

Andrew J. Meyers
County Attorney



OFFICE OF THE COUNTY ATTORNEY
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

954-357-7600 · FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: Adam Katzman, Senior Assistant County Attorney *s/ Adam Katzman*

DATE: November 12, 2020

RE: **Amendments to the Broward County Human Rights Act**

On December 1, 2020, the Board will consider amendments to Chapter 16½ of the Broward County Code of Ordinances ("Human Rights Act") to provide for the protection of hair texture, hair type, and protective hairstyles as a trait of race. In considering the direction to publish Notice of Public Hearing on November 10, 2020, Agenda Item #97, the Board discussed the scope and intent of the amendment. The County Attorney asked me to provide, for your consideration, some additional background and a brief analysis of the proposed amendment.

In 2016, the 11th Circuit Court of Appeals (the federal appellate circuit covering the State of Florida) found that an African American job applicant, whose job offer was rescinded because she refused to cut her dreadlocks, was not protected by the antidiscrimination provisions of Title VII of the 1964 Civil Rights Act ("Title VII"). The Court held that Title VII protects against discrimination based on immutable characteristics such as race, color, or national origin, but a hairstyle, even one closely associated with a particular ethnic group, is not an "immutable characteristic." Rather, the Court found that a hairstyle is a cultural practice or a choice. The Court noted that the distinction in this context is a difficult one, finding that a decision by an employer based on black hair texture, an immutable characteristic, is prohibited by Title VII, but a decision by an employer based on a black hairstyle (e.g., dreadlocks) is not prohibited by Title VII.

In response, numerous jurisdictions such as California, New York, New Jersey, Virginia, Colorado, Washington, and various municipalities enacted legislation prohibiting discrimination based on an individual's hairstyle that is historically associated with race, including but not limited to hair texture and protective hairstyles.

Board of County Commissioners
November 12, 2020
Page 2

The Human Rights Act protects against discrimination based on various classifications, including race. Currently, the Human Rights Act protects an individual from race discrimination on the basis of hair texture, but it may not protect individuals who wear their hair in protective styling such as braids, twists, and locs that keep one's hair free from manipulation. The proposed amendments would define race to include traits associated with race, which would result in protection not only based on hair texture (recognized as an immutable trait), but also based on hair type and protected hairstyles. As with many of the classifications covered by the County's Human Rights Act, whether to include this additional protection is purely a policy decision.

Please let me know if you would like to discuss this matter further. I may be contacted at 954-357-7608 or akatzman@broward.org.

AMK/mb

c: Bertha Henry, County Administrator
Bob Melton, County Auditor
Andrew J. Meyers, County Attorney