out regularly for his hair. *Id.* at 517. He testified that the Assistant Principal removed him from class at least once a week to ensure that his locs complied with the hair policy. *Id*. This monitoring started his freshman year and continued through the fall of his sophomore year. *Id*. Over winter break of his sophomore year, BHISD changed the dress code to include a provision that regulated the length of boys' hair "when let down." *Id.* Kaden refused to cut his locs to avoid punishment and spent the second half of his sophomore year in in-school suspension. *Id.* Students in in-school suspension were not taught by certified teachers and "had to figure out [their] schoolwork and homework on [their] own." *Id.* This lack of educational support led Kaden to transfer to another school district where he could fully participate in school and wear his long locs without punishment. *Id.*

This was not the first time BHISD had discriminated against male students of color through its dress and grooming policy. For example, the U.S. Department of

Justice opened an investigation in 2017 related to allegations that the District refused to allow a Native American student to attend school unless he cut his hair to conform with the District's hair length policy.[4]

During this same time period, BHISD also targeted Kaden's cousin, De'Andre Arnold, for wearing long locs.[5] De'Andre Arnold was a senior at Barbers Hill High School when the District changed the rule to include the "when let down" language, and had been a student in the District throughout his entire high school career.[6] His locs extended past his shoulders when let down, but he was allowed to keep them tied up and pulled back prior to the rule change.[7] De'Andre's father is from Trinidad, where growing long locs is a common part of the culture.[8] When he refused to cut his locs after the rule was changed, De'Andre was also put in in-school suspension and was told he would not be allowed to walk at his high school graduation if he did not cut his locs.[9] This led De'Andre to transfer out of the district.[10]

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[4] *See* United States' Statement of Interest at 3 n.5, *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020) (No. 4:20-cv-01802), available at https://www.justice.gov/crt/case-document/file/1419201/dl?inline; *see also* Christina Carrega, *DOJ defends 2 Texas teens in fight with school district over long locs*, CNN (Jul. 26, 2021), https://www.cnn.com/2021/07/26/politics/doj-texas-locs-litigation/index.html.

[5] Leah Asmelash, *If this Texas student doesn't cut his dreadlocks, he won't get to walk at graduation. It's another example of hair discrimination, some say*, CNN (Jan. 24, 2020, 10:12 AM), https://www.cnn.com/2020/01/23/us/barbers-hill-isd-dreadlocks-deandre-arnold-trnd/index.html.

[6] *Id.*

[7] *Id.*

[8] *Id.*; *see also* Neil J. Savishinsky, *Transnational Popular Culture and the Global Spread of the Jamaican Rastafarian Movement*, 68 NEW WEST INDIAN GUIDE 259, 262–63 (1994).

[9] Asmelash, *supra* note 5.

[10] *Id.*

The district court in the *Arnold* case found these facts to be sufficient to preliminarily enjoin BHISD from enforcing the hair length policy against Kaden, from making disparaging remarks about him, and from retaliating against him. The court found that the District's behavior would likely constitute sex and race discrimination under the Equal Protection Clause and violate their First Amendment rights to free speech. *Arnold*, 479 F. Supp. 3d at 529.

As the District would later seek to do in Darryl George's case, BHISD attempted to justify its discriminatory policy by claiming that the policy helps to "maintain a standard of excellence; maintain an atmosphere conducive to learning; prepare students for success in college, the military, and the workplace; and promote educational goals," but it could not articulate facts establishing any relationship between these goals and the hair length policy. *Id.* at 522. Kaden and De'Andre also offered further proof of racial discrimination with statistical evidence, drawn from BHISD disciplinary records, that African American students were three times more likely to be punished for violating the hair-length policy than their white peers. *Id.* at 526–27. The district court also found expert testimony and the testimonies of Kaden and De'Andre persuasive in showing that "[v]isibly wearing one's hair in a particular manner is capable of communicating one's religion or heritage." *Id.* at 528.

The BHISD hair length policy found unconstitutional in Kaden and De'Andre's cases is the same policy BHISD is enforcing against Darryl George in this case.

II. The Texas CROWN Act was passed in direct response to Barbers Hill ISD's discriminatory hair policies.

In passing the Texas CROWN Act, the Legislature was substantially motivated by Barbers Hill ISD's application of its discriminatory boys-only hair length policy against Kaden and De'Andre. In April 2021, the first time the bill was introduced in the Texas Legislature (as HB 392), De'Andre Arnold testified in support of the bill in front of the House State Affairs Committee:[11]

> While attending Barbers Hill High School in Mont Belvieu Texas, I experienced hair discrimination . . . My hair has never had anything to do with my behavior or capacity to learn. But my high school's grooming policy does not meet equal education and extracurricular opportunities, including the opportunity to graduate with my peers. . . . Policies like Barbers Hill High School's profile, single out, and disproportionately burden Black people for wearing natural hairstyles and styles intimately connected with Black identities. Discrimination against Black hair is an issue of education equity. By enforcing this policy, the school punished me for my hair, removed me from the classroom, and interrupted my education. My hope is that no other student will be penalized for being proud of their heritage and being who they are. Every kid deserves to go to school and be themselves at the same time. I hope the Texas Legislature passes the CROWN Act so that going forward there are legal measures in place to protect Black people from hair discrimination.

[11] *See* Hearing on HB 392 before the Texas House Committee on State Affairs, 87th Leg., R.S. at 1:08:20 (Apr. 29, 2021), https://house.texas.gov/videos/7971.

Arnold's remarks elicited specific acknowledgements from Texas State Representatives on the committee—both Representative Howard (D) and Representative Harless (R) thanked Arnold for speaking and apologized for his experience with BHISD.[12] Other speakers[13] also echoed their understanding that the Act would prohibit BHISD's grooming and hair length policy as a form of race-based discrimination.[14] Though HB 392 did not pass by the deadline for the 87th Regular session, Representative Rhetta Bowers reintroduced and eventually passed an identically worded bill, HB 567, in the next legislative session.

In the 88th Legislative Session, on the floor of the Texas House, Representative Bowers justified the need for the bill by refencing BHISD's discrimination against De'Andre:

> Members, I would like to take a moment to share with you about why we need this bill. This form of race-based discrimination is real, and it is happening today. **It has happened to students like De'andre Arnold who faced in-school suspension and was barred from walking at his high school graduation *because he would not cut his locs*** . . . . **HB 567 will prevent this kind of discrimination**.[15]

Later in the session, Senator Boris Miles (HB 567's Senate sponsor) introduced the bill in the Senate State Affairs Committee after it passed the Texas House of

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[12] *See id.* at 1:10:30.
[13] *See* 87(R) HB 392, House Committee Report Witness List (Apr. 29, 2021), available at https://capitol.texas.gov/tlodocs/87R/witlistbill/html/HB00392H.htm.
[14] *See* Hearing on HB 392 before the Texas House Committee on State Affairs, 87th Leg., R.S. at 41:30 (Apr. 29, 2021), https://house.texas.gov/videos/7971.
[15] *See* Second Reading and Record Vote on HB 567 before the Texas House, 88th Leg., R.S. at 2:20:30 (Apr. 12, 2023), https://house.texas.gov/videos/11086 (emphasis added).

Representatives. He similarly justified the need for the bill by discussing Arnold's case against BHISD:

> [The CROWN Act] prohibits hair-based discrimination . . . . **It is happening to students like De'Andre Arnold who faces in-school suspension and was barred from walking at a high school graduation near Houston *because he would not cut his locs*** . . . . it is about hair texture, and/or style, which are used to protect natural hair health.[16]

Again, other speakers referenced the experiences of students who had to choose between cutting off their locs or enrolling in school[17] and of students like De'Andre Arnold, who were "weeks away from graduation" but were told they weren't allowed to walk the graduation stage "due to [their] natural locs being too long."[18] The speakers highlighted how "it's very important that as we're looking around at our schools, that our students understand that in a state like Texas, we are committed to protecting their individual freedoms . . . we are exhausted with having to show up and ask people to stop discriminating against students in schools with school board policies that are created without them in mind."[19]

Contrary to the district court's finding,[20] the experiences of Black students like De'Andre, Kaden, and ultimately Darryl advocating for the right to wear their

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[16] *See* Hearing on HB 567 before the Texas Senate Committee on State Affairs, 88th Leg., R.S. at 10:20 (May 8, 2023), https://senate.texas.gov/videoplayer.php?vid=19160&lang=en.
[17] *Id.* at 39:20 (testimony of Aicha Davis).
[18] *Id.* at 29:35 (testimony of Myriah Hampton).
[19] *Id.* at 17:50 (testimony of Stephanie Boyce).
[20] *See* 4 CR 1089 ("There is no legislative history suggesting that hair length exemptions are covered by the CROWN Act.").

locs "below the eyebrows, below the earlobes, or below the top of a t-shirt collar" in BHISD were well-documented in the legislative record of the Texas CROWN Act.

ARGUMENT

"In arriving at the intent and purpose of the law, it is proper to consider the history of the subject-matter involved, the end to be attained, the mischief to be remedied, and the purposes to be accomplished." *Sherman v. Pub. Util. Com.*, 643 S.W.2d 681, 684 (Tex. 1983). Accordingly, courts cannot construe statutes in a manner that would "effectively neuter the obligation, impose no duty to carry it out at all, and frustrate the statute's purpose." *Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725, 729 (Tex. 2024) (cleaned up).

Recognizing the harmful impact of hair discrimination in schools, the Texas Legislature passed the Texas Crown Act, which states in relevant part:

> (a) In this section, "protective hairstyle" includes braids, locks, and twists.
>
> (b) Any student dress or grooming policy adopted by a school district, including a student dress or grooming policy for any extracurricular activity, **may not discriminate against a hair texture or protective hairstyle commonly or historically associated with race**.

Tex. Educ. Code § 25.902(a) and (b) (emphasis added). In passing this historic legislation, the Legislature unequivocally declared: "Individuals should not be required to put chemicals in their hair to change its texture or appearance *or*

otherwise divest themselves of their cultural identity in order to adapt or be seen as deserving of opportunities in schools. . . ."[21]

There is no legitimate dispute that the Act was designed to prevent the exact kind of "mischief" that BHISD is currently perpetuating against Darryl George.[22] Yet, BHISD and the district court have failed to give full effect to the statute's plain text and purpose. *C.f. In re Office of the AG*, 422 S.W.3d 623, 629 (Tex. 2013) (stating that courts "must endeavor to read the statute contextually, giving effect to every word, clause, and sentence") (citation omitted); *see also Mass. Bay Ins. Co. v. Adkins*, 615 S.W.3d 580, 604 (Tex. App.—Houston [1st. Dist.] 2020, no pet.) (stating that when construing a statute, the court's "objective is to determine and give effect to the Legislature's intent"). Specifically, in finding that the Texas CROWN Act does not prohibit racially discriminatory *length* restrictions in this case, the district court and the school district misconstrued the meaning of the terms "*protective hairstyle*" and "*commonly or historically associated with race*." *See* Tex. Educ. Code § 25.902(b) (emphasis added). The district court justified the school district's policy by finding that (1) "[t]here is no legislative history suggesting that hair length exemptions are covered by the CROWN Act," and (2) "Section 25.902 of the Texas

[21] Bill Analysis, *supra* note 3 (emphasis added). The rules of the Texas Legislature require each committee to produce report that includes "a detailed analysis of the subject matter of the bill or resolution, specifically including . . . background information on the proposal and information on what the bill or resolution proposes to do." Texas Legislative Manual Rule 4 § 32(c), https://tlc.texas.gov/docs/legref/TXLegeManual2023.pdf.
[22] *See supra* Section II.

Education Code, the CROWN Act, is silent regarding hair length exemptions." 4 CR 1089.

The district court is wrong for at least three reasons.

First, hair length and long protective hair styles are "historically associated with race," *see* Tex. Educ. Code § 25.902(b), and commonly associated with cultural identities. For many Black and Native American people, long hair carries deep historical and cultural significance, symbolizing ancestral connections and spiritual strength. Leaving one's hair uncut is a powerful expression of cultural identity and continuity within these communities. Further, discriminatory dress and grooming rules have long been tied to efforts to "cleanse," "control," and "conform" Black and Native American people in the United States' history of slavery and colonization.

Second, "protective hairstyles" are used, in large part, to facilitate healthy hair growth and retention of hair length—therefore any interpretation of the Texas CROWN Act that would permit the regulation and destruction of the length of these styles would thwart the text's inherent meaning and underlying legislative intent. The legislative record demonstrates that the Texas Legislature understood protective hair styles as both culturally significant and functionally necessary to achieving hair length. Therefore, the Texas CROWN Act—which prohibits discrimination against hair textures and protective hair styles—inherently precludes hair length restrictions targeting racially and culturally significant hairstyles.

Third, the Texas CROWN Act was adopted to prevent the exact discrimination and harm BHISD is perpetuating against Darryl George. Lawmakers enacted the Texas CROWN Act to prevent school districts from requiring students to "divest themselves of their cultural identit[ies]"[23] and to expressly prohibit "*discriminat[ion]*" against a hair texture or protective hairstyle commonly or historically associated with race. There is a robust body of historical, sociological, and legal evidence that particular lengths of protective hairstyles are also commonly and historically associated with race and cultural expression, and therefore any effort to limit or punish such hairstyles is suspect. The discriminatory impact of dress and grooming codes on Black students, Native American students, and other students of color is also well-documented in legal and academic scholarship.

For these reasons, discussed in more detail below, *Amici* urge this Court to reverse the judgment of the trial court and render judgment in favor of Appellants Darryl and Darresha George.

III. Hair length and long protective hairstyles are historically associated with race and cultural identity.

Lawmakers enacted the Texas CROWN Act to prevent school districts from requiring students to "divest themselves of their cultural identit[ies]," and to prohibit discrimination against hair styles and textures commonly or historically associated

[23] Bill Analysis, *supra* note 3.

with race.[24] There is a vast body of historical and sociological evidence that hair length and long protective hair styles are "historically associated with race," *see* Tex. Educ. Code § 25.902(b), and with cultural identities.

Throughout history and continuing today, Black people have used protective hairstyles to facilitate growth and prevent breakage of their natural hair, which has unique structural and textural characteristics. But these hairstyles are not just a practical necessity. From their inception, *long* protective hairstyles have served as distinct forms of racial, spiritual, and cultural expression. Indeed, leaving one's hair uncut and using protective hairstyles is historically associated with ancestral connection and spiritual strength in many African cultures. Similarly, many Native American cultures attribute deep cultural and religious significance to hair length and style. Understanding their cultural significance and power, white, ruling-class Europeans and Americans have historically targeted long and protective hairstyles for suppression throughout our nation and state's history of slavery, colonization, and racial oppression.

A. Leaving one's hair uncut is historically associated with ancestral connection, cultural identity, and spiritual strength in many African and Indigenous communities.

Long locs, long braids, and long twists are iconic symbols deeply rooted in the cultural history and identity of Black and Indigenous people across the globe.

[24] *Id.*; Tex. Educ. Code § 25.902(b).

Their history goes back thousands of years and spans different eras and civilizations.[25] As one historian has documented: "In African cultures, the grooming and styling of hair have long been important social rituals. Elaborate hair designs, reflecting tribal affiliation, status, sex, age, occupation, and the like, were common, and the cutting, shaving, wrapping, and braiding of hair were centuries-old arts."[26] After combing through hundreds of eighteenth-century advertisements for people fleeing slavery, the scholar observed that enslaved African people invested valuable time and effort to maintain their culturally significant hairstyles, even in cruel and unaccommodating circumstances:

> In part, it was the texture of African hair that allowed these cultural practices to develop; as the historian John Thornton has observed, "the tightly spiraled hair of Africans makes it possible to design and shape it in many ways impossible for the straighter hair of Europeans." In the slave systems of the New World, of course, African Americans lacked both the time for such elaborate hairstyling practices and the implement with which they could most effectively be performed—the African pick, or comb, whose long, smooth teeth did not snag or tear thick, tightly curled hair. As a result, slaves' hair often became tangled and matted. Yet, as slave owners' descriptions of runaways clearly show, the hair of large numbers of slaves remained sufficiently malleable for it to

[25] Shane White & Graham White, *Slave Hair and African American Culture in the Eighteenth and Nineteenth Centuries*, THE JOURNAL OF SOUTHERN HISTORY, Feb., 1995, Vol. 61, No. 1 (Feb., 1995), at 49–50, https://www.jstor.org/stable/2211360; *see also* Madison Horne, *A Visual History of Iconic Black Hairstyles: Afros, cornrows, dreadlocks and beyond: The ancient roots of Black hairstyles*, History Channel (Feb. 1, 2019), https://www.history.com/news/black-hairstyles-visual-history-in-photos. Of note, the earliest written evidence of dreadlocks dates back to between 2500 and 1500 BC: the God Shiva and his followers are described as jaTaa, meaning "wearing knots of tangled hair." Capucine, *The History of Dreadlocks: A Journey Through Time and Culture*, Noire O Naturel (May 7, 2023), https://www.noireonaturel.com/le-blog/hair/the-history-of-dreadlocks-a-journey-through-time-and-culture/.

[26] White, *supra* note 25, at 49.

> be styled in surprisingly elaborate ways and, in the process, to serve as an important medium through which cultural messages could be conveyed.[27]

Though it should be self-evident, such "elaborate" designs are simply not possible without long hair to shape and style.

Long protective hairstyles such as long locs are not just hairstyles—for many racial and cultural groups, they serve as symbols of spirituality, freedom, and cultural identity.[28] In Kenya, Maasai warriors are known to spend hours perfecting their famous red locs.[29] Locs have also been worn among ancient Egyptians, West Indians,[30] Buddhist monks in India, Māori warriors in New Zealand, and Rastafaris in Jamaica.[31] In many Indigenous cultures, "[h]air is your strength; it's the teaching that's been passed down from generation to generation. It's who you are. It's your spirit. The longer your hair is, the more connected you are to the land."[32] According to a First Nations tradition in North America, "When you have one braid down the

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[27] *Id.* (internal quotations omitted).
[28] Chasity Henry, *Knot Today: A Look at Hair Discrimination in the Workplace and Schools*, 46 T. MARSHALL L. REV. 29, 31 (Fall 2021).
[29] Princess Gabbarra, *History of Dreadlocks*, Ebony (Jan. 28, 2016), https://www.ebony.com/history-dreadlocks/; *see also* Dayna Gross, *Maasai Tribe Championing Locs* (April 07, 2017), https://drlocs.com/blogs/articles/maasai-tribe-championing-locs?srsltid=AfmBOoolZt2ByAfnhSKT9_KvbNscKY4ogsKCbzBZniFYl0P8g6g1CQzN.
[30] *See, e.g.*, White, *supra* note 25, at 53 ("The dreadlocks of black West Indians also spoke of pride, since that hair arrangement celebrated the very texture of black hair that white racism had devalorized, a texture that alone is capable of being shaped into the dreadlocks' distinctive configurations.").
[31] Gabbara, *supra* note 29.
[32] Ernie Michell, *The Importance of Long Hair in Indigenous Culture*, The Gold Rush Trail (last visited December 1, 2024), https://goldrushtrail.ca/stories/the-importance-of-long-hair-in-indigenous-culture/.

back, it follows the spine. That's where your strength is."[33] Similarly, the Old Testament tells the story of Samson, a powerful and spiritual Nazirite warrior whose famed strength was said to be derived from his hair being "uncut" from birth and divided into "seven locks" or "braids."[34] After being tricked into shaving his hair, Samson's "strength went from him."[35]

Drawing from these traditions, many young people, like De'Andre, Kaden, and Darryl, continue to seek strength from these ancestral practices today. Indeed, Darryl has explained: "I love my hair . . . . it is sacred and it is my strength."[36]

B. Efforts to "cleanse," "control," and "conform" the bodies of Black and Indigenous peoples are inextricably intertwined with the history of slavery and colonization and demonstrate that the cultural and racial significance of long hair is widely understood.

1. From slavery to Jim Crow to the modern era, the use of and discrimination against Black people's long hair and long protective styles demonstrate these styles' inherent associations with race.

When white European colonizers forcibly enslaved African people during the transatlantic slave trade, they shaved their heads in an attempt to destroy their connection to their homeland and the cultural and spiritual strength they derived from their hair—"the first step the Europeans took to erase the slave's culture and

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[33] *Id.*
[34] *Judges* 16:13–19. The use of "locks" or "braids" differs based on the translation of the Bible referenced.
[35] *Id.* ("[I]f I be shaven, then my strength will go from me, and I shall become weak, and be like any other man.").
[36] 4 CR 1203.

alter the relationship between the Africans and their hair."[37] Slave owners often used hair shaving or cropping as punishment for enslaved people because they recognized the readily apparent spiritual and cultural significance of enslaved Africans' ability to grow and style their hair.[38] For example, eighteenth century advertisements for "runaway slaves" described "the young slave Hannah" who had her hair "lately cut in a very irregular manner, as a Punishment for Offences" and "Peter, a frequent runaway," who had "been branded 'S on the cheek, and R on the other,' and had had his hair cut entirely off."[39] Because African hair was also deemed unattractive and inferior to the Eurocentric standard of "long straight hair,"[40] enslaved women who worked in the fields were often required to cover their hair in headscarves.[41] Some enslaved women who worked inside the house, however, had to mimic the hairstyles of their enslavers, forced to either straighten their hair or wear wigs that emulated their enslavers.[42] Even free Black people were not exempt from the demands of the white ruling class to conform to Eurocentric standards. For example, political leaders in antebellum Louisiana legally required "free women of color" to wear a "tignon, a

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[37] AYANA BYRD & LORI THARPS, HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA 9 (2002).
[38] White, *supra* note 25, at 49; *see also id.* at 68 ("Former slaves who were interviewed for the Federal Writers' Project in the 1930s make it clear, for example, that shaving the head of a slave was not an uncommon form of punishment[.]").
[39] *Id.*
[40] Chanté Griffin, *How Natural Black Hair at Work Became a Civil Rights Issue*, JSTOR Daily (July 3, 2019), https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue/.
[41] *Id*.
[42] *Id.*

kerchief which bound the hair."[43] White people often referred to African hair derogatorily as "wool," and locs were described as "dreadful"—which some historians believe lead to the name "dreadlocks."[44]

After the abolition of slavery, newly freed Black people sought to become full citizens in society. One way of achieving this goal was to emulate Eurocentric aesthetics, distancing themselves from the racist and dehumanizing stereotypes associated with "savage Negro[es]," with large lips, wide noses, and kinky hair.[45] During this period, Black men that allowed their hair and beard to grow long, like Frederick Douglass, were considered "uppity"—having boldly stepped out of their designated social place.[46] Decades later, in the Jim Crow era, Black features continued to be demonized and dehumanized, including in advertisements that often-portrayed African Americans as "nappy-haired caricatures" with exaggerated features.[47] Indeed, there is some evidence that the term "Jim Crow" refers to a hair styling implement used by enslaved Africans to comb their hair to their white

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[43] Donald E. Everett, *Free Persons of Color in Colonial Louisiana*, 7 J. LA. HIST. ASS'N 21, 34 (1966), https://www.jstor.org/stable/4230881 (describing "Tignon law" in antebellum Louisiana).
[44] Morgan Simone Mallory, *When the Sun of Cultural Beauty Rises, the Competent Mind Remains Resilient!" The Journey of Title VII and the Story of Natural Hair*, 47 S.U. L. REV. 315, 328 (Spring 2020); *see also* April Williams, *My Hair is Professional Too!: A Case Study and Overview of Laws Pertaining to Workplace Grooming Standards and Hairstyles Akin to African Culture*, 12 S.J. POL'Y & JUST. 138, 165–66 (2018).
[45] BYRD & THARPS, *supra* note 37, at 26.
[46] *Id*. at 38.
[47] *See* Dawn D. Bennett-Alexander & Linda F. Harrison*, My Hair Is Not Like Yours: Workplace Hair Grooming Policies for African American Women as Racial Stereotyping in Violation of Title VI*, 22 CARDOZO J.L. & GENDER 437, 446 (2016).

master's satisfaction. For example, Jacob Stroyer, a formerly enslaved man interviewed by the Federal Writer's Project in the 1930s,[48] described "how, before each inspection of the slave children by the plantation owner and his wife, attempts were made 'to straighten out our unruly wools with some small cards, or Jim-crows,' as they were called."[49]

As a result of these discriminatory societal expectations, a booming beauty industry emerged to help Black men and women alter their natural hair texture with chemical treatments and hot combs.[50] For example, many Black men and women chose, or were required by their employers, to apply chemical relaxers to straighten their natural hair texture.[51] Black school children were similarly required or pressured to do the same.[52] During the Civil Rights Movement, Black political leaders such as Martin Luther King, Jr. made a deliberate choice to wear short

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[48] *See* U.S. Library of Congress, *Born in Slavery: Slave Narratives from the Federal Writers' Project, 1936 to 1938* (last visited Dec. 1, 2024), https://www.loc.gov/collections/slave-narratives-from-the-federal-writers-project-1936-to-1938/about-this-collection/.
[49] White, *supra* note 25, at 69–70.
[50] Alesha Hamilton, *Untangling Discrimination: The CROWN Act and Protecting Black Hair*, 89 U. CIN. L. REV. 483, 493 (2021).
[51] *Id.* For example, Madame C.J. Walker, among the first self-made female millionaires in the United States, found her success in manufacturing specialized products for Black hair. While Walker's success has historically been attributed to her audience's desire for straightened hair, Walker's product system, including products advertised as "Hair Growers," reached notoriety because the formulas were designed to assist in length retention for hair textures prone to breakage. PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA, 187–89 (1984).
[52] Hamilton, *supra* note 50, at 490.

haircuts, keeping their natural hair close and tight to their head.[53] For men especially, short, neat natural hair was an "acceptable" hairstyle, whereas the longer Afro styles starting to come into vogue as symbols of racial pride, self-acceptance, and agency were considered inflammatory. For women, longer hair was preferrable because it was "feminine," but only if straightened.[54] Having long, naturally textured hair was taboo and discouraged, regardless of gender, because it was a blatant, visible symbol of the wearer's heritage.

The Black Power Movement of the 1960s and 1970s gained traction alongside the "Black is Beautiful" campaign, encouraging Black men and women to wear Afros and other culturally significant hairstyles, like braids, to counter popular stereotypes of Black hair and people as ugly, undesirable, and unkempt.[55] During the 1970s, the United States also experienced an influx of Caribbean immigration. Jamaican cultural influence, in particular, gained popularity in no small part due to the spread of Reggae music,[56] increasing the visibility of the Rastafari and the often

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[53] Ernie Suggs, *For many, an Afro isn't just a hairstyle*, Atlanta Journal-Constitution (Feb. 23, 2021), https://www.ajc.com/life/for-many-an-afro-isnt-just-a-hairstyle/7RKTQOXTMFAZ7GFAO7NBV7D74Y/.

[54] For example, in the early 1970s, ABC affiliate reporter Melba Tolliver was removed from the air after she was ordered to straighten her hair or wear a scarf or straight wig, but declined to do so, opting for her natural Afro instead. *See* Indira S. Somani & Natalie Hopkinson, *Color, Caste and the Public Sphere Black journalists who joined television networks from 1994 to 2014*, 13 JOURNALISM PRACTICE 314 (2019).

[55] Tracey O. Patton, *Hey Girl, Am I More than My Hair?: African American Women and Their Struggles with Beauty, Body Image, and Hair*, 18 NAT'L WOMEN'S STUD. ASS'N J. 24, 40 (2006).

[56] Neil J. Savishinsky, *Transnational Popular Culture and the Global Spread of the Jamaican Rastafarian Movement*, 68 NEW WEST INDIAN GUIDE 259, 260–65 (1994).

long-locked hairstyle closely associated with Rastafarianism and wider Caribbean culture. However, these cultural and social movements were eroded in the late 1970s and early 1980s, as notions of assimilation—into newly integrated workplaces and schools—became more dominant and Black people opted for more "acceptable" straight or chemically processed hairstyles that were less associated with Black identity, racial pride, or political messaging that could be considered inflammatory.[57] Through the 1990s and early 2000s, Black men who sported longer natural hairstyles like, Afros, cornrows, braids, and locs were frequently stereotyped as "thuglike"—a particularly harmful and racially-charged assumption.[58]

Influenced by earlier movements, the natural hair movement of the early 2000s pushed for greater mainstream acceptance of natural hair and hairstyles,[59] this time also out of concern that chemical relaxers contribute to various cancers and other adverse health effects and that chemical and heat-based straighteners damage the hair and scalp.[60] Protective styling reemerged as Black people once again embraced their cultural aesthetic, in addition to the utility of such styles to aid in the maintenance of healthy natural hair and prevent breakage.[61] However, most

[57] Patton, *supra* note 55, at 29–30.
[58] BYRD & THARPS, *supra* note 37, at 187.
[59] Martin Childs IV, Comment, *Who Told You Your Hair Was Nappy?: A Proposal for Replacing an Ineffective Standard for Determining Racially Discriminatory Employment Practices*, 2019 MICH. ST. L. REV. 287, 304 (2019).
[60] Juanita Trusty, et al., *Hair Bias in the Workplace: A Critical Human Resource Development Perspective*, 25 ADVANCES IN DEVELOPING HUMAN RESOURCES 5 (2023).
[61] Hamilton, *supra* note 50, at 492.

protective styles—like twists, locs, braids, and sew-in extensions—persist as targets of discrimination, particularly in employment and educational settings.[62] Even decades after the enactment of the Civil Rights Act of 1964, schools, employers, and other institutions continue to implement "race-neutral" appearance and grooming policies that disproportionately affect African Americans and perpetuate racial discrimination.[63] This was the very political and social climate that necessitated the drafting of the CROWN Act by Dove and the CROWN coalition in 2019.[64]

2. Long hair styles are significant symbols of Native American cultural identity and heritage, as demonstrated by their purposeful destruction by the United States government.

Paralleling the experience of Black people in America, from the early 19th century onward, the U.S. government established and funded a vast network of boarding schools aimed at forcibly assimilating Native American youth into white Euro-American culture, systematically extinguishing Native American languages, traditions, and identities.[65] Having realized that it was "cheaper to educate Indians

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[62] D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It*?, 79 U. COLO. L. REV. 1355, 1383 (2008).
[63] Hamilton, *supra* note 50, at 491.
[64] *Creating a Respectful and Open World for Natural Hair: The Official Campaign of the CROWN Act Led by the CROWN Coalition*, The CROWN Coalition (last visited Nov. 13, 2024) https://www.thecrownact.com/.
[65] Bryan Newland, Federal Indian Boarding School Initiative Investigative Report Vol. II 13 (July 2024), https://www.bia.gov/sites/default/files/media_document/doi_federal_indian_boarding_school_initiative_investigative_report_vii_final_508_compliant.pdf ("The Department found that between 1819 and 1969, the Federal Indian boarding school system consisted of 417 Federal schools across 37 states or then-territories, including 22 schools in Alaska and 7 schools in Hawaii.").

than to kill them,"[66] the goal of Indian boarding schools was nevertheless, in the words of one of the first school's founders, to "kill the Indian in him and save the man."[67] Children were stripped of their names, possessions, and tribal clothing, and were forced to speak English in lieu of their Native languages.

And—in what has long been understood as particularly traumatizing assimilationist practice—Native boys' long hair was forcibly cut short.[68] As the U.S. Department of the Interior recently acknowledged:

> The assimilation methods used in Federal Indian boarding schools were physically all-encompassing, from the pain of being stripped and 'cleaned' upon arrival, to the erasure of Native foods, and forcing children to adapt to western dietary tastes. . . . Many survivors shared details of the painful experience of having their hair cut upon arrival at Federal Indian boarding school, physically altering their appearance.[69]

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[66] *The Native American Boarding School System*, N. Y. Times (Aug. 30, 2023), https://www.nytimes.com/interactive/2023/08/30/us/native-american-boarding-schools.html (quoting the speech of commissioner of Indian affairs Thomas J. Morgan at the establishment of the Phoenix Indian School in 1891).

[67] *See* Volume 1 of the Department of the Interior's Federal Indian Boarding School Initiative Investigative Report and S. 2907 1–2, 30, 57, 72, 75, 93, 103 (June 22, 2022), https://www.govinfo.gov/content/pkg/CHRG-117shrg50193/pdf/CHRG-117shrg50193.pdf; *see also Haaland v. Brackeen*, 599 U.S. 255, 298 (2023) ("The federal government had darker designs. By the late 1870s, its goals turned toward destroying tribal identity and assimilating Indians into broader society. . . . Achieving those goals, officials reasoned, required the 'complete isolation of the Indian child from his savage antecedents.'") (cleaned up).

[68] Not only was children's hair cut, hundreds of hair clippings were taken and stored in collections for academics studying eugenics. Those clippings are considered human remains, subject to the Native American Graves Protection and Repatriation Act of 1990. Jenna Kunze, *Harvard's Museum Says It Has Hair Clippings from 700 Native Children Who Attended Indian Boarding Schools*, Native News Online (Nov. 10, 2022), https://nativenewsonline.net/sovereignty/harvard-museum-says-it-has-hair-clippings-from-700-native-children-who-attended-indian-boarding-schools.

[69] Newland, *supra* note 65, at 80.

Hair cutting was systematic: every Native boy who arrived at an Indian boarding school was assaulted in this way—by his educators—within the first days of his arrival. Boarding schools touched multiple generations and every Tribal Nation across the continent. *Amicus curiae* NCAI, comprised of hundreds of Tribal Nations, has promulgated and adopted numerous resolutions over the decades acknowledging how boarding schools and their practices "stripped [children] of traditional clothing, hair and all things and behaviors reflective of their native culture[,]"[70] and were specifically designed to "disintegrat[e] their identities."[71]

One survivor of this violence "still remembers how it felt when his hair, which is considered sacred in Lakota tradition, was cut . . . on one of his first days there."[72] "It fell on the floor and they were walking on it," the now 89-year-old student, Brave Heart, said.[73] "That to me was a deep spiritual violation and disrespect."[74] Another survivor recalled his grandfather telling him: "[A] lot of our Cheyenne people got

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[70] NCAI, *Call to Begin Education and Healing From Historical and Intergenerational Trauma:* Resolution No. ATL-14-026 at 1 (Oct. 31, 2014), https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=937. *See also* NCAI, *Support for Truth and Healing on Indian Boarding Schools*: Resolution No. AK-21-004 (June 24, 2021), https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=204; NCAI, *Entreating a United States Proclamation that a Genocide was Committed on Native Children, Families, and Nations*: Resolution No. ANC-22-023 (June 16, 2022), https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=1960.

[71] NCAI, *Entreating a United States Proclamation that a Genocide was Committed on Native Children, Families, and Nations*: Resolution No. ANC-22-023 at 3 (June 16, 2022), https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=1960.

[72] Lisa Cavazuti et al., *A search for truth — and children's remains — at a former Indian boarding school*, NBC News (Nov. 16, 2022), https://www.nbcnews.com/specials/a-former-native-american-boarding-school-reckons-with-its-dark-past/index.html.

[73] *Id.*

[74] *Id.*

our haircuts . . . . Culturally, our hair is sacred. We do not cut our hair, but they're going to do that to you. You get there, your black braids are not going to come home. And that was hard. My braids got cut off."[75]

In an effort to reckon with the painful consequences of the federal government's 150-year policy to assimilate and erase Native culture and identity, many Native American people have worked to "reestablish many of the elements of culture that was lost and to live according to the traditional values, attitudes and beliefs."[76] For many Native American people, this process includes growing long hair, considered now not only a traditional practice with religious and cultural significance,[77] but also an act of reclaiming what was stolen from hundreds of thousands of Native children and relatives.

Native people continue to associate long hair with their very cultural and racial identity,[78] as it represents "who we are and where we come from, our ancestry, and

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[75] Newland, *supra* note 65, at 81 (internal quotation marks omitted).

[76] *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863, 873 (S.D. Tex. 2009), *aff'd*, 611 F.3d 248 (5th Cir. 2010) (quoting testimony of witness Dr. Riding In).

[77] *Id. See also* Wakinyan LaPointe, *Honoring the Spiritual Legacy, Resiliency, & Healing Power of Our Ancestors Through Indigenous Customary Hair Traditions*, Cultural Survival (Sep. 20, 2020), https://www.culturalsurvival.org/news/honoring-spiritual-legacy-resiliency-healing-power-our-ancestors-through-indigenous-customary ("Pehin [hair] is sacred and powerful. Among the Lakota, there were deep, resounding, and revered purposes for hair that bridged life and death. Pehin is quite literally an extension of the spirit and ancestral connection. As the hair grows so does the spiritual connection. Because in the process of caring for their own hair and carrying out its customary traditions, one learns to braid together wisdom, guidance, and knowledge, deepening their understanding in life. This often came with greater responsibility.").

[78] *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 263 (5th Cir. 2010) ("When people ask A.A. why he has long hair, he tells them it is because he is Native American").

where we're going in life."[79] Religious beliefs often teach that a Native person's long hair should never be cut unless in mourning for the death of a close family member[80] or in the course of some other similarly life changing event.[81] Long hair is an extension of ancestry and self, a "part of [one's] body, similar to a finger or other appendage."[82] And long hair and its styling are inherent components of Native cultural and religious practices, including many dances[83] and the wearing of traditional dress and regalia. Particularly in light of how Indian boarding schools were, for generations, sites of systematic cultural erasure, including with respect to long hair, the fact that Native students still face barriers to wearing their long hair in public school is the source of significant pain for Tribal Nations and their people.

Native students across the country have gone to great lengths to exercise their rights to wear long hair in public schools, including in Texas. Native students', parents', and Tribal Nations' legal advocacy has led federal courts to find unconstitutional school policies that restrict Native American boys' ability to wear their hair in long braids. In *A.A. ex rel. Betenbaugh v. Needville ISD*, a federal district court permanently enjoined the school district from requiring a Native American

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[79] *Id.* at 254.
[80] *Alabama and Coushatta Tribes of Texas v. Trustees of Big Sandy Ind. Sch. Dist.*, 817 F. Supp. 1319, 1326 (E.D. Tex. 1993) (statement of plaintiff student Gilman Abbey); *A.A. ex rel. Betenbaugh*, 611 F.3d at 256 (citing statement of A.A. on Needville ISD's policy exemption form).
[81] *A.A. ex rel. Betenbaugh*, 611 F.3d at 255.
[82] *Alabama and Coushatta Tribes of Texas*, 817 F. Supp at 1326 (citing statement of plaintiff student Danny John).
[83] *Id.*

student—who typically wore his hair in two braids—to wear his hair in one tightly woven braid stuffed down the back of his shirt, purportedly as an accommodation to the district's boys-only hair length rule. 701 F. Supp. 2d 863, 885 (S.D. Tex. 2009), *aff'd*, 611 F.3d 248 (5th Cir. 2010). The district court determined that such a requirement would violate the student's First Amendment right to freedom of speech because his braids were a form of cultural and religious expression:

> A.A.'s braids convey a particularized message of his Native American heritage and religion. . . . In Alabama, our sister court recognized that long hair in Native American culture is "rife with symbolic meaning." . . . [A.A.'s father] believes in wearing long hair, in part, "as a symbol, an outward extension of who we are and where we come from, our ancestry and where we're going in life. It's a constant reminder to us of who we are." Despite his young age, A.A. seems to assign his braids a similar meaning. When people ask him why he has long hair, he tells them it is because he is Native American.

Id. at 882 (internal citations omitted). The court repeatedly referenced young A.A.'s simple testimony: his hair is long because he is Native. Just five years old, he understood that his racial, cultural, and religious identity was evidenced in his long braids. The Fifth Circuit affirmed the permanent injunction, describing the district's proposed accommodation as a "stricture [that would] define [A.A.'s] days as a student," 611 F.3d at 265, teaching him "the obvious lesson that he is being treated differently because of his [Native American] religion." *Id.* at 266.

Similarly, another Texas federal district court enjoined the application of a boys-only hair length rule to male Native students. *Alabama & Coushatta Tribes of*

Texas v. Trustees of Big Sandy Indep. Sch. Dist., 817 F. Supp. 1319, 1338 (E.D. Tex. 1993). Alabama-Coushatta Tribe of Texas and individual student plaintiffs claimed, *inter alia*, that the school district's policy violated the students' First Amendment rights to free exercise and free speech. The district court agreed, writing that the plaintiff and expert testimony provided "compelling evidence that long hair in Native American culture and tradition is rife with symbolic meaning." *Id.* at 1333. As one of the student plaintiffs explained to the court, "hair was part of his religion, as well as his Native American culture and tradition [;]" "[h]e ha[d] heard about the religious significance of long hair from tribal elders[;]" and "[he] thought of his hair as a part of his body, similar to a finger or other appendage." *Id.* at 1326. Following this case, *amicus curiae* NCAI promulgated and adopted a Resolution to Support Native American Students with Long Hair in the United States "in order to preserve for ourselves and our descendants rights secured under Indian cultural values[.]"[84] The resolution specifically referenced this successful case.[85]

These stories demonstrate the deep traditional importance of long hair to Native peoples and Tribal Nations and the national import of this issue for Indian

[84] NCAI, *Resolution No. NV-93-187* (Dec. 3, 1993), https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=4183.

[85] Notably, Needville ISD later attempted to force a Black student, Trevyion Gray, to cut his locs to comply with the district's "Dress Code and Hair Policy." A federal district judge granted Gray's request for a temporary restraining order against the district, finding that he had established a substantial likelihood of success on the merits of his discrimination claims. *Gray v. Needville Indep. Sch. Dist.*, 601 F. Supp. 3d 188, 189 (S.D. Tex. 2022).

Country. They capture students' sincere ascription of their long hair as markers of their Native identities and as a living practice of their cultural heritage. And they demonstrate why the histories that Native families pass to their children must include not only their traditional beliefs surrounding hair, but also how schools once cut their hair with the very purpose of extinguishing their heritage.

"Those who cannot remember the past are condemned to repeat it."[86] Here, the district court's ruling denies this history and countless students' racial, cultural, and religious relationships with their long hair. History shows us that hair length is not, and has never been, a race-neutral aesthetic consideration. Despite the painful reality of racism and forced cultural assimilation woven throughout the history of school dress and grooming codes, Barbers Hill ISD's leadership is once again demanding that "Being American requires conformity."[87] This stance is dangerous, discriminatory, and a blatant violation of both the letter and spirit of the Texas CROWN Act.

[86] George Santayana, *The Life of Reason: Reason in Common Sense 284* (Charles Scribner's Sons, 2d ed. 1929).
[87] Hannah Dellinger, *Barbers Hill ISD Upholds Hair Policy that Led to Suspension of Black Student*, Houston Chronicle (Oct. 18, 2023), https://www.houstonchronicle.com/news/houston-texas/trending/article/barbers-hill-isd-upholds-hair-policy-18614557.php.

IV. Any interpretation of the Texas CROWN Act that would permit the destruction of long protective styles would thwart the Act's inherent purpose and legislative intent.

The Texas CROWN Act prohibits discrimination against "protective hair styles," but does not contain an exclusive or exhaustive definition of "protective." *See* Tex. Educ. Code § 25.902(a) (stating that "'protective hairstyle' *includes* braids, locks, and twists") (emphasis added). When a term is left undefined in a statute, courts must "use the plain and ordinary meaning of the term *and interpret it within the context of the statute*." *Tex. HHS Comm'n v. Est. of Burt*, 689 S.W.3d 274, 280 (Tex. 2024) (quoting *Hogan v. Zoanni*, 627 S.W.3d 163, 169 (Tex. 2021)) (emphasis added); *see also Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725, 735 (Tex. 2024) ("Although text should not be stretched beyond its permissible meaning, its scope should not be restricted without reason to less than the plain language can bear.") (cleaned up). As the Texas Supreme Court recently observed, "context also includes common sense," and the "notion that some things 'go without saying' applies to legislation just as it does to everyday life." *Id.* at 738 (cleaned up).

Here, "protective hairstyle" refers to hairstyles, like braids, locs, twists, and Bantu knots, that limit the manipulation of highly textured hair in order to minimize

damage to the strands, prevent excess breakage,[88] and promote length retention.[89] *See also Protect*, Merriam-Webster (last visited Nov. 30, 2024), https://www.merriam-webster.com/dictionary/protect (defining "protect" to mean "to cover or shield from exposure, injury, damage, or destruction"; "to maintain the status or integrity of especially through financial or legal guarantees"; and "to foster or shield from infringement or restriction"); *Est. of Burt*, 689 S.W.3d at 280–81 (cleaned up) ("To determine a statutory term's common, ordinary meaning, we typically look first to [its] dictionary definitions . . . ."). The "context" of the statute at issue in this case includes the history discussed in Section III, *supra*, in addition to the unique characteristics of Black hair and the specific context of BHISD's years-long history of discrimination against Black students wearing long locs. *See Morath*, 686 S.W.3d at 735 ("Context delineates the contours of a term's scope."). Further, the district court's interpretation of the Texas CROWN Act would lead to arbitrary,

[88] Brittany Whitley & Jill Barnas, *Racial Discrimination Based on Hair Texture/Style*, MOST Policy Initiative, (2022).

[89] CHARLOTTE MENSAH, GOOD HAIR: THE ESSENTIAL GUIDE TO AFRO, TEXTURED AND CURLY HAIR (2020); Venessa Simpson, Note and Comment, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW. L. REV. 265, 265 (2017) ("Essential to healthy black hair care is the utilization of protective styles, as these styles safeguard the delicate strands of black hair. By using these styles, many black women have overcome the challenges inherent to their natural kinky, curly hair and are growing their hair to previously unfathomed lengths.") (footnote omitted); AUDREY DAVIS-SIVASOTHY, THE SCIENCE OF BLACK HAIR: A COMPREHENSIVE GUIDE TO TEXTURED HAIR 23 (2011).

absurd results, undermining the meaning and intent of the legislation. *See Sherman v. Pub. Util. Com.*, 643 S.W.2d 681, 684 (Tex. 1983).

A. Protective styling facilitates healthy hair growth and promotes length retention as a core aspect of its definition and practice.

Natural Black hair is usually associated with coarse, kinky, and thick textures.[90] The structure of Black hair fibers exhibits a "high degree of irregularity," characterized by "frequent twists, random reversals in direction, and pronounced flattening."[91] Additionally, Black hair tends to retain less moisture, is more prone to breakage, and is generally more fragile than white hair.[92] Given these innate characteristics, for centuries many Black people in the United States and around the world turned to protective styles such as locs, braids, and twists to prevent breakage and promote the length retention of natural hair. As Professor D. Wendy Greene, who served as an expert witness in the *Arnold* case, noted in her expert report, natural

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[90] Venessa Simpson, Note and Comment, *What's Going on Hair?: Untangling Societal Misconceptions That Stop Braids, Twists, and Dreads from Receiving Deserved Title VII Protection*, 47 SW. L. REV. 265, 265 (2017); *see also* Manka Nkimbeng et al., *The Person Beneath the Hair: Hair Discrimination, Health, and Well-Being*, 7 HEALTH EQUITY 406–10, 406 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10457631/ ("Natural hair describes texture that is tightly coiled and/or styles that are typically worn by Black persons including afros, locs, twist-outs, and braids.").

[91] Alain Franbourg, et al., *Current research on ethnic hair*, 48 J. AM. ACAD. DERMATOLOGY S115 1 (2003).

[92] Amaris N. Geisler, et al., *Hairstyling Practices to Prevent Hair Damage and Alopecia in Women of African Descent*, MDEdge (2022), https://cdn.mdedge.com/files/s3fs-public/CT109002098.PDF; Geneviève Loussouarn, *African hair growth parameters*, 145 BRIT. J. OF DERMATOLOGY, 294–97 (2001).

hairstyles like cornrows and locs are "often achieved by the unimpeded growth of their naturally curly or coily hair texture."[93]

Further, the chemical straighteners and treatments often used by people of African descent can further weaken hair structure and cause hair loss.[94] Black people often use protective styles[95] to facilitate healthy hair growth and as an alternative to chemical styling.[96] Many protective hair styles "can prevent the hair from curling upon itself or tangling" and allow "hair growth without hair breakage and shedding" because they do not require excessive daily manipulation.[97] Not only are protective styles used to facilitate hair growth but cutting them short can lead to further hair damage and the destruction of the protective styles.[98] Therefore, the Texas CROWN

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[93] Declaration of Professor D. Wendy Greene in Support of K.B.'S Motion for a Preliminary Injunction at 3, *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020) (Dkt. No. 44-1).

[94] Aline Tanus, et al., *Black women's hair: the main scalp dermatoses and aesthetic practices in women of African ethnicity,* 90 ANAIS BRASILEIROS DE DERMATOLOGIA 450, (Jul-Aug 2015), https://pmc.ncbi.nlm.nih.gov/articles/PMC4560533/.

[95] For context, twists are created "by separating a hair bundle from the remaining hair, and dividing it into two equal parts [that] are twisted and joined together with beeswax or gel"), *id.*, and locs are achieved "[w]hen twists remain over many months [and] hair eventually knots or tangles into a permanent locking pattern," Amaris N. Geisler, et al., *Hairstyling Practices to Prevent Hair Damage and Alopecia in Women of African Descent*, MDEdge (2022), https://cdn.mdedge.com/files/s3fs-public/CT109002098.PDF.

[96] The CROWN Act's authors noted the Act's potential to reduce the institutional pressure to use chemical stylers: "Individuals should not be required to put chemicals in their hair to change its texture or appearance." Bill Analysis, *supra* note 3.

[97] Rawn E. Bosley & Steven Daveluy, *A Primer to Natural Hair Care Practices in Black Patients*, 95 CUTIS 78, 79–80 (Feb. 2015), https://cdn.mdedge.com/files/s3fs-public/issues/articles/CT095020078_rev.pdf.

[98] *See, e.g.*, *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 516 (S.D. Tex. 2020) ("K.B. testified that '[l]ocs are meant to grow long' and that '[y]ou don't cut locs' because 'they would unravel,' undoing 'all the hair process and growth' that the wearer spends years

Act must be interpreted to prohibit the mandated cutting of protective hairstyles, as allowing that outcome would undermine the Act's central purpose of facilitating the use of those styles.

Contrary to the district court's finding,[99] the fact that the Act prohibits the destruction of the length of protective styles is well-documented in the legislative record. For example, the Act's primary author noted that the Act was intended to prevent school districts from forcing students to cut their protective styles short.[100]

B. The district court's interpretation of the Texas CROWN Act would lead to arbitrary, absurd results, undermining the meaning and intent of the legislation.

To the extent there is any question regarding the meaning of the Texas CROWN Act's plain language, the court may also consider whether a particular construction "would lead to injustice" or "absurdity." *Sherman v. Pub. Util. Com.*,

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cultivating."); Tanus, et al., *supra* note 94, at 450 ("It is important to remember that the braids or extensions should never be cut, because of the risk of damaging the natural incipient hair.").

[99] *See* 4 CR 1089 ("There is no legislative history suggesting that hair length exemptions are covered by the CROWN Act.").

[100] *See* Second Reading and Record Vote on HB 567 before the Texas House, 88th Leg., R.S. at 2:20:30 (Apr. 12, 2023), https://house.texas.gov/videos/11086 ("Members, I would like to take a moment to share with you about why we need this bill. This form of race-based discrimination is real, and it is happening today. It has happened to students like De'andre Arnold who faced in-school suspension and was barred from walking at his high school graduation because he would not cut his locs . . . . HB 567 will prevent this kind of discrimination"); *see also* Hearing on HB 567 before the Texas Senate Committee on State Affairs, 88th Leg., R.S. at 10:20 (May 8, 2023), https://senate.texas.gov/videoplayer.php?vid=19160&lang=en (Sen. Borris Miles, the bill's Senate Sponsor, stating: "[The CROWN Act] prohibits hair-based discrimination . . . . It is happening to students like De'Andre Arnold who faces in-school suspension and was barred from walking at a high school graduation near Houston because he would not cut his locs . . . . it is about hair texture, and/or style, which are used to protect natural hair health.").

643 S.W.2d 681, 684 (Tex. 1983) (cleaned up). Applying the interpretation of the Texas CROWN Act adopted by BHISD and the district court to a few (real) scenarios illustrates the injustice and absurdity of this construction.

Black hair that is curly, kinky, and coily in nature is prone to a phenomenon called "shrinkage," where it compacts or "shrinks." In this state, the true length of the hair is no longer visible.[101] Textured hair also has a tendency to reach upward or outward, rather than falling downward.[102] Protective hairstyles like twists, braids, and locs elongate the hair strands and weigh the hair down, allowing the wearer's true length to be shown.

BHISD's policy prohibits male students' hair from "be[ing] gathered or worn in a style that would allow the hair to extend below the top of a t-shirt collar, below the eyebrows, or below the ear lobes when let down."[103] Under this arbitrary standard, a student who decides to wear their hair in a shrunken Afro could very well be in compliance with the dress code on one day and out of compliance by the next, by virtue of straightening their hair or installing a protective hairstyle—with absolutely no change to the actual length of their hair. On the other hand, a student with locs or braids—hairstyles that fall downward—could be out of compliance with

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[101] Deborah B. Oladele, et al., *The Genomic Variation in Textured Hair: Implications in Developing a Holistic Hair Care Routine*, 11 COSMETICS (2024).
[102] Renee Henson, *Are my Cornrows Unprofessional?: Title VII's Narrow Application of Grooming Policies, and its Effect on Black Women's Natural Hair in the Workplace*, 1 BUS. ENTREPRENEURSHIP & TAX L. REV. 521, 527 (2017).
[103] 4 C.R. 1211.

the dress code's hair length requirement, but in compliance if the student were to painstakingly comb out or unravel the style and wear their uncut hair in its natural loose, shrunken state. These odd and unworkable outcomes make it impossible for schools to enforce hair length rules without subjecting Black students to unnecessary and intrusive monitoring and without infringing on their right to wear natural and protective styles.

Taken to its extreme, the district court's construction of the Texas CROWN Act could lead to ghastly and absurd outcomes. Under the district court's framework, what would prevent BHISD from changing its male-only hair length policy to prohibit boys from wearing hair below the tops of their ears—or indeed, from adopting a policy requiring students to shave their hair altogether? Similarly, what would stop a school district from adopting a length policy that was applied to all students, including girls? In those scenarios—which would ostensibly be permitted under the district court's interpretation of the Act—students would completely forfeit the ability to wear the hair textures and protective styles the Act explicitly protects. For example, braiding, locking, or twisting the hair requires some not-insignificant amount of hair length, and a rule that requires buzzed or shortly cropped hair would render those styles impossible to achieve. A school district could therefore completely circumvent the Act's requirements by simply imposing a

facially race-neutral length requirement, just as Barbers Hill ISD has attempted to do in this case.

Rather than opening the door to future litigation regarding the regulation of length and other pretextual grooming standards that directly and indirectly target Black and other historically-marginalized students, this Court should give effect to the plain text and clear intent of the Legislature when it adopted the Texas CROWN Act—to prevent these discriminatory, arbitrary, and unjust outcomes.

V. The Texas CROWN Act was adopted to prevent the exact discrimination and harm BHISD is perpetuating against Darryl George.

As former Texas Supreme Court Justice Willet observed in another case involving the regulation of hair, "dogmatic majoritarianism can exact a ruthless price." *Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 94 (Tex. 2015) (Willet, J., concurring). Recognizing this truth, Texas lawmakers enacted the Texas CROWN Act to prevent school districts from requiring students to "divest themselves of their cultural identit[ies]"[104] and to expressly prohibit "*discriminat[ion]*" against a hair texture or protective hairstyle commonly or historically associated with race. Indeed, scholars and courts have resoundingly concluded that long, protective hair styles are specifically associated with racial and cultural identity for people of African and Native American backgrounds and are the

[104] Bill Analysis, *supra* note 3.

common subject of discriminatory grooming policies. The discriminatory impact of dress and grooming codes on Black students, Native American students, and other students of color is well-documented in legal and academic scholarship. Further, hair discrimination in schools leads to harmful exclusionary discipline, erodes students' sense of belonging, safety, and dignity, causes severe mental and emotional distress, and creates a hostile educational environment that denies equal educational opportunity for Black students, Native American students, and other students of color by enforcing discriminatory, Euro-centric standards of acceptable appearance and identity.

A. Scholars and the courts have expressly recognized that long hairstyles are common expressions of racial and cultural identity, and the Texas Legislature enacted the CROWN Act to prohibit discrimination against them.

There is a robust body of historical, sociological, and legal evidence that particular lengths of protective hairstyles are commonly and historically associated with race and cultural expression. Specifically, ***long*** locs, ***long*** braids, and ***long*** twists are distinct and uniquely meaningful protective hairstyles with a historic association to race and cultural identity.

In De'Andre and Kaden's fight against Barbers Hill ISD's boys-only hair length rule—one of the primary motivating forces behind the Texas CROWN Act—they described the racial and cultural significance of their *long* locs:

> De'Andre and [Kaden] wear their natural hair in locs as an expression of their heritage, identity, and ethnicity—a symbol widely understood as a natural Black hair formation connected to Black identity and heritage. De'Andre's locs are representative of his Black and West Indian culture and are worn by De'Andre as a symbol of such cultures and kinship with his family. [Kaden]'s locs are similarly a symbolic expression of his Black culture and connection to his Black community. De'Andre and [Kaden] **wear their locs to the natural length to communicate their affinity with their cultural and family backgrounds.**[105]

Indeed, the federal judge who determined a substantial likelihood of discrimination in their lawsuit favorably credited expert testimony that supported Kaden's understanding of the racial and cultural significance of his long locs with "persuasive historical and sociological evidence."[106] Professor D. Wendy Greene testified that testified that "locs are a long-recognized expression both of African-American identity and West Indian identity" and that "West Indian cultural traditions **prohibit cutting or trimming of locs**."[107] Based on this testimony, the court concluded that Kaden's locs were "sufficiently communicative" of his heritage to warrant constitutional protection.[108]

Professor Greene's expert report also noted that courts across the world have determined that compelling people to cut their protective hair styles short would be

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[105] Plaintiffs' First Amended Complaint at 69, *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511 (S.D. Tex. 2020) (Dkt. No. 128) (cleaned up) (emphasis added).
[106] *Arnold*, 479 F. Supp. at 516.
[107] *Id.* (emphasis added).
[108] *Id.* at 528.

an infringement on their freedom of cultural and racial expression. For example, the High Court of London's Royal Courts of Justice, when analyzing the application of a hair length rule to an African-Caribbean student with locs, ruled that the student presented sufficient evidence "that there are those of African-Caribbean ethnicity who do for reasons based on their culture and ethnicity regard the cutting of their hair to be wrong."[109] The student in that case proffered an expert who explained that in the U.S., Britain, and the Caribbean, there are "family tradition[s] (*i.e.*, non-religious beliefs) where the men in the family . . . do not cut their boys' hair. . . . Haircutting in this context is unacceptable because hair is viewed as sacred by these families."[110] Darryl George has similarly testified that his hair "is sacred."[111]

In other hair discrimination cases federal courts have credited expert testimony asserting that for Native American people, long hair and long braids are sacred expressions of traditional spirituality and identity. In *A.A. ex rel. Bentenbaugh*, Dr. James Riding In testified about the United States' "assimilationist policies" designed to "stamp out traditional spirituality," including subjecting children to "forced haircuts," 611 F.3d at 260, note 33, as described in Section III(B)(2), *supra*. And in *Alabama and Coushatta Tribes of Texas*, anthropologist Dr.

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[109] Declaration of Professor D. Wendy Greene in Support of K.B.'S Motion for a Preliminary Injunction at 6, *Arnold*, 479 F. Supp. at 511 (Dkt. No. 44-1) (citing *G v. St. Gregory's Catholic Sci. Coll.* [2011] EWHC 1452 (Eng.), http://www.bailii.org/ew/cases/EWHC/Admin/2011/1452.html).
[110] *Id.* (citing *G v. St. Gregory's Catholic Sci. Coll*. [2011] EWHC 1452 (Eng.), http://www.bailii.org/ew/cases/EWHC/Admin/2011/1452.html).
[111] 4 C.R. 1203.

Hiram F. Gregory testified that southeastern Tribes "wore their hair long as a symbol of moral and spiritual strength" and that cutting hair "was a complicated and significant procedure" reserved only "as a sign of mourning for a close family member[.]" 817 F. Supp. at 1324–25. To cut one's hair at other times or "without the safeguards of tribal ritual, would disrupt the oneness of that person's spirit[.]" *Id.* For these and other reasons, the school policies at issue in both of those cases were enjoined.

Not only do policies such as BHISD's risk violating students' First Amendment rights to express themselves in connection with their heritage, but such discriminatory grooming policies also create a hostile learning environment for students of color who refuse to conform with white, Eurocentric beauty and grooming standards. These policies single out individuals based on their race, ethnicity, or cultural practices, and make them feel targeted, unwelcome, and unable to fully participate in the educational experience due to constant scrutiny and disciplinary actions for their appearance. Such hostile environments can violate Title VI of the Civil Rights Act of 1964, which protects students from discrimination on the basis of race, color, and national origin.[112] In 2017, for example, the U.S.

[112] 42 U.S.C. § 2000d (1964). Several federal courts have also found that the application of male-only hair length restrictions likely violates Title IX, *see, e.g.*, *A.C. v. Magnolia Indep. Sch. Dist.*, No. CV H-21-3466, 2021 WL 11716732, at *1 (S.D. Tex. Oct. 26, 2021) (granting multiple students' request for a T.R.O., finding that the students established a substantial likelihood of

Department of Education's Office for Civil Rights (OCR) found that Paramount Academy in Peoria, Arizona, failed to comply with Title VI when it discriminated against a Black male student for wearing his hair in an Afro and told him to cut his hair. Because the school selectively enforced the facially race-neutral policy against the student for pretextual reasons, OCR found that the school discriminated against the student based on his race, which violated his rights under Title VI.[113]

B. Black students and other students of color are disproportionately targeted for enforcement of school dress and grooming policies.

Many dress codes appear to be race-neutral but are enforced discriminatorily against students of color.[114] For example, some school dress codes and grooming policies require a "clean-cut" or "professional" look. But because Black natural hair is often perceived by others as "unruly," "unkept," and "unattractive,"[115] these rules tend to be disproportionately enforced against Black students and require them to

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success for their Title IX claims against the school district's gender-based hair length policy); the Equal Protection Clause of the Fourteenth Amendment, *see, e.g.*, *id.*; *Arnold*, 479 F.Supp. 3d at 524-28; and the First Amendment, *see, e.g.*, *Arnold*, 479 F.Supp. 3d at 528–29 (holding that a student's "locs are sufficiently communicative to warrant First Amendment protection" because they "visibly . . . communicat[e]" the student's "heritage") (cleaned up).

[113] *Resource on Confronting Racial Discrimination in Student Discipline*, U.S. Department of Education and U.S. Department of Justice (May 2023) at 9–10, https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/tvi-student-discipline-resource-202305.pdf.

[114] According to a dress code study conducted by the ACLU of Texas, about 80% of surveyed districts used vague and subjective hair standards in their dress codes, which often leads to discriminatory enforcement against certain student groups, including Black students. Chloe Kempf, et al., *Dressed to Express: How Dress Codes Discriminate Against Texas students and Must be Changed*, ACLU of Texas (Feb. 2024) at 25, https://www.aclutx.org/sites/default/files/dresscodereport_2-1-24.pdf.

[115] *See* discussion at Argument Section III(B)(1), *supra*.

adopt hairstyles that do not reflect their racial or cultural heritage in the name of "conformity."[116] In this case, Darryl George attempted to "conform" while still maintaining his heritage by pinning up his hair to meet BHISD's boys-only hair length requirement. However, the district deemed this effort insufficient and punished Darryl for showing up at school as his authentic self.

Unfortunately, Darryl's experience with dress and grooming code discrimination is not unique. Across the country and in Texas specifically,[117] Black students and other students of color are more likely to face dress code discipline than their peers, which is why protections like the CROWN Act are so vital. For example, in October 2018, a Black male student in Greenwood ISD was told by school administrators that he would no longer be allowed to play football if he did not cut his cornrows.[118] In January 2019, a six-year-old Black student in Midway ISD was told to cut his locs because they touched his ears and collar.[119] In 2021, a Native

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[116] In an advertisement published in the Houston Chronicle, Barbers Hill's Superintendent, Greg Poole, stated: "Being American requires conformity." Dellinger, *supra* note 87.

[117] *See, e.g.*, *Gray v. Needville Indep. Sch. Dist.*, 601 F. Supp. 3d 188, 189 (S.D. Tex. 2022), appeal dismissed, No. 22-20229, 2022 WL 3593770 (5th Cir. May 11, 2022); *Woodley et al., v. Tatum Unified School District, et al.*, Case No. 2:21-CV-00364- RWS (E.D. Tex.); *see also* Charley Locke, *6 Kids Speak Out Against Hair Discrimination*, N.Y. Times (Apr. 22, 2022), https://www.nytimes.com/2022/04/22/magazine/kids-hair-discrimination.html (describing Michael Trimble's experience with hair discrimination in Texas' Tatum Unified School District).

[118] Gianni Windahl, *Proposed Greenwood ISD grooming code sparks controversy*, First Alert 7 (Oct. 12, 2018), https://www.firstalert7.com/content/news/Greenwood-ISD-grooming-code--497134531.html.

[119] Erin Donnelly, *Mom says elementary school is demanding that her first-grader cut his dreadlocks: 'I won't conform to racist policies'*, Yahoo Lifestyle (Jan. 9, 2019), https://www.yahoo.com/lifestyle/mom-says-elementary-school-demanding-first-grader-cut-dreadlocks-wont-conform-racist-policies-120109868.html.

American and Latino kindergarten boy in Mission, Texas was placed in in-school suspension for violating the school dress code that prohibited long hair for boys. The student, who did not cut his hair in observance of cultural practices, was isolated from his peers for over a month and fell behind in his schoolwork.[120] Similarly, in the spring of 2021, Troy ISD sent an 11-year-old student to in school suspension for more than ten days because his top knot, which he wore to honor his African heritage, violated the district's dress code.[121] Around the same time, Monahans-Wickett-Pyote ISD threatened two young Native American children with exclusionary discipline for wearing long hair as part of their heritage and beliefs.[122] These examples illustrate the discrimination that Black and Native American students experience in Texas schools for simply existing and expressing themselves and their racial and/or cultural identity.[123]

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[120] Darren Thompson, *Native American Kindergarten Student Punished for Having Long Hair*, Native News Online (Nov. 18, 2021), https://nativenewsonline.net/currents/native-american-kindergarten-student-punished-for-having-long-hair.

[121] Troy Moore, *Troy mother says son is being isolated in school because of his haircut*, Kcentv.com (Apr. 15, 2021), https://www.kcentv.com/article/news/local/troy-mother-says-son-is-being-isolated-in-school-because-of-his-haircut/500-fcac172c-3a6f-4b0d-a41e-719bf7716a1d.

[122] *Complaints Filed Urging Federal Civil Rights Agencies to Investigate Texas School District's Discriminatory Dress Code*, ACLU of Texas (Mar. 4, 2021), https://www.aclutx.org/en/press-releases/complaints-filed-urging-federal-civil-rights-agencies-investigate-texas-school.

[123] Many other schools have indeed attempted to enforce hair length requirements against Black students. While some students have been penalized for wearing their natural hair loose in Afros, others have been punished for wearing their hair in protective styles. For example, in 2017, the Department of Education's Office of Civil Rights determined an Arizona school violated Title VI when the school found a male student's Afro in violation of the dress code because it was more than "3 fingers width" from his head and was "distracting." *See* U.S. Dep't of Educ., OCR, *Letter to Dale Cline, Executive Director, Paramount Academy* (Dec. 14, 2017),

These anecdotes are underscored by recent research by the ACLU of Texas, which asked 50 geographically diverse school districts from across Texas to provide their disciplinary records for dress and grooming code violations. This data indicated that Black students in the surveyed districts faced a hugely disproportionate amount of dress code disciplinary action when compared to their share of the overall student population.[124] Black students received 31% of the documented disciplinary instances but only made up 12.1% of the surveyed student population.[125] White students in the same districts made up 25.1% of the student population but only 12.7% of disciplinary instances.[126]

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https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08171341-a.pdf. The school imposed no restrictions for students with hair or hairstyles that grew or fell in a downwards direction, only enforcing this restriction against the student's Afro. *Id.* In 2016, a Kentucky high school faced widespread backlash against and ultimately modified a policy that banned hairstyles like cornrows, twists, and locs and required that male students have Afros no longer than two inches. *As Natural Hair Goes Mainstream, One High School's Natural Hair Ban Sparks Firestorm*, ABC News (Sept. 15, 2016), https://abcnews.go.com/US/natural-hair-mainstream-high-schools-policy-sparks-firestorm/story?id=42100267. Two twin sisters in a Massachusetts charter school were given detention, banned from school events, and removed from extracurricular activities because they wore braided hairstyles with extensions to aid in their transition from chemically relaxed hair to natural hair. Courtney Cole, *CROWN Act aims to prevent hair discrimination in Massachusetts*, CBS News (July 27, 2022) https://www.cbsnews.com/boston/news/crown-act-will-prevent-hair-discrimination-in-massachusetts/. The Attorney General of Massachusetts wrote to the school informing them that their rules were discriminatory, violating both state and federal laws, and the incident is credited as the inspiration behind the Massachusetts Governor's signing of the CROWN Act into law. *Id*.; *See also* Genevieve C. Nadeau, *Letter from Office of Attorney Gen. of Mass. to Alexander Dan, Interim Sch. Dir. of Mystic Valley Regional Charter School* (May 19, 2017), https://www.aclum.org/sites/default/files/wp-content/uploads/2017/05/Ltr.-to-MVRCS-5-19-17.pdf. The Texas CROWN Act was clearly established to prevent such disparate treatment, but the district court's construction of the statute arguably would allow policies of this nature.

[124] Kempf, et al., *supra* note 114, at 29.

[125] *Id.*

[126] *Id.*

These findings are consistent with national trends over the last 50 years finding that Black students are disproportionately disciplined in public schools.[127] Indeed, some studies indicate that Black students are disciplined at a rate four times higher than any other racial or ethnic group and that they are more likely to be suspended for discretionary reasons such as dress and grooming code violations.[128] Studies suggest that this trend of over-disciplining Black students stems from systemic bias in schools and educators' implicit biases and racial stereotypes of students.[129]

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[127] *Id.* (citing Edelman et al., *School Suspensions: Are They Helping Children?*, Washington Research Project, Cambridge 7 MA. Children's Defense Fund (1975), https://files.eric.ed.gov/fulltext/ED113797.pdf; *Study Finds Blacks Twice as Liable to School Penalties as Whites*, The N.Y. Times (Dec. 12, 1988), https://www. nytimes.com/1988/12/12/us/study-findsblacks-twice-as-liable-to-school-penalties-as-whites.html; Virginia Costenbader and Samia Markson, *School suspension: A study with secondary school students*, JOURNAL OF SCHOOL PSYCHOLOGY (1998), https://doi. org/10.1016/S0022-4405(97)00050-2; Linda Raffaele Mendez, et al., *School demographic variables and out-of-school suspension rates: A quantitative and qualitative analysis of a large, ethnically diverse school district*, PSYCHOLOGY IN THE SCHOOLS (2002), https://doi.org/10.1002/pits.10020; Catherine Bradshaw et al., *Multilevel Exploration of Factors Contributing to the Overrepresentation of Black Students in Office Disciplinary Referrals*, JOURNAL OF EDUCATIONAL PSYCHOLOGY (2010); *K–12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, U.S. Government Accountability Office (Mar. 22, 2018), https://www.gao.gov/products/gao-18-258).

[128] Jill C. Humphries, *Penalizing Black Hair in the Name of Academic Success Is Undeniably Racist, Unfounded, and Against the Law*, Brookings (Feb. 15, 2022), https://www.brookings.edu/articles/penalizing-black-hair-in-the-name-of-academic-success-is-undeniably-racist-unfounded-and-against-the-law/.

[129] Kempf et al., *supra* note 114, at 29, (citing Walter Gilliam, et al., *Do early educators' implicit biases regarding sex and race relate to behavior expectations and recommendations of preschool expulsions and suspensions?*, Yale University Child Study Center (Sept. 28, 2016), https://marylandfamiliesengage.org/wp-content/uploads/2019/07/Preschool-Implicit-BiasPolicy-Brief.pdf; Russell Skiba, et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, THE URBAN REVIEW (2002), https://doi.org/10.1023/A:1021320817372; Jason Okonofua and Jennifer Eberhardt, *Two Strikes: Race and the Disciplining of Young Students*, PSYCHOLOGICAL SCIENCE (Apr. 8, 2015), https://doi.org/10.1177/0956797615570365).

But "exclusionary" forms of discipline that remove students from the classroom and separate them from their peers have devastating consequences.[130] These punishments can lead to hours of lost instruction and are associated with negative educational outcomes, increased drop-out rates, and increased risk of incarceration through the school-to-prison pipeline.[131] These national and state-wide trends—catalyzed by the cases against Barbers Hill ISD—led the Texas legislature to pass the Texas CROWN Act.

C. Decades of research indicate that discriminatory dress and grooming codes inflict severe mental, emotional, and physical harms.

Finally, discriminatory applications of school dress and grooming codes have severe mental and physical health implications and undermine students' sense of belonging, safety, and dignity. As health experts have explained, "[h]air, beauty, self-image, and identity are inextricably linked and influence each other," and "[h]air discrimination may have significant effects on self-image, health, and well-being."[132] Experience with discrimination has been identified as a "stressor that activates and prolongs the stress response system."[133] Describing identity-based

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[130] *Id*. at 39; Jill C. Humphries, *Penalizing Black Hair in the Name of Academic Success Is Undeniably Racist, Unfounded, and Against the Law*, Brookings (Feb. 15, 2022), https://www.brookings.edu/articles/penalizing-black-hair-in-the-name-of-academic-success-is-undeniably-racist-unfounded-and-against-the-law/.
[131] Kempf et al., *supra* note 114, at 39.
[132] Nkimbeng et al., *supra* note 90, at 407.
[133] *Id.*

victimization as a "violent assault on one's sense of self," health experts have found that discriminatory treatment is often "experienced as a complex interpersonal trauma that can chronically and pervasively alter one's social, psychological, cognitive, and biological development."[134] As Alvis, et al. recently explained, these findings have been established based on decades of research:

> Experiences of discrimination, in addition to the already heightened allostatic load of stressors that individuals of color endure, are theorized to limit or deplete coping resources over time, thereby increasing the risk for negative psychological outcomes. Additionally, the link between interpersonal forms of victimization and pathology intensifies during adolescence, as teenagers experience heightened rejection sensitivity and emotional reactivity. This suggests that experiences of discrimination may be especially detrimental to the mental health of Black and Latino youth, particularly those who already have a history of trauma exposure. Indeed, discrimination is robustly associated with poor mental health in youth of color, including higher depressive symptoms and PTSS.[135]

And because students with historically marginalized identities are at a greater risk of experiencing mental health challenges, which increased during the COVID-19 pandemic,[136] unnecessary and harmful targeting of these students by school officials must be prohibited.

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[134] Lauren Alvis, et al., *Identity-based bullying and mental health among Black and Latino youth: The moderating role of emotional suppression*, J. OF TRAUMATIC STRESS (2023), at 1–2, https://mmhpi.org/wp-content/uploads/2023/04/2023_Identity-Based-Bullying.pdf.

[135] *Id.* at 2 (cleaned up).

[136] *Protecting Youth Mental Health*, Office of the U.S. Surgeon General (2023), https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf; *see also Fact Sheet: Behavioral Health*, U.S. Dept. of Health and Human Servs. & Indian Health Service, https://www.ihs.gov/newsroom/factsheets/behavioralhealth/; Sherry C. Kwon, et al.,

Further, there is little empirical evidence that strict dress and grooming codes improve student performance, increase school safety, or create more inclusive communities.[137] Instead, hair discrimination enforced by teachers and school leaders sends a deleterious message to school communities that students' natural, protective, and racially and/or culturally significant hair styles are undesired or unacceptable, creating an unwelcoming and unsafe learning environment for historically marginalized students. As described above, dress codes disproportionately affect students of color, leaving them feeling targeted and singled out by the administration. Because referrals for dress and grooming code violations are largely enforced at school leaders' discretion, targeted students often feel that the administration is looking for any reason to reprimand students of color. For example, as Darryl George explained: "I am being harassed by school officials and treated like a dog . . . . I am being subjected to cruel treatment and a lot of unkind words from many adults within the school including teachers, principals, and administrators."[138] Creation and maintenance of this school climate can also signal tolerance of discrimination to a targeted student's peers, leading to increases in identity-based bullying and

Mental Health Challenges in Caring for American Indians and Alaska Natives (Feb. 12, 2024), https://www.ncbi.nlm.nih.gov/books/NBK570587/.

[137] Deborah Ahrens & Andrew Siegel, *Of Dress and Redress: Student Dress Restrictions in Constitutional Law and Culture*, 54 Harv. C.R.-C.L. L. Rev. 49 (2019), https://digitalcommons.law.seattleu.edu/faculty/808.

[138] Pooja Salhotra & Alejandro Serrano, *A Texas school has punished a Black student over his hairstyle for months. Neither side is backing down*, Texas Tribune (Feb. 22, 2024), https://www.texastribune.org/2024/02/22/texas-crown-act-barbers-hill-lawsuit/.

harassment due to the student's hair and other racially or culturally significant features.[139] On the other hand, research has also shown that "perceived school fairness, which refers to students' beliefs about how fairly rules are enforced, the consistency of punishments, and how much respect teachers have for students," can be a "protective factor" to mitigate and prevent this harm.[140] Specifically, schools where students perceived more fairness in the administration of school rules are safer and had lower rates of discriminatory bullying and harassment.[141]

VI. Conclusion

Darryl George has been growing his locs for almost ten years and his locs include strands of hair from both his father and grandfather.[142] To allow BHISD to force Darryl and other similarly situated students to cut off their protective hairstyles would allow school leaders to mandate the destruction of their ancestral ties (literally and figuratively in this case), spiritual strength, and cultural identity. This Court can and must put an end to this unnecessary and painful litigation—initiated by a school

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[139] *See* Nkimbeng, *supra* note 90, at 148; *see also* Kelly Lynn Mulvey, et al., *Understanding Experiences With Bullying and Bias-Based Bullying: What Matters and for Whom?* (Nov. 2018), https://www.researchgate.net/publication/329045824_Understanding_experiences_with_bullying_and_bias-based_bullying_What_matters_and_for_whom; *c.f.* Alvis, *supra* note 134 (discussing the harms of identity-based bullying on students of color).

[140] *Mulvey, supra* note 139, at 703.

[141] *Id*.

[142] Chandelis Duster, *Texas school district that suspended student over locs asks court to clarify if dress policy violates the law*, CNN (Sept. 20, 2023), https://www.cnn.com/2023/09/20/us/darryl-george-barbers-hill-court-lawsuit/index.html.

district against a minor child—and require BHISD and all other Texas school districts to respect the rule of law and comply with the Texas CROWN Act.

PRAYER

For the reasons stated above, *Amici* respectfully request that this Court reverse the judgment of the trial court and render judgment in favor of Appellants Darryl and Darresha George.

Respectfully submitted,

By: */s/ Paige Duggins-Clay*

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