EEOC v. CATASTROPHIC MANAGEMENT SOLUTIONS
2016 WL 4916851 (11th CIR. Sept. 15, 2016)

Before JORDAN and JULIE CARNES, Circuit Judges, and ROBREÑO,* District Judge.

* The Honorable Eduardo Robreño, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

JORDAN, Circuit Judge:

The Equal Employment Opportunity Commission filed suit on behalf of Chastity Jones, a black job applicant whose offer of employment was rescinded by Catastrophe Management Solutions pursuant to its race-neutral grooming policy when she refused to cut off her dreadlocks. The EEOC alleged that CMS' conduct constituted discrimination on the basis of Ms. Jones' race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2(a)(1) & 2000e–2(m). The district court dismissed the complaint under Federal Rule of Civil Procedure 12(b)(6) because it did not plausibly allege intentional racial discrimination by CMS against Ms. Jones. The district court also denied the EEOC's motion for leave to amend, concluding that the proposed amended complaint would be futile. The EEOC appealed.

With the benefit of oral argument, we affirm. First, the EEOC—in its proposed amended complaint and in its briefs—conflates the distinct Title VII theories of disparate treatment (the sole theory on which it is proceeding) and disparate impact (the theory it has expressly disclaimed). Second, our precedent holds that Title VII prohibits discrimination based on immutable traits, and the proposed amended complaint does not assert that dreadlocks—though culturally associated with race—are an immutable characteristic of black persons. Third, we are not persuaded by the guidance in the EEOC's Compliance Manual because it conflicts with the position taken by the EEOC in an earlier administrative appeal, and because the EEOC has not offered any explanation for its change in course. Fourth, no court has accepted the EEOC's view of Title VII in a scenario like this one, and the allegations in the proposed amended complaint do not set out a plausible claim that CMS intentionally discriminated against Ms. Jones on the basis of her race.

I

The EEOC relies on the allegations in its proposed amended complaint, so we set out those allegations below.

CMS, a claims processing company located in Mobile, Alabama, provides customer service support to insurance companies. In 2010, CMS announced that it was seeking candidates with basic computer knowledge and professional phone skills to work as customer service representatives. CMS' customer representatives do not have contact

with the public, as they handle telephone calls in a large call room.

Ms. Jones, who is black, completed an online employment application for the customer service position in May of 2010, and was selected for an in-person interview. She arrived at CMS for her interview several days later dressed in a blue business suit and wearing her hair in short dreadlocks.

After waiting with a number of other applicants, Ms. Jones interviewed with a company representative to discuss the requirements of the position. A short time later, Ms. Jones and other selected applicants were brought into a room as a group.

CMS' human resources manager, Jeannie Wilson—who is white—informed the applicants in the room, including Ms. Jones, that they had been hired. Ms. Wilson also told the successful applicants that they would have to complete scheduled lab tests and other paperwork before beginning their employment, and she offered to meet privately with anyone who had a conflict with CMS' schedule. As of this time no one had commented on Ms. Jones' hair.

Following the meeting, Ms. Jones met with Ms. Wilson privately to discuss a scheduling conflict she had and to request to change her lab test date. Ms. Wilson told Ms. Jones that she could return at a different time for the lab test.

Before Ms. Jones got up to leave, Ms. Wilson asked her whether she had her hair in dreadlocks. Ms. Jones said yes, and Ms. Wilson replied that CMS could not hire her "with the dreadlocks." When Ms. Jones asked what the problem was, Ms. Wilson said "they tend to get messy, although I'm not saying yours are, but you know what I'm talking about." Ms. Wilson told Ms. Jones about a male applicant who was asked to cut off his dreadlocks in order to obtain a job with CMS.

When Ms. Jones said that she would not cut her hair, Ms. Wilson told her that CMS could not hire her, and asked her to return the paperwork she had been given. Ms. Jones did as requested and left.

At the time, CMS had a race-neutral grooming policy which read as follows: "All personnel are expected to be dressed and groomed in a manner that projects a professional and businesslike image while adhering to company and industry standards and/or guidelines.... [H]airstyle should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable[.]"

Dreadlocks, according to the proposed amended complaint, are "a manner of wearing hair that is common for black people and suitable for black hair texture. Dreadlocks are formed in a black person's hair naturally, without any manipulation, or by manual manipulation of hair into larger coils."

The EEOC alleged that the term dreadlock originated during the slave trade in the early history of the United States. "During the forced transportation of Africans across

the ocean, their hair became matted with blood, feces, urine, sweat, tears, and dirt. Upon observing them, some slave traders referred to the slaves' hair as 'dreadful,' " and dreadlock became a "commonly used word to refer to the locks that had formed during the slaves' long trips across the ocean."

The proposed amended complaint also contained some legal conclusions about the concept of race. First, the EEOC stated that race "is a social construct and has no biological definition." Second, the EEOC asserted that "the concept of race is not limited to or defined by immutable physical characteristics." Third, according to the EEOC Compliance Manual, the "concept of race encompasses cultural characteristics related to race or ethnicity," including "grooming practices." Fourth, although some non-black persons "have a hair texture that would allow the hair to lock, dreadlocks are nonetheless a racial characteristic, just as skin color is a racial characteristic."

Playing off these legal conclusions, the proposed amended complaint set out allegations about black persons and their hair. The hair of black persons grows "in very tight coarse coils," which is different than the hair of white persons. "Historically, the texture of hair has been used as a substantial determiner of race," and "dreadlocks are a method of hair styling suitable for the texture of black hair and [are] culturally associated" with black persons. When black persons "choose to wear and display their hair in its natural texture in the workplace, rather than straightening it or hiding it, they are often stereotyped as not being 'teamplayers,' 'radicals,' 'troublemakers,' or not sufficiently assimilated into the corporate and professional world of employment." Significantly, the proposed amended complaint did not allege that dreadlocks are an immutable characteristic of black persons.

II

Our review in this appeal is plenary. Like the district court, we accept as true the well-pleaded factual allegations in the proposed amended complaint and draw all reasonable inferences in the EEOC's favor. The legal conclusions in the proposed amended complaint, however, are not presumed to be true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679–81 (2009).

A complaint must contain sufficient factual allegations to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In a Title VII case like this one, the EEOC had to set out enough "factual content t[o] allow[ ] [a] court to draw the reasonable inference" that CMS is liable for the intentional racial discrimination alleged.

III

The EEOC claimed in its proposed amended complaint that a "prohibition of dreadlocks in the workplace constitutes race discrimination because dreadlocks are a manner of wearing the hair that is physiologically and culturally associated with people of African descent." So, according to the EEOC, the decision of CMS to "interpret its

race-neutral written grooming policy to ban the wearing of dreadlocks constitutes an employment practice that discriminates on the basis of race."

The district court dismissed the initial complaint, and concluded that the proposed amended complaint was futile, because "Title VII prohibits discrimination on the basis of immutable characteristics, such as race, color, or natural origin," and "[a] hairstyle, even one more closely associated with a particular ethnic group, is a mutable characteristic." The district court was not swayed by the EEOC's contention that the allegations were sufficient because "hairstyle can be a determinant of racial identity," explaining that other courts had rejected that argument. The district court also declined the EEOC's invitation to discard the immutable/mutable distinction for Title VII race discrimination claims.

The EEOC advances a number of arguments on appeal in support of its position that denying a black person employment on the basis of her dreadlocks through the application of a race-neutral grooming policy constitutes intentional discrimination on the basis of race in violation of Title VII. The arguments, which build on each other, are that dreadlocks are a natural outgrowth of the immutable trait of black hair texture; that the dreadlocks hairstyle is directly associated with the immutable trait of race; that dreadlocks can be a symbolic expression of racial pride; and that targeting dreadlocks as a basis for employment can be a form of racial stereotyping.

IV

The question in a disparate treatment case is "whether the protected trait actually motivated the employer's decision." Generally speaking, "[a] plaintiff can prove disparate treatment ... by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic, or ... by [circumstantial evidence] using the burden-shifting framework set forth in *McDonnell Douglas*."

Title VII does not define the term "race." And, in the more than 50 years since Title VII was enacted, the EEOC has not seen fit to issue a regulation defining the term. *See* EEOC Compliance Manual, § 15-II, at 4 (2006) ("Title VII does not contain a definition of 'race,' nor has the Commission adopted one."). This appeal requires us to consider, at least in part, what "race" encompasses under Title VII because the EEOC maintains that "if [ ] individual expression is tied to a protected trait, such as race, discrimination based on such expression is a violation of the law."

"The meaning of the word 'race' in Title VII is, like any other question of statutory interpretation, a question of law for the court." When words are not defined in a statute, they are "interpreted as taking their ordinary, contemporary, common meaning," *Sandifer v. U.S. Steel Corp.*, ––U.S. ––––, 134 S.Ct. 870, 876, 187 L.Ed.2d 729 (2014) (citation and internal quotation marks omitted), and one of the ways to figure out that meaning is by looking at dictionaries in existence around the time of enactment. *See, e.g.*, *St. Francis College v. Al–Khazraji*, 481 U.S. 604, 609–12 (1987).

In the 1960s, as today, "race" was a complex concept that defied a single

definition. Take, for example, the following discussion in a leading 1961 dictionary: "In technical discriminations, all more or less controversial and often lending themselves to great popular misunderstanding or misuse, RACE is anthropological and ethnological in force, usu[ally] implying a physical type with certain underlying characteristics, as a particular color of skin or shape of skull ... although sometimes, and most controversially, other presumed factors are chosen, such as place of origin ... or common root language." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1870 (unabridged 1961).

Nevertheless, most dictionaries at that time tied "race" to common physical characteristics or traits existing through ancestry, descent, or heredity. *See id.* (defining "race" as "the descendants of a common ancestor: a family, tribe, people, or nation belonging to the same stock" or "a class or kind of individuals with common characteristics, interests, appearance, or habits as if derived from a common ancestor," or "a division of mankind possessing traits that are transmissible by descent and sufficient to characterize it as a distinct human type (Caucasian ~) (Mongoloid ~)"); A DICTIONARY OF THE SOCIAL SCIENCES 569 (Julius Gould & William Kolb eds. 1964) ("A *race* is a subdivision of a species, individual members of which display with some frequency a number of hereditary attributes that have become associated with one another in some measure through considerable degree of in-breeding among the ancestors of the group during a substantial part of their recent evolution."); A DICTIONARY OF SOCIOLOGY 142 (G. Duncan Mitchell ed. 1968) ("Biologically speaking the concept of *race* refers to a population sharing a gene-pool giving rise to a characteristic distribution of physical characteristics determined by heredity. There are no clear cut boundaries between racial groups thus defined and considerable variations may be exhibited within races."). One specialty dictionary, while defining "race" as an "anthropological term denoting a large group of persons distinguished by significant hereditary physical traits," cautioned that "[a] common misconception is that cultural traits sufficiently differentiate races." DICTIONARY OF POLITICAL SCIENCE 440 (Joseph Dunne ed. 1964).

From the sources we have been able to review, it appears more likely than not that "race," as a matter of language and usage, referred to common physical characteristics shared by a group of people and transmitted by their ancestors over time. Although the period dictionaries did not use the word "immutable" to describe such common characteristics, it is not much of a linguistic stretch to think that such characteristics are a matter of birth, and not culture.

There is little support for the position of the EEOC that the 1964 Congress meant for Title VII to protect "individual expression ... tied to a protected race." Br. of EEOC at 20. Indeed, from a legal standpoint, it appears that "race" was then mostly understood in terms of inherited physical characteristics. *See* BLACK'S LAW DICTIONARY 1423 (4th ed. 1951) ("Race. An ethnical stock; a great division of mankind having in common certain distinguishing physical peculiarities constituting a comprehensive class appearing to be derived from a distinct primitive source. A tribal or national stock, a division or subdivision of one of the great racial stocks of mankind distinguished by minor peculiarities. Descent.").

It may be that today "race" is recognized as a "social construct," *Ho by Ho v. San Francisco Unified Sch. Dist.*, 147 F.3d 854, 863 (9th Cir. 1998), rather than an absolute biological truth. But our possible current reality does not tell us what the country's collective zeitgeist was when Congress enacted Title VII half a century ago. "That race is essentially only a very powerful idea and not at all a biological fact is, again, an emerging contemporary understanding of the meaning of race." Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483, 515 (2003).

If we assume, however, that the quest for the ordinary understanding of "race" in the 1960s does not have a clear winner, then we must look for answers elsewhere. Some cases from the former Fifth Circuit provide us with binding guidance, giving some credence to Felix Frankfurter's adage that "[n]o judge writes on a wholly clean slate." Walter Hamilton, *Preview of a Justice*, 48 YALE L.J. 819, 821 (1939) (quoting FELIX FRANKFURTER, THE COMMERCE CLAUSE UNDER MARSHALL, TANEY, AND WAITE 12 (1937)). As we explain below, those cases teach that Title VII protects against discrimination based on immutable characteristics.

In *Willingham v. Macon Tel. Publ'g Co.*, 507 F.2d 1084 (5th Cir. 1975) (en banc), we addressed a Title VII sex discrimination claim by a male job applicant who was denied a position because his hair was too long. Although the employer interpreted its neutral dress/grooming policy to prohibit the wearing of long hair only by men, and although the plaintiff argued that he was the victim of sexual stereotyping (i.e., the view that only women should have long hair), we affirmed the grant of summary judgment in favor of the employer.

We held in *Willingham* that "[e]qual employment opportunity," which was the purpose of Title VII, "may be secured only when employers are barred from discriminating against employees on the basis of immutable characteristics, such as race and national origin. Similarly, an employer cannot have one hiring policy for men and another for women *if* the distinction is based on some fundamental right. But a hiring policy that distinguishes on some other ground, such as grooming or length of hair, is related more closely to the employer's choice of how to run his business than equality of employment opportunity." We "adopt[ed] the view ... that distinctions in employment practices between men and women on the basis of something other than immutable or protected characteristics do not inhibit employment *opportunity* in violation of [Title VII]." And we approved the district court's alternative ground for affirming the grant of summary judgment in favor of the employer—that because grooming and hair standards were also imposed on female employees, men and women were treated equally. In closing, we reiterated that "[p]rivate employers are prohibited from using different hiring policies for men and women only when the distinctions used relate to immutable characteristics or legally protected rights."

Willingham involved hair length in the context of a sex discrimination claim, but in *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980), we applied the immutable characteristic limitation to national origin, another of Title VII's protected categories. In *Garcia* a

bilingual Mexican-American employee who worked as a salesperson was fired for speaking Spanish to a co-worker on the job in violation of his employer's English-only policy, and he alleged that his termination was based on his national origin in violation of Title VII (which we referred to as the "EEO Act"). We affirmed the district court's judgment in favor of the employer following a bench trial. We noted that an expert witness called by the employee had "testified that the Spanish language is the most important aspect of ethnic identification for Mexican-Americans, and it is to them what skin color is to others," and that testimony formed part of the basis for the claim that the employer's policy was unlawful. Although the district court had found that there were other reasons for the employee's dismissal, we assumed that the use of Spanish was a significant factor in the employer's decision.

We explained that neither Title VII nor common understanding "equates national origin with the language that one chooses to speak," and noted that the English-only rule was not applied to the employee as a "covert basis for national origin discrimination." Though the employee argued that he was discriminated against on the basis of national origin "because national origin influences or determines his language preference," we were unpersuaded because the employee was bilingual and was allowed to speak Spanish during breaks. And even if the employer had no genuine business need for the English-only policy, we said that "[n]ational origin must not be confused with ethnic or sociocultural traits or an unrelated status, such as citizenship or alienage." Citing *Willingham*, we emphasized that Title VII "focuses its laser of prohibition" on discriminatory acts based on matters "that are either beyond the victim's power to alter, or that impose a burden on an employee on one of the prohibited bases."

The employee in *Garcia* also argued that the employer's English-only policy was "discriminatory in impact, even if that result was not intentional, because it was likely to be violated only by Hispanic-Americans and that, therefore, they ha[d] a higher risk of incurring penalties." We rejected this argument as well because "there is no disparate impact if the rule is one that the affected employee can readily observe and nonobservance is a matter of individual preference," and Title VII "does not support an interpretation that equates the language an employee prefers to use with his national origin."

What we take away from *Willingham* and *Garcia* is that, as a general matter, Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices. And although these two decisions have been criticized by some, *see, e.g.*, Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1213–21 (2004), we are not free, as a later panel, to discard the immutable/mutable distinction they set out.

We recognize that the distinction between immutable and mutable characteristics of race can sometimes be a fine (and difficult) one, but it is a line that courts have drawn. So, for example, discrimination on the basis of black hair texture (an immutable characteristic) is prohibited by Title VII, while adverse action on the basis of black

hairstyle (a mutable choice) is not.

Critically, the EEOC's proposed amended complaint did not allege that dreadlocks themselves are an immutable characteristic of black persons, and in fact stated that black persons choose to wear dreadlocks because that hairstyle is historically, physiologically, and culturally associated with their race. That dreadlocks are a "natural outgrowth" of the texture of black hair does not make them an immutable characteristic of race. Under *Willingham* and *Garcia*, the EEOC failed to state a plausible claim that CMS intentionally discriminated against Ms. Jones on the basis of her race by asking her to cut her dreadlocks pursuant to its race-neutral grooming policy. The EEOC's allegations—individually or collectively—do not suggest that CMS used that policy as proxy for intentional racial discrimination.

The EEOC admitted in its proposed amended complaint that CMS' grooming policy is race-neutral, but claimed that a "prohibition on dreadlocks in the workplace constitutes race discrimination" because dreadlocks are a racial characteristic, i.e., they "are a manner of wearing the hair that is physiologically and culturally associated with people of African descent." So, as noted earlier, the claim that CMS intentionally discriminated against Ms. Jones on the basis of her race depends on the EEOC's conception of what "race" means (and how far it extends) under Title VII.

In support of its interpretation of Title VII, the EEOC relies on its own Compliance Manual. *See* EEOC Compliance Manual, § 15-II, at 4 (2006) ("Title VII prohibits employment discrimination against a person because of cultural characteristics often linked to race or ethnicity, such as a person's name, cultural dress and grooming practices, or accent or manner of speech."). But even if we could ignore *Willingham* and *Garcia*, the Compliance Manual does not save the day for the EEOC.

"[T]he rulings, interpretations, and opinions" of an agency charged with enforcing a particular statute, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The Compliance Manual, therefore, is entitled to deference "only to the extent that [it has] the power to persuade." *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000). Factors relevant to determining the persuasiveness of the Compliance Manual, and thus the weight given to the EEOC's guidance, include "the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements[.]"

The Compliance Manual contravenes the position the EEOC took in an administrative appeal less than a decade ago. *See Thomas v. Chertoff*, Appeal No. 0120083515, 2008 WL 4773208, at *1 (E.E.O.C. Office of Federal Operations Oct. 24, 2008) (concluding, in line with federal cases like *Willingham*, that a grooming policy interpreted to prohibit dreadlocks and similar hairstyles lies "outside the scope of federal employment discrimination statutes," even when the prohibition targets "hairstyles generally associated with a particular race"). Because the EEOC has not provided a

reasoned justification for changing course in the Compliance Manual, and has opted not to address *Thomas* in its reply brief, we choose to not give its guidance much deference or weight in determining the scope of Title VII's prohibition of racial discrimination.

The Compliance Manual also runs headlong into a wall of contrary caselaw. In the words of a leading treatise, "[c]ourts generally have upheld facially neutral policies regarding *mutable* characteristics, such as facial hair, despite claims that the policy has an adverse impact on members of a particular race or infringes on the expression of cultural pride and identification." BARBARA LINDEMANN & PAUL GROSSMAN, 1 EMPLOYMENT DISCRIMINATION LAW 6-5 (5th ed. 2012).

As far as we can tell, every court to have considered the issue has rejected the argument that Title VII protects hairstyles culturally associated with race. *See Cooper v. Am. Airlines, Inc.*, 149 F.3d 1167, at *1 (4th Cir.1998) (upholding district court's 12(b)(6) dismissal of claims based on a grooming policy requiring that braided hairstyles be secured to the head or at the nape of the neck); *Campbell v. Alabama Dep't of Corr.*, No. 2:13–CV–00106–RDP, 2013 WL 2248086, at *2 (N.D. Ala. May 20, 2013) ("A dreadlock hairstyle, like hair length, is not an immutable characteristic."); *Pitts v. Wild Adventures, Inc.*, No. CIV.A.7:06–CV–62–HL, 2008 WL 1899306, at *5–6 (M.D. Ga. Apr. 25, 2008) (holding that a grooming policy which prohibited dreadlocks and cornrows was outside the scope of federal employment discrimination statutes because it did not discriminate on the basis of immutable characteristics); *Eatman v. United Parcel Serv.*, 194 F.Supp.2d 256, 259–67 (S.D.N.Y. 2002) (holding that an employer's policy prohibiting "unconventional" hairstyles, including dreadlocks, braids, and cornrows, was not racially discriminatory in violation of Title VII); *McBride v. Lawstaf, Inc.*, No. CIV. A.1:96–CV–0196C, 1996 WL 755779, at *2 (N.D. Ga. Sept. 19, 1996) (holding that a grooming policy prohibiting braided hairstyles does not violate Title VII); *Rogers,* 527 F.Supp. at 232 (holding that a grooming policy prohibiting an all-braided hairstyle did not constitute racial discrimination, and distinguishing policies that prohibit Afros, because braids are not an immutable characteristic but rather "the product of ... artifice"); *Carswell v. Peachford Hosp.*, No. C80–222A, 1981 WL 224, at *2 (N.D. Ga. May 26, 1981) ("There is no evidence, and this court cannot conclude, that the wearing of beads in one's hair is an immutable characteristic, such as national origin, race, or sex. Further, this court cannot conclude that the prohibition of beads in the hair by an employer is a subterfuge for discrimination."); *Wofford v. Safeway Stores, Inc.*, 78 F.R.D. 460, 470 (N.D. Cal. 1978) (explaining that the "even-handed application of reasonable grooming regulations has uniformly been held not to constitute discrimination on the basis of race") (internal citations omitted); *Thomas v. Firestone Tire & Rubber Co.*, 392 F.Supp. 373, 375 (N.D. Tex. 1975) (holding that a grooming policy regulating hair length and facial hair, which was applied even-handedly to employees of all races, did not violate Title VII or 42 U.S.C. § 1981). *See also Brown v. D.C. Transit System*, 523 F.2d 725, 726 (D.C. Cir. 1975) (rejecting claim by black male employees that race-neutral grooming regulation, which prohibited most facial hair, violated Title VII despite contention by employees that the regulation was "an 'extreme and gross suppression of them as black men and (was) a badge of slavery' depriving them 'of their racial identity and virility' ").

We would be remiss if we did not acknowledge that, in the last several decades, there have been some calls for courts to interpret Title VII more expansively by eliminating the biological conception of "race" and encompassing cultural characteristics associated with race. But even those calling for such an interpretive change have different visions (however subtle) about how "race" should be defined.

Assuming that general definitional consensus could be achieved among those who advocate the inclusion of culture within the meaning of "race," and that courts were willing to adopt such a shared understanding of Title VII, that would only be the beginning of a difficult interpretive battle, and there would be other very thorny issues to confront, such as which cultural characteristics or traits to protect. There would also be the related question of whether cultural characteristics or traits associated with one racial group can be absorbed by or transferred to members of a different racial group. At oral argument, for example, the EEOC asserted that if a white person chose to wear dreadlocks as a sign of racial support for her black colleagues, and the employer applied its dreadlocks ban to that person, she too could assert a race-based disparate treatment claim.

The resolution of these issues, moreover, could itself be problematic. Even if courts prove sympathetic to the "race as culture" argument, and are somehow freed from current precedent, how are they to choose among the competing definitions of "race"? How are they (and employers, for that matter) to know what cultural practices are associated with a particular "race"? And if cultural characteristics and practices are included as part of "race," is there a principled way to figure out which ones can be excluded from Title VII's protection?

We cannot, and should not, forget that we—and courts generally—are tasked with interpreting Title VII, a statute enacted by Congress, and not with grading competing doctoral theses in anthropology or sociology. Our point is not to take a stand on any side of this debate—we are, after all, bound by *Willingham* and *Garcia*—but rather to suggest that, given the role and complexity of race in our society, and the many different voices in the discussion, it may not be a bad idea to try to resolve through the democratic process what "race" means (or should mean) in Title VII.

V

Ms. Jones told CMS that she would not cut her dreadlocks in order to secure a job, and we respect that intensely personal decision and all it entails. But, for the reasons we have set out, the EEOC's original and proposed amended complaint did not state a plausible claim that CMS intentionally discriminated against Ms. Jones because of her race. The district court therefore did not err in dismissing the original complaint and in concluding that the proposed amended complaint was futile.