

Journal of Law & Commerce

Vol. 40, No. 1 (2021) • ISSN: 2164-7984 (online)
DOI 10.5195/jlc.2021.223 • <http://jlc.law.pitt.edu>

CASHING IN ON CULTURE? DOVE AND THE CROWN ACT

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CASHING IN ON CULTURE? DOVE AND THE CROWN ACT

*Cassandra Maas**

In the United States, the general public is often wary of companies using money to influence the law. The public is extremely wary of lobbyists—about eighty percent of Americans believe that lobbyists exercise undue influence on public policy.¹ Corporations, industry groups and think tanks write thousands of bills every year.² Sometimes, these laws specifically benefit certain industries. However, these laws can also benefit the public.

There are many ways for both individuals and business entities to influence government actions, ranging from “suing government agencies to commenting on executive branch rulemaking, to urging legislators to propose legislation.”³ Public policy advocacy is vital for an effective representative government.⁴ Lobbyists have focused expertise which enables them to provide analysis that public officials are not always able to access by themselves.⁵ By providing this expertise and analysis, lobbyists can help public officials make informed decisions.⁶ Lobbyists use a variety of techniques in lobbying, including mobilizing grassroots support, building coalitions in key districts, and running ads.⁷ One of the key things that some of these techniques need is what moves the U.S. economy: money. Without

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¹ Nicholas W. Allard, *Lobbying is an Honorable Profession: The Right to Petition and the Competition to Be Right*, 19 STAN. L. & POL’Y REV. 23, 25 (2008).

² Rob O’Dell & Nick Penzenstadler, *You Elected Them to Write New Laws. They’re Letting Corporations Do It Instead*, USA TODAY (Apr. 3, 2019), <https://www.usatoday.com/in-depth/news/investigations/2019/04/03/abortion-gun-laws-stand-your-ground-model-bills-conservatives-liberal-corporate-influence-lobbyists/3162173002/>.

³ Lloyd Hitoshi Mayer, *What is This ‘Lobbying’ That We Are So Worried About?*, 26 YALE L. & POL’Y REV. 485, 487 (2008).

⁴ Allard, *supra* note 1, at 36.

⁵ *Id.* at 42.

⁶ *Id.*

⁷ *Id.* at 33.

funds and the economic power to back legislative efforts, some proposed legislation will never become law.

In some ways, businesses have a “clear advantage” over other interest groups because they have more material resources.⁸ Fortunately, not all interest groups exert detrimental influence on government actors.⁹ Businesses have the potential, because of their material resources, to influence government actors and bring about good change in legislation.

This Note looks at the CROWN Act, a piece of anti-discrimination legislation, as an example of good legislation that should be passed into law. It examines the relationship between the coalition founded to support the legislation’s passage throughout the United States, both in individual states and even on the national level, and the goals of the legislation. One of the key proponents of the CROWN Act is the soap and beauty company: Dove. In 2019, Dove co-founded the CROWN Coalition, which advocates for the CROWN Act.¹⁰ Out of all the other members of the CROWN Coalition, which includes Color of Change and the National Urban League, Dove is the only for-profit corporation.¹¹ Dove and Unilever, Dove’s parent company, ultimately have goals to grow as a brand and to make a profit.¹² This plays a large role in its decision to support different movements, which may create goodwill for the company and benefit society as a whole. By pursuing relevant issues in current society, Dove and Unilever both capitalize on social movements and help the law progress when the courts cannot or fail to do so.

⁸ Mayer, *supra* note 3, at 534.

⁹ *Id.* at 539.

¹⁰ *The CROWN Act: Working to Eradicate Race-based Hair Discrimination*, DOVE, https://www.dove.com/us/en/stories/campaigns/the-crown-act.html?utm_source=google&utm_medium=cpc&utm_campaign=Always%20On_CN000557_LV5_CH2215_BH0162_US_NonBrnd-Crown-Act-BMM&utm_term=+crown++coalition&gclid=CjwKCAiAzNj9BRBDEiwAPsL0d7imnVjanxNkex2qsttFmemgnBZ_GN-YRvLgHG_LUVQFnuh9GWtJ9xoCmWAQAvD_BwE&gclid=aw.ds (last visited Mar. 28, 2021).

¹¹ *Id.*

¹² See Unilever Annual Report and Accounts 2019, UNILEVER (2019), https://www.annualreports.com/HostedData/AnnualReports/PDF/LSE_ULVR_2019.pdf [hereinafter Unilever Annual Report].

I. THE CROWN ACT

The CROWN Act is an act to “prohibit discrimination based on an individual’s texture or style of hair.”¹³ It stands for “Creating a Respectful and Open World for Natural Hair Act,” and it prohibits discriminatory action in housing practice and in any program or activity receiving federal financial assistance.¹⁴ It additionally prohibits anyone from being subjected to a practice prohibited under sections 201, 202, or 203 of the Civil Rights Act of 1964.¹⁵ Section 201 of the Civil Rights Act guarantees the right to “full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations” of any public accommodation place, free from discrimination or segregation¹⁶ Section 202 ensures all persons are free from discrimination or segregation “if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.”¹⁷ Section 203 prohibits anyone from withholding, denying, or depriving any person of a right guaranteed by sections 201 or 202 or from intimidating, threatening, coercing, or punishing anyone in connection to that person’s exercise of their section 201 or 202 rights.¹⁸ The main goal of the CROWN Act is to prohibit discrimination based on hair.

California Governor Gavin Newsom signed the CROWN Act into law in July 2019.¹⁹ In the same month, then-New York Governor Andrew Cuomo also signed the Act into law.²⁰ Since then, many more states have enacted the

¹³ CROWN Act, H.R. 5309, 116th Cong. (2020).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Civil Rights Act of 1964, Pub. L. No. 88-352, § 201, 78 Stat. § 241, 243 (codified as amended at 42 U.S.C. §§ 2000a (2020)).

¹⁷ Civil Rights Act of 1964, Pub. L. No. 88-352, § 202, 78 Stat. § 241, 244 (codified as amended at 42 U.S.C. §§ 2000a1 (2020)).

¹⁸ Civil Rights Act of 1964, Pub. L. No. 88-352, § 203, 78 Stat. § 241, 244 (codified as amended at 42 U.S.C. §§ 2000a-a2 (2020)).

¹⁹ H.R. 5309, 116th Cong. (2020).

²⁰ *Id.*

CROWN Act,²¹ and it has even been adopted on local levels.²² Interestingly, some city councils that have passed the CROWN Act have also expanded it to include protection in other ways. For example, in Pittsburgh, Pennsylvania, city officials wanted to add “or religious grooming practice” and “facial hair” to several clauses so as not to exclude those whose religious practices require that they grow beards.²³ On the federal level, the House of Representatives introduced and passed the Act in 2020.²⁴ In 2021, the Act was again introduced before Congress.²⁵ As of the writing of this piece, we are currently awaiting further action.

The Act begins by stating that hair has also served as a basis for race discrimination.²⁶ The Act targets discriminatory school and workplace policies and practices “that bar natural or protective hairstyles commonly worn by people of African descent.”²⁷ The 2020 House report on the CROWN Act noted that, under current federal law, there are no explicit protections against discrimination against natural hair as a type of race discrimination.²⁸

There are federal protections against discrimination—Section 1981 of the 1866 Civil Rights Act and Title VII of the 1964 Civil Rights Act. Section 1981 guarantees equal rights under the law for contract enforcement.²⁹ Under Title VII, an employer is not allowed “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment,

²¹ See “The CROWN Act: About.” <https://www.thecrownact.com/about> (includes information about which states have passed the CROWN Act, which states have considered it, and which states have done nothing).

²² See Press Release, *Mayor Peduto Submits CROWN Act to City Council to Protect from Hairstyle Discrimination*, Pittsburgh, Pennsylvania Press Releases, Oct. 5, 2020, <https://pittsburghpa.gov/press-releases/press-releases/4347>.

²³ Tom Davidson, *Beards for Pittsburgh Residents Would Be Protected in Revised Law*, PITTSBURGH TRI.-REV. (Feb. 11, 2021), <https://triblive.com/local/beards-for-city-residents-would-be-protected-in-revised-pittsburgh-law/> (growing beards is considered important in religions such as Islam, Traditional Christianity, Orthodox Judaism and Sikhism).

²⁴ H.R. 5309, 116th Cong. (2020).

²⁵ S. 888, 117th Cong. (2021).

²⁶ *Id.*; H.R. 5309, 116th Cong. (2020).

²⁷ *Id.*

²⁸ H.R. DOC. No. 116-525, at 5 (2020).

²⁹ 42 U.S.C. § 1981 (2018).

because of such individual's race. . . ."³⁰ Additionally, an employer cannot "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race. . . ."³¹ These protections are among the few shelters that most employees have in the workplace, as the general rule in non-unionized workplaces is "employment at will."³²

Race-based discrimination charges involve large amounts of money. In 2019, the EEOC received 23,976 charges, with monetary benefits of \$79.8 million.³³ There is a lot of time and money involved in investigating, litigating, and/or settling discrimination charges, which makes it seem that federal discrimination charges would be useful in preventing discrimination on hair- which largely seems tied to race. However, most federal courts have determined that cases involving grooming code discrimination are generally not actionable.³⁴ As the House report noted, there are no explicit protections in federal anti-discrimination law for natural hair.

The CROWN Act is not just a piece of proposed legislation. It has become more of a social movement, similar to #MeToo and #BlackLivesMatter.³⁵ It has risen almost concurrently with the #BlackLivesMatter Movement. In 2020, there was even a short animated movie, *Hair Love*, about natural, black hair that won an Oscar for Best Animated Short Film.³⁶ To understand why an anti-discrimination law

³⁰ 42 U.S.C. § 2000e-2(a)(1) (2018).

³¹ 42 U.S.C. § 2000e-2(a)(2) (2018).

³² See *At-Will Employment—Overview*, NAT'L CONF. OF ST. LEGISLATURES (Apr. 15, 2008), <https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx>.

³³ U.S. Equal Emp't Opportunity Comm'n, *Race-Based Charges (Charges filed with EEOC) FY 1997-FY 2019*, eoc.gov/statistics/race-based-charges-charges-filed-eoc-fy-1997-fy-2019 (last visited Jan. 20, 2021).

³⁴ D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit's Take on Workplace Bans Against Black Women's Natural Hair* in *EEOC v. Catastrophe Management Solutions*, 71 U. MIAMI L. REV. 987, 995 (2017).

³⁵ See, e.g., Isabella Robinson, *Supporters Rally in Favor of CROWN Act*, THE PARTHENON (Mar. 15, 2021), <https://marshallparthenon.com/27120/news/supporters-rally-in-favor-of-crown-act/>; CJ Daniels, *Rally Planned in Frankfort on Monday to Support CROWN Act*, WHAS11 (Mar. 28, 2021), <https://www.whas11.com/article/news/local/frankfort-crown-act-rally/417-8598d13f-33b2-4f5d-a6f0-e14dae720d6a>.

³⁶ Julia Jacobs, *'Hair Love' Receives a Lot of Love at the Oscars for Best Animated Short Film*, N.Y. TIMES (Feb. 9, 2020), <https://www.nytimes.com/2020/02/09/movies/hair-love-oscars-animated->

focused on hair is needed, it is helpful to look at the social and legal history of Black and minority hair discrimination.

II. THE SOCIAL HISTORY OF BLACK HAIR IN THE UNITED STATES

Black men and women have been pressured for years to wear their hair “modestly” in the workplace and schools.³⁷ For Black women and girls, hair greatly matters because it has deep social, cultural, and personal meaning.³⁸ Beauty constructions intersect with race and gender for Black women, and hair is “a big deal” because of the “whole mythology of it being [a woman’s] crown and glory. . . .”³⁹ While all women may have concerns about their hair, Black women have historically been forced to drastically alter their hair texture and deal with “cultural and political constructions of hair that intersect with race and gender in relationship to mainstream notions of beauty. . . .”⁴⁰ Hair does not just embody a Black woman’s “identity, beauty, power, and consciousness” however; hair also influences individual perceptions of other individuals and groups.⁴¹ Within the Black community, “hair is not just hair; it contains emotive qualities that are linked to one’s lived experience.”⁴²

Dating back to slavery times, the first thing that was done to slaves once they were caught was to cut off their hair, which was the beginning of “the process of wiping out [Black] culture and identity to break their spirit to make it easier to control” the individuals.⁴³ The idea of Black individuals having either “good” or “bad” hair, as defined by the texture of the hair, dates back to the nineteenth century.⁴⁴ The prevalent white hairstyles of the time highly

short.html (accepting his Oscar, director Matthew A. Cherry said he wanted to draw attention to the CROWN Act).

³⁷ Ra’Mon Jones, *What the Hair: Employment Discrimination Against Black People Based on Hairstyles*, 36 HARV. BLACKLETTER, L.J. 27, 27 (2020).

³⁸ INGRID BANK, HAIR MATTERS: BEAUTY, POWER, AND BLACK WOMEN’S CONSCIOUSNESS 22 (2000).

³⁹ *Id.*

⁴⁰ *Id.* at 38.

⁴¹ *Id.* at 38, 42.

⁴² Brenda A. Randle, *I Am Not My Hair; African American Women and Their Struggles with Embracing Natural Hair!*, 22 RACE, GENDER & CLASS 1, 117 (2015).

⁴³ *Id.*

⁴⁴ *Id.* at 118.

influenced what was considered “good” in the Black community.⁴⁵ Then, in 1905, Madame C.J. Walker’s hair softener, accompanied by a hair-straightening comb, was released.⁴⁶ Madame Walker’s product was considered to be the first hair product developed and manufactured by, as well as sold to, Black people.⁴⁷ While revolutionizing the way that Black women thought about hair, Madame Walker’s product also “sanctioned the act of straightening” because she was also Black.⁴⁸

The natural hair movement originated in the 1960s, through the popularization of hair styles such as the afro.⁴⁹ Until that time, Black individuals used perms, wore wigs, or cut their hair to “downplay their natural textures.”⁵⁰ Some authors have suggested that Black hair was at the peak of politicization during the Black Power movement, when the afro was the symbol of Black pride and there was the slogan that “Black is Beautiful.”⁵¹ These authors have suggested that, at this point, chemical relaxers and the pressing comb became oppressive and symbols of self-hatred because they symbolized decades of being pushed to buy into Euro-centric ideals of beauty.⁵² In the 1970s, the natural hair movement was in “full swing,” although Black men and women began using Jheri curls and other texturized styles in the 1980s.⁵³ In the 1990s, many Black women began to revert to processed hair, weaves, and wigs.⁵⁴ In the early 2000s, and throughout the 2010s, the natural hair movement experienced a resurgence.⁵⁵

Most recently, due to the coronavirus, natural Black hair products have gotten a “lift” in sales because many salons and barbershops were closed.⁵⁶ Even though demand for natural Black hair products was growing before 2020, sales of some natural hair products doubled, big chain stores are

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Jones, *supra* note 37, at 29.

⁵⁰ *Id.*

⁵¹ BANK, *supra* note 38, at 43.

⁵² *Id.*

⁵³ Jones, *supra* note 37, at 30.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Jeff Green & Kelsey Butler, *Natural Black Hair Products Get a Lift in the Coronavirus Era*, BLOOMBERG (Sept. 19, 2020, 10:35 AM EDT), <https://www.bloomberg.com/news/articles/2020-09-19/natural-black-hair-products-get-a-lift-in-the-coronavirus-era>.

stocking more of the products, and social media influencers have “moved to capitalize on the rising popularity of naturally curly and coily hair.”⁵⁷

III. THE LEGAL HISTORY OF HAIR DISCRIMINATION IN THE UNITED STATES

The pressure that Black men and women feel to wear their hair “modestly” has also been legally reinforced. Hair discrimination is not a new phenomenon, and it is prevalent in certain areas of society. This has especially been an issue in schools and in workplaces.

In the 1960s and 1970s, there were a series of cases pertaining to hair length policies in schools. In particular, white males challenged the enforcement of school regulations that prohibited them from wearing their hair past their earlobes.⁵⁸ Some of the circuit courts upheld these regulations;⁵⁹ others did not.⁶⁰ There have also been school cases in which the protesting students were minorities. In *New Rider v. Board of Education*, three Pawnee students alleged that the hair regulations of their school violated their rights.⁶¹ They wore long braided hair, which the trial court found was an expression of a long-standing tradition and heritage of the Pawnee.⁶² The students testified that they wished to wear their hair in long braids because of their pride in their nationality, but the trial court upheld the regulation.⁶³ The appeals court also upheld the hair regulation, stating that the regulation bore a “rational relationship” to a state objective, which was “instilling pride and initiative among the students leading to scholarship attainment and high school spirit and morale.”⁶⁴

This has even been an issue in more recent years. In December 2018, a 16-year-old Black high school wrestler was ordered by a referee to shave his dreadlocks or forfeit.⁶⁵ Given ninety seconds to make the choice, the student

⁵⁷ *Id.*

⁵⁸ See *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972); *Freeman v. Flake*, 448 F.2d 258 (10th Cir. 1971); *Valdes v. Monroe Cnty. Bd. of Pub. Transp.*, 325 F. Supp. 572 (S.D. Fla. 1971).

⁵⁹ *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697, 697 (5th Cir. 1968).

⁶⁰ *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972).

⁶¹ *New Rider v. Bd. of Educ.*, 480 F.2d 693, 695 (10th Cir. 1973).

⁶² *Id.* at 696.

⁶³ *Id.*

⁶⁴ *Id.* at 698.

⁶⁵ Ronald Turner, *On Locs, “Race,” And Title VII*, 2019 WIS. L. REV. 873, 874 (2019).

tearfully cut his locs.⁶⁶ In the same year, a Florida school would not allow a six-year-old boy to begin first grade because of his hairstyle.⁶⁷ A Texas school required another six-year-old student to cut his hair before returning to school in January 2019.⁶⁸ Even though the immutable characteristic argument is flawed because certain hairstyles, like locs and afros, are “the product of the growth of natural Black hair” and “are distinctly African-American racial traits,”⁶⁹ many courts have allowed schools to enforce discriminatory hair policies.

In rarer instances, courts have halted the discriminatory policies. At Barber Hills High School, two African American students were forced to transfer because they wore their hair in locs.⁷⁰ One of these students, KB, said that he wore his hair in locs “because it is part of [his] Black culture and heritage” and because he wanted to emulate “[his] loved ones, including extended family members with West Indian roots, [who] have locs.”⁷¹ The court there issued a preliminary injunction, halting the school’s discriminatory hair policy.⁷² This type of outcome is not consistent across the courts, and the fact that these cases still arise is a major reason for passing legislation. The traditional approach to discrimination, brought under Title VII, does not find hair styles protectable.

Natural hair has also been policed as part of grooming codes for workplace settings. Under Title VII, grooming codes usually escape a finding of discrimination, although the codes are often looked at in the scope of sex instead of race.⁷³

In *EEOC v. Catastrophe*, the Eleventh Circuit Court of Appeals reaffirmed the traditional finding that discrimination based upon hair was not protectable because hair is a “mutable trait” and Title VII only prohibits

⁶⁶ *Id.*

⁶⁷ *Id.* at 875.

⁶⁸ *Id.* at 876.

⁶⁹ *Id.* at 903–04.

⁷⁰ *Arnold v. Barbers Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 516–17 (S.D. Tex. 2020).

⁷¹ *Id.* at 516.

⁷² *Id.* at 531.

⁷³ *See, e.g., Jespersen v. Harrah’s Operating Company, Inc.*, 444 F.3d 1104 (9th Cir. 2006) (en banc) (holding that an employer’s grooming and appearance policy that does not unreasonably burden one gender more than the other will not violate Title VII); MARTHA CHAMALLAS, *PRINCIPLES OF EMPLOYMENT DISCRIMINATION LAW* 149 (2019).

discrimination based on immutable traits.⁷⁴ In *Catastrophe*, the EEOC filed a claim on behalf of Jones, a female Black applicant whose employment offer was rescinded by her employer when Jones refused to cut her dreadlocks.⁷⁵ Part of the reason why the claim failed, however, was because the EEOC proceeded on a disparate treatment theory and not a disparate impact theory.⁷⁶ Regardless, discrimination based on hair historically has not been protectable. This finding ties in largely with workplace grooming codes, which courts have largely upheld.⁷⁷

This ruling follows centuries of other hair discrimination cases and rulings. Discrimination in today's society operates differently in many ways than it did in 1964, when Title VII was passed.⁷⁸ There are examples of hair discrimination, particularly in the school setting, which affect white, Black, and other minority groups. Discrimination may be driven by traits and attributes that are culturally or statistically associated with race, so that employers may be more willing to hire Black individuals who conform to that employer's cultural norms.⁷⁹ Professor Kimberly Yuracko of Northwestern University School of Law has argued that trait requirements may stigmatize racial or ethnic minorities by "attacking and denigrating traits that are associated with group identity," which "reinforce the privilege of the dominant culture and the outsider status of those whose cultural expressions differ from it."⁸⁰ Antidiscrimination law should prohibit job irrational trait discrimination when it adversely impacts traditionally disadvantaged racial or ethnic groups, because that would remain "faithful" to merit-based hiring, as has been the goal of Title VII.⁸¹

There is clearly a race-based discrimination problem with natural hair in schools and workplaces. The question of how to fix it has largely been answered by legislation and proposed legislation, such as the CROWN Act.

⁷⁴ EEOC v. *Catastrophe*, 852 F.3d 1018, 1021 (11th Cir. 2016).

⁷⁵ *Id.* at 1020.

⁷⁶ *Id.* at 1024.

⁷⁷ See *Rogers v. Am. Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981).

⁷⁸ Kimberly A. Yuracko, *Trait Discrimination as Race Discrimination: An Argument About Assimilation*, 74 GEO. WASH. L. REV. 365, 366 (2006).

⁷⁹ *Id.*

⁸⁰ *Id.* at 377–78.

⁸¹ *Id.* at 369.

The CROWN Act has been supported by the CROWN Coalition, which is a group of mostly nonprofit organizations.⁸²

IV. THE CROWN COALITION

In 2019, Dove was one of the co-founders of the CROWN Coalition, which consists of the National Urban League, Color of Change, and the Western Center on Law and Poverty.⁸³ Dove is the only corporation in the list of co-founders, while the rest are non-profits.⁸⁴ About seventy-five different groups support the CROWN Act, most of which, if not all, are non-profit organizations.⁸⁵ These are groups as diverse as a labor union (SEIU), historically Black college fraternities and sororities, the NAACP, and different branches of the ACLU.⁸⁶

In this large list of non-profits, Dove seems to be the odd one out. “The National Urban League is a historic civil rights organization,”⁸⁷ and Color of Change is the “nation’s largest online racial justice organization.”⁸⁸ The Western Center on Law & Poverty was created to help low-income Californians, and it is “driven by the belief that low-income Californians deserve the finest possible legal representation before every institution that shapes their lives.”⁸⁹ As a for-profit organization devoted to selling soap to millions of women, Dove does not seem have anything in common with these other organizations. The question remains: why is Dove involved, and what is at stake for the company?

In its mission statement, Dove proclaims that the company “care[s] about all women, female-identifying and non-binary people” and wants to “redefine beauty standards.”⁹⁰ Unilever, Dove’s parent corporation, noted in

⁸² *The CROWN Act: Working to Eradicate Race-based Hair Discrimination*, *supra* note 10.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Mission and History*, NATIONAL URBAN LEAGUE, <https://nul.org/mission-and-history> (last visited Nov. 19, 2020).

⁸⁸ *About Color of Change*, COLOR OF CHANGE, <https://colorofchange.org/about/> (accessed Nov. 19, 2020).

⁸⁹ *About Western Center*, WESTERN CENTER ON LAW & POVERTY, <https://wclp.org/about-wclp/>.

⁹⁰ *About Dove*, DOVE, <https://www.dove.com/us/en/stories/about-dove.html>.

its 2019 annual report that “Brands with Purpose Grow.”⁹¹ In order to do this, Unilever’s report states that the company’s strategy was to “[c]ontribute to a fairer and more socially inclusive world with brands that champion human rights, stand up for equality and distribute value fairly.”⁹² In 2019, fifty-two percent of Unilever’s total operating profit came from beauty and personal care, which includes the brands Axe, Lux, Vaseline, and Dove.⁹³ As a company, Dove wishes to appeal to its market, which it has determined to be largely made of women.

However, Dove’s campaigns have mostly been targeted towards white women until recent years. This was evidenced by the wait to release hair care products specifically for Black women until 2015, with the company’s “Love Your Curls” campaign.⁹⁴ Dove first introduced its own product line for Black hair in May 2016. According to Bloomberg, there is a \$1.8 billion market for all Black-hair products.⁹⁵ In 2019, Dove was responsible for commissioning the JOY Collective to conduct the CROWN Research Study.⁹⁶ The JOY Collective was responsible for revealing Dove’s CROWN Research Study in April 2019 on Capitol Hill, during which time 200 “power-players,” including congressional members, directors, and staff, as well as media partners and researchers, were in attendance.⁹⁷ In March 2021, the JOY Collective was awarded with “Campaign of the Year” by the PR Week Awards for its work with Dove and the CROWN Coalition for work that was “[e]xcellent, meaningful, and relevant.”⁹⁸ Because of its resources, Dove was

⁹¹ Unilever Annual Report, *supra* note 12.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Dove Hair Encourages Women to #LoveYourCurls*, UNILEVER USA, <https://www.unileverusa.com/news/press-releases/2015/dove-hair-encourages-women-to-love-your-curly.html>.

⁹⁵ Jeff Green & Kelsey Butler, *Natural Black Hair Products Get a Lift in the Coronavirus Era*, BLOOMBERG (Sept. 22, 2020, 10:35 AM), <https://www.bloomberg.com/news/articles/2020-09-19/natural-black-hair-products-get-a-lift-in-the-coronavirus-era>.

⁹⁶ *JOY Collective Wins Campaign of the Year for Transformative Work with Dove and the CROWN Act Movement at Illustrious PRWeek Awards*, PR NEWSWIRE (Mar. 19, 2021), <https://www.prnewswire.com/news-releases/joy-collective-wins-campaign-of-the-year-for-transformative-work-with-dove-and-the-crown-act-movement-at-illustrious-2021-prweek-awards-301251220.html>.

⁹⁷ Orlena Nwokah Blanchard, *Talking Hair Discrimination on Capitol Hill*, JOY COLLECTIVE (May 1, 2019), <https://joycollective.com/taking-hair-discrimination-to-capitol-hill/>.

⁹⁸ *JOY Collective Wins Campaign of the Year for Transformative Work with Dove and the CROWN Act Movement at Illustrious PRWeek Awards*, *supra* note 96 (speaking on the campaign, one judge stated: “They could not have executed a better campaign. Relevant ties to an important moment in time, given what was happening in the news.”).

able to commission a study that revealed the scale of hair discrimination. This research, in turn, fueled the legislative efforts to pass the CROWN Act.

Legislation and social movements always need money. The other organizations that are part of the CROWN Coalition all have limited means of pushing for the legislation; they rely heavily upon donations in order to work for public good. Dove, on the other hand, makes millions of dollars every year in revenue.⁹⁹ It is powerful to have a company that can afford the costs of pushing this type of legislation forward, regardless of what motives the company may have in achieving the legislation. However, Dove's participation in the movement almost begs the question: what does Dove stand to gain by investing so much into passing the legislation?

V. COMPETITION

Dove is owned by Unilever, a British-Dutch conglomerate. In the 1990s and early 2000s, there was heavy competition between Unilever and Proctor & Gamble (P&G), the company that makes Olay.¹⁰⁰ Even though Dove had made "pretty, soft, oval-shaped bar" soap since 1955, Unilever had "even greater ambitions."¹⁰¹ In 2001, Unilever director of development May Shana'a stated that their aim was to be "the biggest. We want to be on the top of the mind, like Coke."¹⁰² Cue the Dove Campaign for Real Beauty, launched in 2004.¹⁰³

Business decisions do not happen in a vacuum. Instead, they are motivated by a variety of factors, including competition. In thinking about Dove's motivation for supporting the CROWN Act, it is helpful to consider Dove's competition. In this case, P&G is largely the competitor of Unilever. P&G has its own soap product, Olay, and there has been competition between Olay and Dove since the 1990s.¹⁰⁴

Similar to Dove, Olay has recently focused its advertising on diversity and combating racism, writing on its website that the company believes "in

⁹⁹ See Unilever Annual Report, *supra* note 12.

¹⁰⁰ Julian E. Barnes, *The Making (Or Possible Breaking) Of a Megabrand*, THE N.Y. TIMES (July 22, 2001).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

a diverse and inclusive standard of beauty” and that company “stand[s] against racism and injustice.”¹⁰⁵ Olay has “put its money where its mouth is”: the company committed \$5 million to a fund supporting organizations fighting systemic bias and inequality.¹⁰⁶ This money was given to a variety of organizations, including the NAACP Legal Defense and Education Fund.¹⁰⁷ Olay’s parent company, P&G, advocates for investing time to listen and learn about “both historical and present-day experiences of Black people in America,” as well as donating to “efforts that advance equity and equality” such as the Bail Project, Campaign Zero, Color of Change, and others.¹⁰⁸

Unilever bought SheaMoisture, a Black-founded natural hair brand in 2017.¹⁰⁹ Like Unilever, P&G has also bought natural hair brands, such as Bevel.¹¹⁰ Tia Cummings, who was hired by P&G’s Walker & Company Brands to help increase sales of Bevel and other brands that the company bought in 2018, said that the products are now available in 10,000 stores.¹¹¹ Dove and Unilever must consider the competition when making economic decisions, which may partly explain why Dove became involved with the CROWN Coalition. Competition may spur economic decisions, but there are also other forces to consider: the consumers.

VI. DOVE’S GAIN FROM SUPPORTING LEGISLATION FOR THE PUBLIC GOOD

Unilever has expanded its line of products and brands in recent years. In 2017, Unilever acquired Sundial Brands, which include SheaMoisture, Nubian Heritage, Madam C.J. Walker, and nyakio.¹¹² As part of the acquisition agreement, Unilever and Sundial created the New Voices Fund with an initial investment of \$50 million to empower women of color entrepreneurs.¹¹³ On the acquisition, Unilever North America President Kees

¹⁰⁵ *What We Believe*, Olay, <https://www.olay.com/why-olay> (last visited Nov. 19, 2020).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Proctor & Gamble’s “Take on Race” Campaign*, Proctor & Gamble, <https://us.pg.com/take-on-race/> (last visited Nov. 19, 2020).

¹⁰⁹ Green & Butler, *supra* note 56.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Unilever to Acquire Sundial Brands*, BUS. WIRE (Nov. 27, 2017), <https://www.businesswire.com/news/home/20171127005578/en/Unilever-Acquire-Sundial-Brands>.

¹¹³ *Id.*

Kruythoff stated: “The Sundial team has built differentiated and on-trend premium brands serving multicultural and millennial consumers that enhance our existing portfolio. Sundial is an important addition to our U.S. portfolio of purpose-driven companies, which includes Ben & Jerry’s and Seventh Generation.”¹¹⁴ In 2020, Unilever and Sundial launched a new line of textured hair care products for “Gen Z multicultural women.”¹¹⁵ To “spread awareness of the brand’s product range and purpose,” Sundial and Unilever created the “Emerge Creative Collective,” comprised of influential women of color, including a professional ballet dancer, LGBTQIA activist, and celebrity hair artist.¹¹⁶

Unilever is very much aware of the impact of its decisions. In March 2021, Unilever’s president of beauty and personal care products, Sunny Jain, said that consumers increasingly are “rewarding brands” that take action on environmental and social issues.¹¹⁷ Jain also said that the personal beauty campaign would make Unilever a “more successful business.”¹¹⁸

Unilever’s other brands are also involved in social movements. Ben & Jerry’s released a statement in 2016 about the Black Lives Matter movement, and the company similarly released a statement following the death of George Floyd in summer 2020.¹¹⁹ Interestingly, Unilever has faced backlash and criticism over the past few years because of its advertisements and allegations that some of its products promote negative stereotypes around dark skin tones.¹²⁰ For example, in Asia, Unilever sells a skin-lightening cream that it rebranded from “Fair and Lovely” to “Glow and Lovely,” despite still selling the product.¹²¹ It is also difficult to forget the infamous Dove body lotion advertisement in 2017, where a Black woman took of her

¹¹⁴ *Id.*

¹¹⁵ *Unilever and Sundial Brands Announce New Brand, Emerge, for Natural Hair*, PR NEWSWIRE (Jan. 22, 2020), <https://www.prnewswire.com/news-releases/unilever-and-sundial-brands-announce-new-brand-emerge-for-natural-hair-exclusively-at-target-300991555.html>.

¹¹⁶ *Id.*

¹¹⁷ *Unilever Drops Word ‘Normal’ From Beauty Products*, BBC NEWS (Mar. 9, 2021), <https://www.bbc.com/news/business-56331524> [hereinafter *Unilever Drops Word ‘Normal’*].

¹¹⁸ *Id.*

¹¹⁹ *Why Black Lives Matter*, BEN & JERRY’S (Oct. 6, 2016), <https://www.benjerry.com/whats-new/2016/why-black-lives-matter>; *Silence is NOT an Option*, BEN & JERRY’S, <https://www.benjerry.com/about-us/media-center/dismantle-white-supremacy> (last visited Mar. 26, 2021).

¹²⁰ *Unilever Drops Word ‘Normal,’ supra* note 117.

¹²¹ *Id.*

shirt to reveal a white woman, and the white woman removed her shirt to reveal an Asian woman.¹²²

The year 2020 was also a “watershed moment” for the company, as many salons were closed due to coronavirus and the Black Lives Matter protests “gave added impetus to the cultural acceptance of natural Black hair.”¹²³ Dove and Unilever could not have foreseen the coronavirus, but their fortuitous decision to listen to the public placed them in a position to greatly benefit.

Even considering Unilever’s economic gain from the situation, there is still public good that will result from Dove’s support of the CROWN Act. It is helpful to look towards other legislation in the past that has been supported by companies and which ultimately was determined to be good for society. In the early 1900s, company interests and consumer interests “were closely intertwined” with regard to the Food and Drug Act.¹²⁴ The issues with unclear food labelling involved “poisonous and deleterious adulteration, commercial fraud, and accurate product labeling,” which resulted in an annual cost of \$1 billion.¹²⁵ All companies advocating for the legislation had three common interests: they were all dedicated to survival, growth, and profits for their companies.¹²⁶ H.J. Heinz, one of the biggest supporters of the legislation, felt that his company would not grow unless it earned “public confidence.”¹²⁷ The way to earn that public confidence was to work with a federal regulatory agency to make the industry “respectable and trusted.”¹²⁸ So, even though the legislation in that instant was important and beneficial to corporations because it allowed companies to obtain protection from competitors, the legislation was also good for society because it ensured that consumers had the information to make informed market choices.

Similarly, by advocating for the CROWN Act, it can be argued that Dove is trying to earn public confidence. While Dove has focused on its beauty campaigns since the early 2000s, it only became interested in

¹²² *Id.*

¹²³ Green & Butler, *supra* note 56.

¹²⁴ Donna Wood, *The Strategic Use of Public Policy: Business Support for the 1906 Food and Drug Act*, 59 THE BUS. HIST. REV. 404, 404 (1985).

¹²⁵ *Id.* at 408–09.

¹²⁶ *Id.* at 414.

¹²⁷ *Id.* at 419–20.

¹²⁸ *Id.* at 420.

specifically marketing towards people of color around 2015.¹²⁹ This closely follows the #BlackLivesMatter movement, which first began in 2013.¹³⁰ By catering to what it feels that society wants, Dove satisfies its economic wants and some societal needs. While some of its endeavors may seem disingenuous, Dove's decision to advocate for and put money towards antidiscrimination legislation may actually benefit society.

VII. CONCLUSION

While it may be tempting to look disdainfully at companies supporting legislation seemingly primarily for public goodwill, company support for legislation can be highly beneficial. Historically, this has resulted in the passage of some very important bills, such as the Pure Food and Drug Act of 1906.¹³¹ Public perception influences choice, although we do need to have informed consumers.

Businesses can help to move the law along in the right direction at times when the courts and non-profits cannot. Businesses can take the initiative from social movements, feed upon what the consumers want, and then make decisions to better society. Here, with the CROWN Act, Dove is taking initiative to change what is clearly a problem: discrimination based upon hair is almost always discrimination based upon race. Euro-centric beauty ideals have defined the workplace in the United States for decades, which has resulted in discrimination against those who do not conform to established dress codes and grooming standards.¹³² Dove and Unilever make decisions based upon their economic impact, but behavior like this should be encouraged when it supports important anti-discrimination legislation. This is especially true in an area such as hair discrimination, where the courts have traditionally failed to strike down racially-based discriminatory hair policies.¹³³ Money may not and should not directly buy legislation, but it can help support and expediate the process.

¹²⁹ See Barnes, *supra* note 100; *Dove Hair Encourages Women to #LoveYourCurls*, *supra* note 94.

¹³⁰ *About Black Lives Matter*, Black Lives Matter, <https://blacklivesmatter.com/about/> (last visited Nov. 19, 2020).

¹³¹ Wood, *supra* note 124.

¹³² Jones, *supra* note 37.

¹³³ See *supra* notes 61–69.

