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## The Hidden Costs Behind Cheap Clothing: Addressing Fast Fashion's Environmental and Humanitarian Impact

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# The Hidden Costs Behind Cheap Clothing: Addressing Fast Fashion’s Environmental and Humanitarian Impact

## ABSTRACT

*The increasing speed at which social media trends come and go has caused fashion trends to accelerate in response to consumers’ ever-changing demands. To keep up with the latest fads, fast fashion companies design their clothing only to withstand a couple of uses before the item is no longer in good condition. The manufacture and discard of cheaply made clothing creates a variety of environmental issues. Brands conceal the treatment and compensation of their workers throughout the supply chain; the available information suggests that garment workers are mistreated. Finally, the disposal of these clothing items creates tension between the United States and the countries that ultimately assume its textile waste. The United States has done little to address these issues and currently has no legislation addressing the social and environmental decisions of the fashion industry, despite the industry’s social and environmental costs. This Note suggests that the United States enact a federal scheme to regulate the fast fashion industry by drawing on the European Union’s Strategy for Sustainable and Circular Textiles and Corporate Sustainability Reporting Directive, California’s Garment Worker Protection Act, and New York’s proposed Fashion Sustainability and Social Accountability Act.*

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## I. INTRODUCTION

Fast fashion has taken the industry by storm due to its cheap, speedy manufacturing methods and the increase in consumer appetite for rapidly evolving trends.<sup>1</sup> In order to cater to consumer demands, fast fashion companies produce garments in a particularly frugal manner, which tends to result in carelessly made items.<sup>2</sup> Companies are aware that consumers will only wear the clothing items a handful of times and bear this in mind when making decisions on the quality of items.<sup>3</sup>

Because fast fashion companies cater to consumer demand and fashion fads, fast fashion is faster than ever before, and the market is only expected to grow as media development continues.<sup>4</sup> With the

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1. Adam Hayes, *Fast Fashion*, INVESTOPEDIA, <https://www.investopedia.com/terms/f/fast-fashion.asp> [<https://perma.cc/EC3B-3Q8X>] (Sept. 16, 2022); *see also* Kenneth P. Pucker, *The Myth of Sustainable Fashion*, HARV. BUS. REV. (Jan. 13, 2022), <https://hbr.org/2022/01/the-myth-of-sustainable-fashion> [<https://perma.cc/9NHJ-ADTV>].

2. *Id.*

3. *See id.*; Natalie Kitroeff, *Fashion Nova's Secret: Underpaid Workers in Los Angeles Factories*, N.Y. TIMES (Dec. 16, 2019), <https://www.nytimes.com/2019/12/16/business/fashion-nova-underpaid-workers.html?auth=login-google> [<https://perma.cc/9C9J-R9HE>].

4. *See Global Fast Fashion Market with Focus on The United States 2020–2024 with Impact Analysis of COVID-19*, PR NEWSWIRE (Oct. 27, 2020, 12:30 PM), <https://www.prnewswire.com/news-releases/global-fast-fashion-market-with-focus-on-the-united-states-2020-2024-with-impact-analysis-of-covid-19-301160568.html> [<https://perma.cc/CRG3-HCAG>]; Pucker, *supra* note 1 (“Because it is hard to make a better performing or more efficient blouse, handbag, or pair of socks, to motivate consumption, the industry pushes change. Not better—just different, cheaper, or faster.”).

popularity of social media platforms like TikTok, where trends last roughly a week, it makes sense that fashion fads are both starting and ending more quickly.<sup>5</sup> In fact, Shein, an online-only fast fashion retailer, is the overall most mentioned brand on TikTok.<sup>6</sup> Social media use has been shown to positively correlate with time and money spent shopping online, and as media use continues to increase so do the sales of fast fashion brands.<sup>7</sup> These brands launch fifty to one hundred microseasons annually—as compared to traditional fashion brands, which typically produce around four seasons.<sup>8</sup>

Even in 2017, 41 percent of women between the ages of eighteen to twenty-five “felt pressure to wear a different outfit every time they went out.”<sup>9</sup> Social media preys on these pressures and insecurities by targeting consumers virtually anywhere at virtually any time.<sup>10</sup> The constant pressure to update personal wardrobes leads many people to rely on fast fashion as a cheap and easy option, but one that comes with negative consequences. Negative environmental and social costs that result from fast fashion include an increase in pollution, exploitation of garment workers, and tense relations with the countries that receive the bulk of the fashion industry’s waste.<sup>11</sup> Consulting firm McKinsey predicts that the environmental effects and social costs of fast fashion will grow proportionally as more clothing is produced unless the industry undertakes to resolve these challenges soon.<sup>12</sup> Considering

5. See Michael Stelzner, *TikTok Trends: How to Leverage Trending Content for Business*, SOC. MEDIA EXAM’R (Apr. 8, 2021), <https://www.socialmediaexaminer.com/tiktok-trends-how-to-leverage-trending-content-for-business/> [https://perma.cc/TRA9-GH56]; Zoe Christen Jones, *Not Sure How to Dress? Just Watch TikTok*, CBS NEWS, <https://www.cbsnews.com/news/tiktok-fashion-trends-cottagecore-y2k/> [https://perma.cc/WZ48-5A6T] (July 20, 2021, 4:06 PM).

6. Marthe de Ferrer, *How Are Shein Hauls Making Our Planet Unlivable?*, EURONEWS, <https://www.euronews.com/green/2022/10/17/how-are-shein-hauls-making-our-planet-unlivable> [https://perma.cc/QUJ4-EC9G] (Oct. 17, 2022).

7. See Rachel Monroe, *Ultra-Fast Fashion is Eating the World*, ATLANTIC (Feb. 6, 2021), <https://www.theatlantic.com/magazine/archive/2021/03/ultra-fast-fashion-is-eating-the-world/617794/> [https://perma.cc/32TY-JQEZ].

8. See Urska Trunk, *Fast Fashion’s Addiction to Synthetic Fibres*, ETHICAL CONSUMER (Apr. 6, 2021), <https://www.ethicalconsumer.org/fashion-clothing/fast-fashions-addiction-synthetic-fibres> [https://perma.cc/YD3A-7W6X].

9. Monroe, *supra* note 7.

10. See *id.* Through social media, brands can access their consumer bases at any time of the day, anywhere, and in almost any context. See *id.*

11. *Id.*; see also Terry Nguyen, *Americans Throw Away Too Many Clothes. Poorer Countries Are Left with the Waste.*, VOX (Oct. 6, 2021, 9:00 AM), <https://www.vox.com/the-goods/22700581/aja-barber-consumed-book-fast-fashion-ghana> [https://perma.cc/434T-2BFE].

12. Nathalie Remy, Eveline Speelman, & Steven Swartz, *Style That’s Sustainable: A New Fast-Fashion Formula*, MCKINSEY SUSTAINABILITY (Oct. 20, 2016), <https://www.mckinsey.com/business-functions/sustainability/our-insights/style-thats-sustainable-a-new-fast-fashion-formula> [https://perma.cc/D8GJ-4RGS].

that the fashion industry could use over 25 percent of the world's carbon budget by 2050, regulating the industry is extremely important.<sup>13</sup>

This Note proposes that the United States enact a legislative and regulatory scheme to address the harms stemming from the fast fashion industry, similar to the European Union's Strategy for Sustainable and Circular Textiles (the Strategy) and Corporate Sustainability Reporting Directive (CSRD) and other state-led legislative initiatives. Part II provides background information on the environmental and social impacts of the fast fashion industry and what fast fashion companies have communicated about these impacts thus far. Part III analyzes the United States' federal statutory and regulatory provisions that most closely apply to the fast fashion industry as of now. Additionally, it examines state legislation specifically enacted and proposed to address the effects of the fast fashion industry. Part III also examines the industry's self-regulation, which is what the current US framework supports in terms of sustainability initiatives. This Note then describes the European Union's Strategy and the CSRD. Finally, in Part IV, this Note suggests that the United States adopt a regulatory scheme incorporating concepts from the European Union's recent measures, California's newly enacted bill, and New York's recently proposed legislation.

## II. BACKGROUND

### A. *Environmental Impact*

The fashion industry as a whole is responsible for ninety-two million tons of solid waste each year.<sup>14</sup> In the United States, each person generates roughly seventy-five pounds of clothing waste a year, which is an increase of 750 percent within the last sixty years.<sup>15</sup> On top of that, thousands of tons of fabric are wasted at the design and production stage before clothing even reaches the customer.<sup>16</sup> The industry generally operates on a linear model of "make, use, dispose," as opposed to a circular model involving the reuse and recycling of a product.<sup>17</sup>

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13. Kiran Pandey, *Fashion Industry May Use Quarter of World's Carbon Budget by 2050*, DOWNTOEARTH (July 18, 2018), <https://www.downtoearth.org.in/news/environment/fashion-industry-may-use-quarter-of-world-s-carbon-budget-by-2050-61183> [<https://perma.cc/3ED5-YQG3>].

14. Kaya Dory, *Why Fast Fashion Needs to Slow Down*, U.N. ENV'T PROGRAMME (June 27, 2018), <https://www.unep.org/news-and-stories/blogpost/why-fast-fashion-needs-slow-down> [<https://perma.cc/XZV2-XZP2>].

15. Monroe, *supra* note 7.

16. ENVIRONMENTAL AUDIT COMMITTEE, *FIXING FASHION: CLOTHING CONSUMPTION AND SUSTAINABILITY*, 2017–19, HC 1952, ¶113 (UK).

17. *See id.* ¶104.

Many fast fashion companies use synthetic textiles.<sup>18</sup> The use of polyester in the fashion industry correlates with the explosion in demand for cheap and low-quality clothing and appears to be a prime enabler of such low prices.<sup>19</sup> This presents various environmental issues, as synthetic textiles are a major source of microplastic pollution.<sup>20</sup> Microplastics take hundreds or thousands of years to decompose, and they harm the ocean and marine animals, clog waterways, and contaminate seafood and drinking water.<sup>21</sup> Additionally, the production of synthetic fibers relies heavily on fossil fuels, and currently the quantity of oil required to produce these fibers is so immense that it exceeds the annual oil consumption of Spain.<sup>22</sup>

Because of the clothing items' low cost of production, fast fashion companies frequently produce more clothing than they sell.<sup>23</sup> Some fast fashion companies incinerate excess products.<sup>24</sup> The Environmental Protection Agency (EPA) estimates that out of the thirteen million tons of clothing and footwear generated in 2018, about 2.2 million tons were combusted and over nine million were landfilled, compared to the only 1.7 million tons recycled.<sup>25</sup> Burning unsold inventory compounds the climate impact of the clothing products, as greenhouse gases are generated both during production and later during incineration.<sup>26</sup>

18. Trunk, *supra* note 8.

19. *See id.*

20. Monroe, *supra* note 7; *EU Strategy for Sustainable and Circular Textiles*, at 5, COM (2022) 141 final (Mar. 30, 2022) (“As the highest amount of microplastics are released in the first 5 to 10 washes, fast fashion, which is associated with the growing use of fossil-based synthetic fibres, has a high impact on microplastic pollution.”).

21. *See id.*; *Microplastics*, NAT'L GEOGRAPHIC SOC'Y, <https://www.nationalgeographic.org/encyclopedia/microplastics/> [<https://perma.cc/M9UR-CGUB>] (May 20, 2022).

22. Sally Ho, *Nearly 60% of Sustainable Fashion Claims Are Greenwashing, Report Finds*, GREEN QUEEN, <https://www.greenqueen.com.hk/fashion-brands-sustainability-claims-greenwashing/> [<https://perma.cc/39DF-DRLW>] (July 10, 2021).

23. *See* Cecilia Dardana, *The Destruction of Unsold Clothes Shows the Dark Side of Fast Fashion*, LIFE GATE (Apr. 5, 2021), <https://www.lifegate.com/fast-fashion-overproduction> [<https://perma.cc/Y9AC-H6JL>].

24. Chavie Lieber, *Why Fashion Brands Destroy Billions' Worth of Their Own Merchandise Every Year*, VOX (Sept. 17, 2018, 8:00 AM), <https://www.vox.com/the-goods/2018/9/17/17852294/fashion-brands-burning-merchandise-burberry-nike-h-and-m> [<https://perma.cc/W7VH-C8BE>] (“[T]oday, quantitatively, there’s more stuff than there ever has been before. Fashion cycles have also gotten shorter because of the internet and fast fashion, so there’s a push to constantly put new merchandise out on the market. So when you combine these two, we are now literally at a place where we no longer have anywhere for this stuff to go other than up a chimney.”); *see also* Ho, *supra* note 22.

25. *Nondurable Goods: Product-Specific Data*, EPA, <https://www.epa.gov/facts-and-figures/about-materials-waste-and-recycling/nondurable-goods-product-specific-data#Clothingand-Footwear> [<https://perma.cc/L88N-Y893>] (Dec. 3, 2022).

26. ENVIRONMENTAL AUDIT COMMITTEE, *FIXING FASHION: CLOTHING CONSUMPTION AND SUSTAINABILITY*, 2017–19, HC 1952, ¶122 (UK).

Moreover, clothing made from synthetic fibers releases microplastics into the air when incinerated.<sup>27</sup>

The industry negatively contributes to other environmental problems as well—it produces 20 percent of global wastewater, is the second largest consumer of water, and generates “more greenhouse gas emissions than all international flights and maritime shipping combined.”<sup>28</sup>

## B. Social Impact

### 1. Labor Practices

In order to cut costs and keep prices low, fast fashion companies have been found to participate in frowned-upon, and sometimes illegal, labor practices.<sup>29</sup> As one fashion industry writer commented, “Either the company or the garment worker is taking the hit, and most likely it’s not the company, because that wouldn’t be a profitable business model.”<sup>30</sup> The fast fashion industry’s short fashion cycles and its consumers’ overconsumption lends itself to a model that “puts profits ahead of human welfare.”<sup>31</sup>

Some fast fashion companies cut costs by offshoring their manufacturing to countries where wages are low due to the systematic exploitation of workers and the lack of meaningful labor regulations.<sup>32</sup> Yet despite the emphasis that some fast fashion companies have placed on manufacturing their clothing in the United States, domestic manufacturing does not automatically mean that workers are paid a living wage.<sup>33</sup> For example, the US Department of Labor conducted investigations of the fast fashion company Fashion Nova from 2016

27. *Id.*

28. Dory, *supra* note 14.

29. See Kitroeff, *supra* note 3.

30. Hannah Marriott, *The Truth About Fast Fashion: Can you Tell how Ethical Your Clothing Is by Its Price?*, GUARDIAN (July 29, 2021, 1:00 PM), <https://www.theguardian.com/fashion/2021/jul/29/the-truth-about-fast-fashion-can-you-tell-how-ethical-your-clothing-is-by-its-price> [<https://perma.cc/ALF2-HLGY>].

31. Elizabeth Reichart & Deborah Drew, *By the Numbers: The Economic, Social and Environmental Impacts of “Fast Fashion”*, WORLD RES. INST. (Jan. 10, 2019), <https://www.wri.org/insights/numbers-economic-social-and-environmental-impacts-fast-fashion> [<https://perma.cc/62FX-P9H6>]; Ilana Winterstein, Opinion, *Talk of Sustainability Is Hollow Until Fashion Brands Pay Their Workers*, THOMSON REUTERS FOUND. NEWS (Oct. 16, 2020, 10:03 AM), <https://news.trust.org/item/20201016100358-n8xy0/> [<https://perma.cc/4W34-3G8A>] (“The business model is built on exploitation: brands seek the fastest turnaround and the cheapest production locations, which go hand-in-hand with the laxest labour laws.”).

32. See Monroe, *supra* note 7.

33. *Id.*

through 2019 and found that the company owed \$3.8 million in back wages to hundreds of workers.<sup>34</sup> The US factories that produce Fashion Nova's garments were paying sewing professionals only \$2.77 an hour.<sup>35</sup> After the investigation, Fashion Nova declined to specify the overall percentage of its clothing that is made in the United States,<sup>36</sup> suggesting that fast fashion brands depend on paying insufficient wages to workers in order to keep profit margins high.<sup>37</sup>

Many states do not expressly prohibit fashion companies from paying garment workers by their "piece rate," a specified rate that workers get for each piece of clothing they manufacture per day.<sup>38</sup> The piece rate system incentivizes workers to rush their work, which can come at the expense of taking proper safety measures.<sup>39</sup> Additionally, workers typically make far less than minimum wage and receive no overtime compensation, forcing them to work long hours in order to earn livable wages.<sup>40</sup> This underpayment of workers is referred to as "wage theft."<sup>41</sup>

Moreover, the prevalence of women working as garment workers indicates that fast fashion is a feminist issue as well.<sup>42</sup> Worldwide, women make up 80 percent of garment workers.<sup>43</sup> The severely low wages that fast fashion workers receive therefore disproportionately affect women.<sup>44</sup> The fast fashion industry's practice of paying workers less than a living wage for work done predominantly by women

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34. *Id.*; Kitroeff, *supra* note 3.

35. Kitroeff, *supra* note 3.

36. *Id.*

37. *See id.*

38. *See* David M. Prager & Vidaur Durazo, *California Becomes First State to Ban Piece Rate Pay for Garment Workers*, EPSTEIN BECKER GREEN: WAGE & HOUR DEF. BLOG (Oct. 4, 2021), <https://www.wagehourblog.com/2021/10/articles/california-wage-hour-law/california-becomes-first-state-to-ban-piece-rate-pay-for-garment-workers/> [<https://perma.cc/RW5T-9BAA>] (explaining that up until last year every state allowed piece rate pay for garment workers, with California becoming the first state to enact a ban).

39. *See* Dave Jamieson, *California Ends 'Piece Rate' Work for Garment Workers, Guaranteeing Minimum Hourly Wage*, HUFFPOST (Sept. 28, 2021, 12:30 PM), [https://www.huffpost.com/entry/california-garment-workers-minimum-wage\\_n\\_615326c7e4b06beda474b392](https://www.huffpost.com/entry/california-garment-workers-minimum-wage_n_615326c7e4b06beda474b392) [<https://perma.cc/A273-QTZF>].

40. *See id.*

41. *See id.*

42. Mary Meade, *From Fast to Fair Fashion*, GREEN AM., <https://www.greenamerica.org/unraveling-fashion-industry/fast-fair-fashion> [<https://perma.cc/8ZDU-62A3>] (last visited Feb. 21, 2023); *EU Strategy for Sustainable and Circular Textiles*, at 1, COM (2022) 141 final (Mar. 30, 2022) ("As women make up the majority of the low-wage and unskilled textile workforce, improving the sustainability of the supply chain has also an important gender equality dimension.").

43. Meade, *supra* note 42.

44. *See id.*



devalues their work and livelihood and simultaneously creates a barrier to equality.<sup>45</sup> From an intersectionality viewpoint, wage theft also disproportionately affects women of color—the majority of women working as garment workers are Latina and Asian.<sup>46</sup>

## 2. International Relations

Beyond wage concerns, the United States' fast fashion industry transfers its environmental waste problems to other countries and thus creates additional humanitarian issues.<sup>47</sup> Because many fast fashion garments are unable to be reused or resold in thrift stores domestically due to their poor quality, these items are shipped overseas to developing countries.<sup>48</sup> For example, almost fifteen million used clothing items arrive in Ghana each week.<sup>49</sup> Meanwhile, the United States exports more secondhand clothing than any other country.<sup>50</sup>

Though at face value some may contend that developing countries are in need of leftover garments, the reality is that the United States is actually feeding its textile waste into these countries.<sup>51</sup> In Ghana, 40 percent of the clothing bales received from Western countries end up in landfills, causing local officials to call for the United States to stop hiding under the “guise of donations of secondhand clothing” when it causes more problems in the receiving country.<sup>52</sup> Indeed, in 2020 a pile of clothing outside of Ghana's capital generated so much methane

45. *See id.*

46. Rucha Chitnis, *Garment Workers Organize to End Wage Theft*, YES! MAG. (Dec. 28, 2021), <https://www.yesmagazine.org/social-justice/2021/12/28/garment-workers-fashion-industry-wage-theft> [<https://perma.cc/P7DU-STMJ>].

47. *See* Nguyen, *supra* note 11; *Fast Fashion in the U.S. Is Fueling an Environmental Disaster in Ghana*, CBS NEWS (Sept. 18, 2021, 7:36 AM), <https://www.cbsnews.com/news/ghana-fast-fashion-environmental-disaster/> [<https://perma.cc/KV9K-GLDX>].

48. *See Fast Fashion in the U.S. Is Fueling an Environmental Disaster in Ghana*, *supra* note 47; Monroe, *supra* note 7 (“Some thrift shops, glutted with flimsy, synthetic wares, have stopped accepting fast-fashion donations. Discarded clothes get shipped overseas.”).

49. *Fast Fashion in the U.S. Is Fueling an Environmental Disaster in Ghana*, *supra* note 47.

50. *Id.*

51. *See id.*; Catriona Standfield, *Fast Fashion and the Politics of Disposability*, THE DUCK OF MINERVA (Sept. 5, 2021, 3:54 PM), <https://www.duckofminerva.com/2021/09/fast-fashion-and-the-politics-of-disposability.html> [<https://perma.cc/92J6-5LK4>] (“What is unable to be resold, recycled, or incinerated in the Global North is exported to countries in the Global South, like Ghana, which are faced with the burden of this textile waste.”).

52. *See Fast Fashion in the U.S. Is Fueling an Environmental Disaster in Ghana*, *supra* note 47.

that it exploded and continued to burn for months.<sup>53</sup> Fast fashion is simply “premised on disposability.”<sup>54</sup>

*C. What Fast Fashion Brands Have to Say About the Issue: Think Fast*

Despite these issues, the fast fashion industry purports to be ethical, and fashion companies have gone to great lengths to portray themselves as such.<sup>55</sup> Yet few brands report credible information about exactly how they are addressing environmental and humanitarian concerns and allegations.<sup>56</sup> Some critics question whether any fast fashion brand can truly be sustainable, given that the business model is premised on such high production numbers.<sup>57</sup>

Greenwashing, the misleading claims by companies that their products are more environmentally friendly than they actually are, is rife within the fashion industry.<sup>58</sup> A study of 2,500 fashion brands found that, among large brands that set greenhouse gas emission targets, only 31 percent actually share whether they are on track to meet those

53. Monroe, *supra* note 7.

54. Standfield, *supra* note 51.

55. See Monroe, *supra* note 7 (“Fast-fashion companies tell their customers that it’s possible to buy their products and still have a clean conscience.”); see also Bradley D. Medcalf, *Marketing Green to Grab Green: FTC More Aggressive in Pursuit of Unsubstantiated “Environmental” Marketing Claims*, 21 J. ENV’T & SUSTAINABILITY L. 435, 436–37 (2015) (“Business firms worldwide have noticed the positive gains that can result from environmentally friendly marketing strategies and the potential pitfalls associated with failure to implement effective ‘green’ marketing schemes. . . . With all that [can] be gained from a successful ‘green’ marketing campaign, corporations are eager to market products or the institution itself as ‘green.’ Unfortunately, this might also incentivize lies and deceit.”); Priya Elan, *Greta Thunberg: Ethical Fast Fashion Is ‘Pure Greenwashing’*, GUARDIAN (Aug. 10, 2021, 11:37 AM), <https://www.theguardian.com/fashion/2021/aug/10/greta-thunberg-ethical-fast-fashion-greenwashing> [<https://perma.cc/FNZ6-BTUR>].

56. See Ho, *supra* note 22.

57. Anika Kozlowski, *Fast Fashion Lies: Will They Really Change Their Ways in a Climate Crisis?*, THE CONVERSATION (Aug. 1, 2019, 4:04 PM), <https://theconversation.com/fast-fashion-lies-will-they-really-change-their-ways-in-a-climate-crisis-121033> [<https://perma.cc/U6FQ-TA9S>] (stating that the fast fashion business model is the “very antithesis” to sustainability).

58. Sophie Benson, *Is Fashion Making Progress on Climate Change? We Rated 4,000 Brands to Find Out*, GOOD ON YOU (Nov. 4, 2022), <https://goodonyou.eco/fashion-climate-inaction/> [<https://perma.cc/94LF-EN44>]; Maeve Campbell, *EU Fast Fashion Brands Found to be Lying About the Sustainability of Their Fabrics*, EURONEWS, <https://www.euronews.com/green/2021/07/02/eu-fashion-brands-found-to-be-lying-about-the-sustainability-of-their-fabrics> [<https://perma.cc/QV45-H2QK>] (Feb. 7, 2021). Note that not all instances of greenwashing are intentional, however, as some companies are accidentally greenwashing because they lack the expertise to know whether or not their claims are fully supported. See Leyla Acaroglu, *What Is Greenwashing? How to Spot It and Stop It*, MEDIUM (July 8, 2019), <https://medium.com/disruptive-design/what-is-greenwashing-how-to-spot-it-and-stop-it-c44f3d130d5> [<https://perma.cc/BGZ2-B9AX>].

targets.<sup>59</sup> In fact, according to one study, at least one fast fashion brand had a purportedly environmentally “conscious” collection that actually contained a higher proportion of synthetic fibers than its regular collections.<sup>60</sup>

As for humanitarian considerations, a study by the Clean Clothes Campaign and other researchers reported that only two out of 250 of the world’s largest fashion brands disclose how many of their workers are paid a living wage, defined as a gross hourly wage of €6.19, or \$6.30.<sup>61</sup> Though brands have begun to voluntarily publish more information about their suppliers, information about the treatment of factory workers at these facilities remains opaque.<sup>62</sup> Fast fashion production is a multistep process, and subcontractors, home-based workers, and workers who process raw materials are not accounted for.<sup>63</sup> One campaign looked at the outcome of twenty leading brands, including fast fashion brands, and found that none of the companies could show that living wages were being paid to workers in supply chains outside of the countries in which they are headquartered.<sup>64</sup>

### III. ANALYSIS

#### *A. Examining the United States’ Current Statutory and Regulatory Scheme*

While some states have taken steps in the right direction by proposing or enacting legislation designed to lessen the impact of fast fashion practices, the federal and state legal and regulatory scheme is currently lacking.<sup>65</sup> Indeed, there is no general legislation in *any* country mandating change or governing the broader social and

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59. Benson, *supra* note 58.

60. Ho, *supra* note 22. (“One of the biggest shocks came from H&M’s Conscious Collection, which was found to contain a higher proportion of synthetic fibres than its fast-fashion line. While the former contained 72%, the latter had 61%.”).

61. Marriott, *supra* note 30.

62. Emily Chan, *6 Ways to Be Greenwashing Vigilant*, BRIT. VOGUE (Feb. 12, 2020), <https://www.vogue.co.uk/news/article/greenwashing-in-fashion> [https://perma.cc/4N9A-2KPD].

63. *About the Campaign*, FASHION CHECKER, [https://fashionchecker.org/about\\_us.html](https://fashionchecker.org/about_us.html) [https://perma.cc/764L-NHTW] (last visited Feb. 22, 2023).

64. CLEAN CLOTHES CAMPAIGN, TAILORED WAGES: THE STATE OF PAY IN THE GLOBAL GARMENT INDUSTRY 5 (2019), <https://cleanclothes.org/file-repository/tailoredwages-fp.pdf/view> [https://perma.cc/LUE7-28FJ].

65. See Vanessa Friedman, *New York Could Make History with a Fashion Sustainability Act*, N.Y. TIMES (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/style/new-york-fashion-sustainability-act.html> [https://perma.cc/N46E-M3ES].

environmental actions of the fashion industry.<sup>66</sup> The Federal Trade Commission (FTC) Green Guides, select EPA regulations, and federal labor regulations taken together set out a framework for the minimum standards with which fashion companies must comply.<sup>67</sup>

### 1. The FTC Green Guides

The FTC Green Guides are the FTC's administrative interpretations of the law illustrating how the FTC will apply the FTC Act to environmental advertising and marketing practices.<sup>68</sup> The Green Guides are designed to help firms avoid making environmental marketing claims that are considered unfair or deceptive under section 5 of the FTC Act.<sup>69</sup> An act, omission, or practice is deceptive according to the FTC Green Guides "if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions."<sup>70</sup> For the purposes of environmental claims, the FTC recommends competent and reliable scientific evidence to ensure that all reasonable interpretations of the claims are supported by a reasonable basis.<sup>71</sup>

Notably, the current FTC Green Guides specifically address labels for non-toxic claims, recyclable claims, and recycled content claims, among others, yet fail to specify requirements for "sustainable" or "organic" labels.<sup>72</sup> Rather, sustainability claims are likely to fall

66. *Id.* Note that there is proposed federal legislation in the United States as of May 2022—the Fashioning Accountability and Building Real Institutional Change (FABRIC) Act is modeled after California's Garment Worker Protection Act, discussed in Section III.A.4. Alyssa Hardy, *A National US Fashion Bill Is Coming: What to Know on the FABRIC Act*, VOGUE BUS. (May 11, 2022), <https://www.voguebusiness.com/fashion/a-national-us-fashion-bill-is-coming-what-to-know-on-the-fabric-act> [<https://perma.cc/74Z2-NBD5>]. Because of the similarity to California's law, this Note does not discuss the FABRIC Act.

67. *See generally*, Joseph J. Swartz, *Thinking Green or Scheming Green: How and Why the FTC Green Guide Revisions Should Address Corporate Claims of Environmental Sustainability*, 18 PENN ST. ENV'T. L. REV. 95 (2009); *Textile Manufacturing Sector (NAICS 313)*, EPA, <https://www.epa.gov/regulatory-information-sector/textile-manufacturing-sector-naics-313> [<https://perma.cc/CD5Y-PFUX>] (Sept. 12, 2022); Paul Chang, *Protecting Garment Workers from Systemic Abuse*, DEP'T OF LAB.: BLOG (Oct. 18, 2021), <https://blog.dol.gov/2021/10/18/protecting-garment-workers-from-systemic-abuse> [<https://perma.cc/2J99-NJLE>].

68. Swartz, *supra* note 67, at 100.

69. 16 C.F.R. § 260.1(a) (2023).

70. 16 C.F.R. § 260.2 (2023).

71. *Id.*

72. 16 C.F.R. §§ 260.10, 260.12, 260.13 (2023); Bella Webb, *The Big Global Greenwashing Crackdown*, VOGUE BUS. (May 27, 2021), <https://www.voguebusiness.com/sustainability/the-big-global-greenwashing-crackdown> [<https://perma.cc/SP8B-V6BZ>] ("Politically in Fashion's letter to the FTC . . . calls out the need to examine and apply guardrails to words such as 'sustainability' and 'organic.'").

under the broad umbrella of 16 C.F.R. 260.4, “General Environmental Benefit Claims.”<sup>73</sup> This section states that it is deceptive to directly or indirectly misrepresent that a product or service offers a general environmental benefit.<sup>74</sup> Additionally, the FTC dissuades firms from making unqualified general environmental benefit claims, as they are difficult to interpret;<sup>75</sup> qualified general environmental benefit claims, however, are permitted.<sup>76</sup>

The biggest deficiency of the Green Guides, however, is that they are not law—they do not bind the FTC or the public, and the FTC has discretion as to whether or not it takes action against a company making an environmental claim inconsistent with the Green Guides.<sup>77</sup> The Green Guides have therefore faced criticism for being ineffective as “non-binding suggestions open to subjective enforcement actions rather than fully and properly established objective legal rules.”<sup>78</sup> Moreover, the Green Guides have not been updated since 2012, leading some to call for FTC review of these policies;<sup>79</sup> the FTC began a review of the Green Guides in late 2022, but has not yet formally updated this guidance.<sup>80</sup>

## 2. EPA Regulations

There is no environmental regulation specific to fashion in the United States,<sup>81</sup> which is surprising given the EPA’s estimate that nine million tons of clothing in the United States ended up in a landfill in 2018.<sup>82</sup> The EPA published its Sustainable Materials Management Strategic Plan (Strategic Plan) in 2015, which remained in effect until

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73. 16 C.F.R. § 260.4 (2023).

74. 16 C.F.R. § 260.4(a) (2023).

75. 16 C.F.R. § 260.4(b) (2023).

76. 16 C.F.R. § 260.4(c) (2023).

77. Medcalf, *supra* note 55, at 438.

78. *Id.* at 440.

79. Webb, *supra* note 72.

80. *FTC Seeks Public Comment on Potential Updates to its ‘Green Guides’ for the Use of Environmental Marketing Claims*, FTC.GOV (Dec. 14, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/12/ftc-seeks-public-comment-potential-updates-its-green-guides-use-environmental-marketing-claims>; *see also* Bergeson & Campbell, P.C., *FTC Intends to Initiate Review of Green Guides in 2022*, JDSUPRA (July 7, 2022), <https://www.jdsupra.com/legalnews/ftc-intends-to-initiate-review-of-green-2192324/> [<https://perma.cc/AY5U-W2BS>].

81. Julie Wainwright, Opinion, *The RealReal CEO: Fashion Is Polluting Our Planet. We Need Regulation to Make it Stop*, CNN BUS. (Nov. 10, 2021, 9:49 AM), <https://www.cnn.com/2021/11/10/perspectives/therealreal-fashion-carbon-emissions/index.html> [<https://perma.cc/2PDV-ZV8P>].

82. *Nondurable Goods: Product-Specific Data*, *supra* note 25.

the end of 2022.<sup>83</sup> Some of the goals of the program included decreasing the amount of materials that are disposed of and reducing the environmental impacts of said materials.<sup>84</sup> Though the fashion industry is a major player in both of these areas, the Strategic Plan failed to mention anything about textiles or the fashion industry.<sup>85</sup> Additionally, the Strategic Plan was not binding law, so it is subject to similar enforceability and effectiveness criticisms as the FTC Green Guides.<sup>86</sup> The effectiveness of the Strategic Plan since its end date is too early to evaluate without more information from the EPA.

### 3. Federal Labor Regulations

The Wage and Hour Division of the US Department of Labor enforces wage rules.<sup>87</sup> In the context of garment workers, the Wage and Hour Division is responsible for enforcing the principle that a worker who is paid a piece rate must still make at least minimum wage—that is, their total pay divided by the number of hours they worked should at least equal the minimum wage in the worker’s locality.<sup>88</sup> However, the Wage and Hour Division is understaffed given the number of workplaces it is expected to oversee nationwide.<sup>89</sup>

Moreover, outsourcing production to other countries whose labor laws are less stringent than in the United States is a commonly used tactic for fashion retailers to “insulate themselves from legal liability for working conditions in the factories making their products.”<sup>90</sup> The United States does not require disclosure of supply chain management

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83. EPA, SUSTAINABLE MATERIALS MANAGEMENT PROGRAM STRATEGIC PLAN 2 (2015), [https://19january2017snapshot.epa.gov/sites/production/files/2016-03/documents/smm\\_strategic\\_plan\\_october\\_2015.pdf](https://19january2017snapshot.epa.gov/sites/production/files/2016-03/documents/smm_strategic_plan_october_2015.pdf) [<https://perma.cc/BQL2-R4VR>].

84. *See id.* at 3.

85. *See generally id.*

86. *See Planning, Budget, and Results*, EPA, <https://www.epa.gov/planandbudget> [<https://perma.cc/42QB-RRU4>] (last visited Feb. 23, 2023); *Cf. Medcalf, supra* note 55, at 438; *supra* Section III.A.1.

87. Uncertain Hour Staff, *What Does It Mean to Be Paid a “Piece Rate”?*, MARKETPLACE (Mar. 3, 2021), <https://www.marketplace.org/2021/03/03/what-does-it-mean-to-be-paid-a-piece-rate/> [<https://perma.cc/9B53-GK8T>].

88. *Id.*

89. *See id.* (“David Weil, the division head under the Obama administration, told us during his tenure, there were only about 1,000 federal inspectors keeping tabs on more than 7 million workplaces nationwide.”)

90. ELENA ARENGO, FUTURE OF FASHION 5 (Liana Foxvog, Judy Gearhart & Eric Gottwald eds., 2019), [https://media.business-humanrights.org/media/documents/files/documents/Future\\_of\\_Fashion\\_ILRF.pdf](https://media.business-humanrights.org/media/documents/files/documents/Future_of_Fashion_ILRF.pdf) [<https://perma.cc/VJN5-YGCU>].

practices, so it is unclear whether some companies' supply chains are fraught with labor rights abuses.<sup>91</sup>

#### 4. State Regulations

Many states have legislation in place that provides protection for garment workers who are employed by or contract with manufacturers.<sup>92</sup> However, this definition excludes retailers, who are exempt from liability under such statutes.<sup>93</sup> Accordingly, fast fashion brands typically attempt to squeeze themselves into the "retailer" category, despite having various manufacturing centers present in the United States.<sup>94</sup> This classification issue, along with many companies' practice of creating layers of subcontracting and subsidiaries to disguise the true nature of their business, results in the circumvention of wage laws and denial of proper pay to employees.<sup>95</sup>

In late 2021, California passed the Garment Worker Protection Act in response to this loophole.<sup>96</sup> The Act makes clothing companies and their holding companies liable for the full amount of an employee's unpaid compensation, essentially extending liability down the supply chain.<sup>97</sup> Additionally, the Act abolishes piece rate compensation in the garment industry, instead requiring that workers be paid minimum

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91. Brian Stauffer, *Follow the Thread*, HUM. RTS. WATCH (Apr. 20, 2017), <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry> [<https://perma.cc/TNB6-U2F8>]; Amy L. Groff, *U.S. Congress Joins the Growing Number of Countries Considering Supply Chain Transparency Legislation*, NAT'L L. REV. (Oct. 31, 2018), <https://www.natlawreview.com/article/us-congress-joins-growing-number-countries-considering-supply-chain-transparency> [<https://perma.cc/Z7UX-BWHD>]; Pucker, *supra* note 1 (explaining how some brands themselves do not know where certain things in their supply chain come from).

92. *See New California Law Could Overhaul Abuse-Ridden Manufacturing Sector*, FASHION L. (Sept. 29, 2021), <https://www.thefashionlaw.com/california-passes-hourly-wage-mandate-in-a-move-expected-to-overhaul-garment-manufacturing-sector/> [<https://perma.cc/MJX5-4H9F>].

93. *Id.*

94. *See id.*

95. *See id.* ("Some retailers and manufacturers have spent the last 20 years circumventing the law by creating layers of subcontracting, allowing them to avoid being classified as garment manufacturers, and to avoid liability [under AB 633], thereby, preventing tens of thousands of garment workers in Los Angeles County from recovering stolen wages.") (quoting Los Angeles County Board of Supervisors member Hilda Solis).

96. S.B. 62 (Cal. 2021).

97. *New California Law Could Overhaul Abuse-Ridden Manufacturing Sector*, *supra* note 92.

wage.<sup>98</sup> Though the Act's effects are not yet observable,<sup>99</sup> California's attempt at addressing immoral labor practices associated with fast fashion manufacturers and companies is notable.<sup>100</sup> Given that the Act is the first of its kind, it is unclear if other states will follow suit.<sup>101</sup>

As for state-level environmental regulations, a few states have taken steps to lessen the impact of fast fashion on the environment.<sup>102</sup> For example, if textiles constitute more than 10 percent of a business's waste during a month, New York requires the business to "separate and recycle or repurpose all textile waste including fabric scraps, clothing, belts, bags, and shoes."<sup>103</sup> This provides an effective tool to combat pre-consumer waste.<sup>104</sup> Additionally, the New York legislature recently proposed the Fashion Sustainability and Social Accountability Act.<sup>105</sup> If passed, this legislation will apply to global apparel companies that do business in New York and generate over \$100 million in revenue.<sup>106</sup> The law would require these firms to disclose at least 50 percent of their supply chain and their production volume of certain materials.<sup>107</sup>

### B. Self-Regulation: Solution or Simple Fix?

A popular view of the fashion industry, particularly in the capitalist system of the United States, is that the industry should and will self-regulate.<sup>108</sup> Because consumers purport to care more about the environment than they did previously, this viewpoint assumes that companies will follow consumer preferences and thus will trend toward

98. S.B. 62 (Cal. 2021).

99. See Zoie Matthew, *3 Cents per Piece to Hourly Pay For CA Garment Workers: Will US Follow?*, KCRW (Aug. 22, 2022), <https://www.kcrw.com/news/shows/greater-la/labor-rights-salaries-pets/garment-workers-hourly-pay> [<https://perma.cc/E8CA-JNUT>] (describing how although no brands have been held accountable for wage theft yet, "many workers have reported increases in their take-home pay, either because their factory switched to an hourly wage or because they found a new job that pays the minimum wage—something [that] 'just wasn't a common thing prior to SB 62'").

100. See *New California Law Could Overhaul Abuse-Ridden Manufacturing Sector*, *supra* note 92.

101. See Chitnis, *supra* note 46.

102. See Friedman, *supra* note 65.

103. *Recycling for Businesses: Special Cases*, N.Y.C. DEP'T OF SANITATION, <https://www1.nyc.gov/assets/dsny/site/services/recycling/special-cases> [<https://perma.cc/5RQS-WZPS>] (last visited Feb. 23, 2023).

104. See ENVIRONMENTAL AUDIT COMMITTEE, *FIXING FASHION: CLOTHING CONSUMPTION AND SUSTAINABILITY, 2017–19*, HC 1952, ¶115 (UK).

105. Friedman, *supra* note 65.

106. *Id.*

107. *Id.*

108. See *id.* ("[E]fforts to rectify the situation have been left up to the companies. . . . Often there is a knee-jerk reaction by businesses against the idea of regulation.").



more environmentally conscious practices.<sup>109</sup> Many businesses have recently adopted voluntary environmental and corporate social responsibility (CSR) policies to hold themselves to higher standards than what is legally required.<sup>110</sup>

However, sustainability is still largely viewed as a cost.<sup>111</sup> In a survey of over 300 fashion executives, only 10 percent of executives see sustainability as a growth opportunity.<sup>112</sup> Because executives are driven by cost, this statistic suggests that fashion firms will not voluntarily choose to prioritize sustainability or self-impose stricter environmental standards until they are required, which may not be anytime soon.<sup>113</sup> Another study assessing twenty-nine fashion brands found that the voluntary commitments from these firms are entirely insufficient to slow the growing volume of textiles as they continue to “tinker . . . at the edges of the destructive fast fashion business model.”<sup>114</sup> Even if companies do make efforts to take responsibility for sustainability or human rights initiatives, these results will vary widely if left wholly unregulated.<sup>115</sup> Without binding legal standards, voluntary CSR initiatives are likely insufficient.<sup>116</sup> Indeed, self-regulation has been so ineffective in the European Union that it has

109. See Swartz, *supra* note 67 at 103–04.

110. *Id.* at 107–08. (“The environmental aspect of CSR practices have [sic] come to the forefront as the public consensus has taken the view that individuals and businesses have an ethical obligation to conserve and protect the environment. This has led many businesses to shift from simply including environmental practices in their CSR policies to focusing on environmental sustainability. By doing so, businesses are attempting to illustrate that they are committed to going beyond their legal obligations and are holding themselves to higher standards of responsibility.”).

111. Brooke Roberts-Islam, *The State of Fashion Report—Sustainability Is No Longer Top Priority*, FORBES (Jan. 8, 2021, 5:00 AM), <https://www.forbes.com/sites/brookeroberst-sislam/2021/01/08/the-state-of-fashion-report—sustainability-is-no-longer-top-priority/?sh=2c0d88d07ef6> [<https://perma.cc/XS8N-L9W7>]; see also Friedman, *supra* note 65 (explaining that businesses typically have a “knee-jerk reaction” against regulation).

112. Roberts-Islam, *supra* note 111.

113. See *id.*

114. *Detoxing Fashion Supply Chains Is a Game Changer, but Without Regulation Climate Damage by the Industry Continues*, GREENPEACE (Nov. 23, 2021), <https://www.greenpeace.org/international/press-release/50947/detoxing-fashion-supply-chains-is-a-game-changer-but-without-regulation-climate-damage-by-the-industry-continues-greenpeace/> [<https://perma.cc/3LEV-WATK>]; Pucker, *supra* note 1 (“After a quarter century of experimentation with the voluntary, market-based win-win approach to fashion sustainability, it is time to shift.”).

115. See *Detoxing Fashion Supply Chains Is a Game Changer, but Without Regulation Climate Damage by the Industry Continues*, *supra* note 114; Friedman, *supra* note 65; Pucker, *supra* note 1.

116. See Winterstein, *supra* note 31.

spurred new textile legislation and regulations, as discussed in Section III.C.<sup>117</sup>

Additionally, rather than trending toward meaningful sustainability initiatives, fast fashion brands have resorted to greenwashing in order to adhere to consumer sustainability preferences.<sup>118</sup> For example, some experts claim that a circular business model, which many fashion companies claim to employ, is impossible given the amount of synthetic fibers used.<sup>119</sup> Even when companies claim that their items are made from sustainably sourced materials or recycled textiles, this can amount to a form of greenwashing.<sup>120</sup> As one fashion-sustainability consultant mentions, companies can and will make such claims even when “five items that [they] made are sustainable, but the rest of the 2,000 items on [their] website are not.”<sup>121</sup>

A similar laissez-faire approach to the issue of fast fashion purports that the onus is on the consumer to choose more sustainable and higher quality garments with transparent sourcing.<sup>122</sup> However, this viewpoint is criticized because it assumes that consumers are readily able to afford a more expensive, albeit more sustainable, product.<sup>123</sup> When faced with a choice between a more expensive item versus a less expensive item that at first glance appears to have no issues, a consumer with limited resources is likely to choose the less expensive item.<sup>124</sup> Many people therefore assert that the multi-billion-dollar companies who promote and benefit the most from

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117. *Urgent Break with Fast Fashion Needed in Upcoming EU Textile Laws*, EUR. ENV'T BUREAU (June 16, 2021), <https://eeb.org/urgent-break-with-fast-fashion-needed-in-upcoming-eu-textile-laws/> [<https://perma.cc/YBS2-FKUS>].

118. *See* Ho, *supra* note 22; Campbell, *supra* note 58.

119. Campbell, *supra* note 58.

120. *Id.*

121. Monroe, *supra* note 7.

122. *See* Dory, *supra* note 14.

123. *See* Kelly Luu, *What if I Can't Afford Sustainable Fashion?*, FASHION TAKES ACTION (Mar. 12, 2021), <https://fashiontakesaction.com/what-if-i-cant-afford-sustainable-fashion/> [<https://perma.cc/CHE7-PBQ6>] (“[M]ore ethical, sustainable, and high quality purchases . . . often come with a higher price tag. These qualities can morally justify their sometimes higher cost, especially when you consider the higher price trickles down the fashion supply chain so those making the clothes ‘may’ be better taken care of. But this does not resolve the fact that for many of us who already buy less, we still cannot afford to support and purchase from sustainable brands as often as we’d like.”); *see also* Pucker, *supra* note 1 (“Asking consumers to match their intention with action and to purchase sustainable, more expensive fashion is not working.”).

124. *See* Kelsey Dallas, *How the Fashion Industry Drives Your Shopping Choices*, DESERET NEWS (Sept. 25, 2014, 8:10 AM), <https://www.deseret.com/2014/9/25/20549145/how-the-fashion-industry-drives-your-shopping-choices#the-fashion-industry-operates-at-high-speeds-consumers-take-advantage-of-low-prices-buying-clothes-often-why-are-some-industry-insiders-trying-to-pump-the-brakes> [<https://perma.cc/L6PC-BNZ6>].

fast fashion should be held accountable.<sup>125</sup> Additionally, given the issue of greenwashing, it is difficult to know whether consumers can make truly informed choices about whether the “green” items they are buying are actually sustainable.<sup>126</sup> The responsibility should not be placed on consumers without first addressing companies’ obligation to honestly represent the sustainability of their products.<sup>127</sup>

### *C. The European Union’s Strategy and CSRD*

#### 1. The Strategy

The EU Strategy was published on March 30, 2022.<sup>128</sup> The European Green Deal, the Circular Economy Action Plan, and the Industrial Strategy identified textiles as a high priority industry where reform could decrease environmental harm.<sup>129</sup> The Strategy’s proposals rely on modifying existing EU initiatives and legal frameworks to address the textile supply chain from design to ultimate end of product life.<sup>130</sup>

125. *Urgent Break with Fast Fashion Needed in Upcoming EU Textile Laws*, *supra* note 117 (“We can’t ask people to do their part when it comes to sustainability if the multi-billion-dollar companies responsible for promoting such unsustainable consumption habits are not being held to account.”). “[S]uch unsustainable patterns have not allowed citizens to benefit fully from cost-saving opportunities.” *EU Strategy for Sustainable and Circular Textiles*, at 1–2, 7, COM (2022) 141 final (Mar. 30, 2022).

126. *See* Acaroglu, *supra* note 58; *see also supra* Section II.C.

127. *Cf.* Michael E. Mann & Jonathan Brockopp, Opinion, *You Can’t Save the Climate by Going Vegan. Corporate Polluters Must be Held Accountable.*, USA TODAY (June 3, 2019, 5:00 AM), <https://www.usatoday.com/story/opinion/2019/06/03/climate-change-requires-collective-action-more-than-single-acts-column/1275965001/> [<https://perma.cc/L5AH-TXCZ>] (“Personal actions, from going vegan to avoiding flying, are being touted as the primary solution to the [climate] crisis. . . . Though many of these actions are worth taking, and colleagues and friends of ours are focused on them in good faith, a fixation on voluntary action alone takes the pressure off of the push for governmental policies to hold corporate polluters accountable. In fact, one recent study suggests that the emphasis on smaller personal actions can actually undermine support for the substantive climate policies needed.”). Ideally, responsibility should fall on both consumers and companies. Jason Mark, *Yes, Actually, Individual Responsibility Is Essential to Solving the Climate Crisis*, SIERRA (Nov. 26, 2019), <https://www.sierraclub.org/sierra/yes-actually-individual-responsibility-essential-solving-climate-crisis> [<https://perma.cc/N8WR-EBDY>] (“Ultimately, a personal action versus political action binary is unhelpful. The environmental movement needs to sustain a way to do both: agitate and organize for systemic change while also still encouraging individual behavior changes.”).

128. *See generally EU Strategy for Sustainable and Circular Textiles*, COM (2022) 141 final (Mar. 30, 2022).

129. *Id.* at 2.

130. Bella Webb, *EU Moves to Legislate Sustainable Fashion. Will It Work?*, VOGUE BUS. (Apr. 7, 2022), <https://www.voguebusiness.com/sustainability/eu-moves-to-legislate-sustainable-fashion-will-it-work> [<https://perma.cc/PLS2-PD2S>].

One of the Strategy's proposals suggests a transparency obligation for large companies regarding textiles they discard and destroy.<sup>131</sup> This includes what the company plans to do with the textiles in the future, whether it be reusing, recycling, incinerating, or landfilling.<sup>132</sup> Importantly, the Strategy introduces a ban on the destruction of unsold products.<sup>133</sup>

Under the Strategy, the European Commission will develop binding product ecodesign requirements.<sup>134</sup> Such requirements are anticipated to increase textiles' durability and reusability,<sup>135</sup> while also reducing microplastic pollution caused by fast fashion.<sup>136</sup> In addition to targeting product design, the Strategy encompasses manufacturing processes.<sup>137</sup> For example, an ecodesign requirement could be a mandate to minimize packaging waste, set minimum levels of recycled content for products, or require ease of recycling or disassembling products.<sup>138</sup>

The Strategy also provides for a Digital Product Passport (DPP) for textiles.<sup>139</sup> DPPs inventory all materials, components, and raw materials used in a product.<sup>140</sup> The rationale is that this will increase customers' access to information on the environmental sustainability of products, improve communication between actors along supply chains, and empower businesses to "make better choices."<sup>141</sup> To accompany this, the Commission will review textile labeling regulations regarding fiber composition and introduce "mandatory disclosure of other types of information, such as sustainability and circularity parameters, product

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131. *EU Strategy for Sustainable and Circular Textiles*, at 4, COM (2022) 141 final (Mar. 30, 2022).

132. *Id.*

133. Note that the ban is subject to the Commission receiving authority under the Ecodesign for Sustainable Products Regulation. *Id.*

134. *Id.* at 3.

135. *Id.*

136. *Id.* at 5.

137. *Id.*

138. Natasha Lomas, *Europe Lays Out Expanded Ecodesign Rules with Plan for Digital Product Passports*, TECHCRUNCH (Mar. 30, 2022, 11:11 AM), <https://techcrunch.com/2022/03/30/eu-expands-ecodesign-rules/> [<https://perma.cc/346K-6C4A>].

139. *EU Strategy for Sustainable and Circular Textiles*, at 5, COM (2022) 141 final (Mar. 30, 2022).

140. Antonella Ilaria Totaro, *Europe: Digital Product Passport Is Coming Soon*, RENEWABLE MATTER (Jan. 31, 2022, 1:31 PM), <https://www.renewablematter.eu/articles/article/europe-digital-product-passport-is-coming-soon> [<https://perma.cc/5QM7-TZY3>].

141. *EU Strategy for Sustainable and Circular Textiles*, at 5, COM (2022) 141 final (Mar. 30, 2022).

size and, where applicable, the country where manufacturing processes take place.”<sup>142</sup>

The Strategy also addresses environmental sustainability claims in the textile industry.<sup>143</sup> General environmental claims, including “green,” “eco-friendly,” and “good for the environment,” will no longer be permissible unless “underpinned by recognized excellence in environmental performance” based on EU standards.<sup>144</sup> Meanwhile, voluntary sustainability labels must be verified by a third party or established by public authorities.<sup>145</sup>

The Strategy intends to implement extended producer responsibility, which would make producers responsible for the waste that their products create.<sup>146</sup> The Commission proposes “eco-modulation” of fees for producers, which is a relatively novel concept in the textile area.<sup>147</sup> Eco-modulation sets higher fees for—and thus penalizes the use of—environmentally harmful materials, while setting lower fees for—and incentivizing the use of—materials that are better for the environment,<sup>148</sup> which the Strategy generally describes as “designed in respect of circularity principles.”<sup>149</sup>

Another interesting solution that the Strategy considers is incentivizing a “product-as-a-service” business model, which is already employed in other industries and continues to gain popularity.<sup>150</sup> Under a product-as-a-service model, consumers neither own the textiles nor bear the cost of owning them.<sup>151</sup> Instead, customers rent the item and

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142. *Id.*

143. *Id.* at 6. Note that the Strategy draws on various other initiatives to accomplish these goals. *See id.*; see also *Directive of the European Parliament and of the Council Amending Directives 2005/29/EC and 2011/83/EU as Regards Empowering Consumers for the Green Transition Through Better Protection Against Unfair Practices and Better Information*, COM (2022) 143 final (Mar. 30, 2022).

144. *EU Strategy for Sustainable and Circular Textiles*, at 6, COM (2022) 141 final (Mar. 30, 2022).

145. *Id.*

146. *Id.* at 7.

147. *Id.*; see also Calvin Lakhan, *Eco-Modulation: What Is It, Does It Work, and How Can It Apply to Packaging Waste?*, YORK U. (Apr. 5, 2022), <https://euc.yorku.ca/research-spotlight/eco-modulation-what-is-it-does-it-work-and-how-can-it-apply-to-packaging-waste/> [<https://perma.cc/KLK8-ECZB>].

148. Lakhan, *supra* note 147.

149. *EU Strategy for Sustainable and Circular Textiles*, at 5, COM (2022) 141 final (Mar. 30, 2022).

150. *See id.* 8–9; see also Robert van Boeschoten, *Product-as-a-Service, the Business Model for a Circular Economy*, LINKEDIN (Jan. 13, 2017), <https://www.linkedin.com/pulse/product-as-a-service-business-model-circular-economy-van-boeschoten/> [<https://perma.cc/8HHS-35NN>].

151. *See Monetizing Fashion as a Service*, SIMON-KUCHER (June 6, 2019), <https://www.simon-kucher.com/en/insights/monetizing-fashion-service> [<https://perma.cc/944C-37TD>].

return it to the company when they are finished with it.<sup>152</sup> Some product-as-a-service companies adopt a subscription model rather than a rental model.<sup>153</sup> The rationale behind the product-as-a-service model from a sustainability standpoint is that it shifts incentives from volume to durability and performance.<sup>154</sup> This addresses the issue of overproduction and poor quality in the fast fashion industry.<sup>155</sup> The Strategy also encourages EU Member States to adopt tax measures favorable to the reuse and repair sector.<sup>156</sup>

Finally, because of the globalized nature of the textile industry, the Strategy intends to promote “greener and fairer value chains” through a variety of avenues.<sup>157</sup> As part of the Strategy, the European Union has proposed a Corporate Sustainability Due Diligence Directive, whereby large companies would have a due diligence obligation to identify, prevent, mitigate, end, and account for actual and potential adverse impacts on human rights and the environment stemming from the companies’ global value chains.<sup>158</sup> The obligation includes companies outside the European Union that are “involved in textile value chains of European buyers, or large buyers in operating in the European Union, that generate significant turnover in the European Union.”<sup>159</sup> The Commission will also introduce an initiative to prohibit products made by forced labor from being sold in the EU market.<sup>160</sup>

## 2. CSRD

Additionally, the European Union recently adopted the CSRD in connection with the European Green Deal, which increases the reporting requirements on sustainability claims by businesses.<sup>161</sup> The

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152. *See id.*

153. *Id.*

154. PETER LACY, JUSTIN KEEBLE & ROBERT MCNAMARA, CIRCULAR ADVANTAGE 14 (2014), [https://www.accenture.com/t20150523t053139\\_w\\_/us-en/\\_acnmedia/accenture/conversion-as-sets/dotcom/documents/global/pdf/strategy\\_6/accenture-circular-advantage-innovative-business-models-technologies-value-growth.pdf](https://www.accenture.com/t20150523t053139_w_/us-en/_acnmedia/accenture/conversion-as-sets/dotcom/documents/global/pdf/strategy_6/accenture-circular-advantage-innovative-business-models-technologies-value-growth.pdf) [<https://perma.cc/XHG6-2PAU>].

155. *See id.*

156. *EU Strategy for Sustainable and Circular Textiles*, at 9, COM (2022) 141 final (Mar. 30, 2022).

157. *Id.* at 12.

158. *Id.*; *Commission Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937*, COM (2022) 71 final (Feb. 23, 2022).

159. *EU Strategy for Sustainable and Circular Textiles*, at 12, COM (2022) 141 final (Mar. 30, 2022).

160. *Id.*

161. *Corporate Sustainability Reporting*, EUR. COMM’N, <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company->

CSRD entered into force in January 2023; companies will need to apply the new rules by financial year 2024.<sup>162</sup>

The EU recognizes that investors, nongovernmental organizations, social partners, and other stakeholders have an interest in the sustainability information of their investments.<sup>163</sup> According to a proposal for the CSRD, these users' needs were not met under the European Union's past framework because some companies left out key information or failed to report the information altogether.<sup>164</sup> The reported information was also often unreliable and difficult to compare between companies.<sup>165</sup> Additionally, documentation was often "difficult for users to find and [was] rarely available in a machine-readable digital format. Information on intangibles . . . [was] under-reported, even though these intangibles represent the majority of private sector investment in advanced economies."<sup>166</sup>

Thus, to address the "widening gap between the sustainability information companies report and the needs of the intended users of that information," the European Union adopted the CSRD.<sup>167</sup> The European Union recently adopted its first draft of sustainability reporting standards, which set out the information companies must disclose.<sup>168</sup> It is expected that the ultimate standards, set to be adopted in 2023, will compel companies to publicly disclose information about sustainability risks and opportunities their respective firms face and the impact of their firms on both people and the environment.<sup>169</sup> The

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reporting/corporate-sustainability-reporting\_en [https://perma.cc/264F-AALL] (last visited Feb. 23, 2023).

162. *Id.*

163. *Commission Proposal for a Directive of the European Parliament and of the Council Amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as Regards Corporate Sustainability Reporting*, COM (2021) 189 final (Apr. 21, 2021).

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *See First Set of Draft ESRS*, EUR. FIN. REPORTING ADVISORY GRP., <https://ef-rag.org/lab6?AspxAutoDetectCookieSupport=1#subtitle3> [https://perma.cc/WHF8-KJKN] (last visited Feb. 24, 2023).

169. *Id.*; *Commission Proposal for a Directive of the European Parliament and of the Council Amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as Regards Corporate Sustainability Reporting*, COM (2021) 189 final (Apr. 21, 2021) ("Compared to the existing provisions, it introduces new requirements for companies to provide information about their strategy, targets, the role of the board and management, the principal adverse impacts connected to the company and its value chain, intangibles, and how they have identified the information they report. It specifies that companies should report qualitative and quantitative information, forward-looking and retrospective

CSRD is expected to require 49,000 companies to report sustainability information, expanding the group significantly from the 11,600 companies currently required to report such data.<sup>170</sup> Additionally, the data provided will be audited for accuracy, and the company's administrative body will be informed of the outcome.<sup>171</sup>

One concern with such an expansive measure is the costs that companies will incur as a result of preparing the newly required reporting information.<sup>172</sup> The CSRD emphasizes that companies are likely already facing increased pressure from stakeholders to provide sustainability information, so companies may actually cut some costs by using the standards because reports will remove the need for additional information requests.<sup>173</sup>

#### IV. SOLUTION: THE UNITED STATES SHOULD ENACT LEGISLATION INCORPORATING ASPECTS OF THE EU STRATEGY, CSRD, AND STATE-LEVEL LEGISLATION

The United States' failure to regulate the fashion industry allows fast fashion firms wide discretion to commit environmental and social wrongs.<sup>174</sup> The current US regime poses a competitive disadvantage to companies that pay workers fair wages and focus on sustainable materials.<sup>175</sup> This is because companies that are not doing so are not required to report such metrics, so consumers know neither what labor practices are in place nor whether sustainability claims are anything more than greenwashing.<sup>176</sup> Moreover, companies that underpay workers and cheaply manufacture clothing are at an

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information, and information that covers short, medium[,] and long-term time horizons as appropriate.”).

170. Peter Wollmert & Andrew Hobbs, *How the EU's New Sustainability Directive is Becoming a Game Changer*, ERNST & YOUNG (Aug. 1, 2022), [https://www.ey.com/en\\_gl/assurance/how-the-eu-s-new-sustainability-directive-is-becoming-a-game-changer](https://www.ey.com/en_gl/assurance/how-the-eu-s-new-sustainability-directive-is-becoming-a-game-changer) [<https://perma.cc/9PHE-8VHD>]; *Corporate Sustainability Reporting*, *supra* note 161.

171. Wollmert & Hobbs, *supra* note 170. Note that small to medium-sized enterprises will only need to provide sustainability reporting proportionate to their size and resources. *Id.*

172. *Id.*

173. *Id.*

174. See Friedman, *supra* note 65 (“Fashion is one of the least regulated industries[.]” . . . As a result, efforts at sustainability vary widely.” (quoting Maxine Bédard)).

175. See *id.*

176. See *id.*; Leyla Acaroglu, *What is Greenwashing? How to Spot It and Stop it*, MEDIUM (July 8, 2019), <https://medium.com/disruptive-design/what-is-greenwashing-how-to-spot-it-and-stop-it-c44f3d130d5> [<https://perma.cc/B45V-RJK5>] (“[E]nvironmental problems stay the same or more likely, get even worse, as greenwashing often sucks up airtime and misdirects well-intentioned consumers down the wrong path.”).



advantage purely because they have lower costs than their socially conscious counterparts.<sup>177</sup>

The United States should enact a broad regulatory scheme using the EU Strategy and CSRD as a blueprint. This policy should include incentivizing circular business models, improving textile waste collection, and promoting technologies and materials that improve sustainable designs.<sup>178</sup> Additionally, the policy should include standards for reporting requirements on sustainability claims,<sup>179</sup> or ideally follow New York's lead and add a provision requiring supply chain transparency.<sup>180</sup> These reports should be subject to annual audits.<sup>181</sup> If the US government chose to regulate the fast fashion industry, it would regularize reporting and level the playing field for responsible companies that face increased costs due to already voluntarily prioritizing sustainability.<sup>182</sup> Finally, the United States should reform its piece rate policy to more closely resemble California's Garment Worker Protection Act.<sup>183</sup>

One potential issue with mirroring the EU Strategy and the CSRD is that critics may assert that the United States does not need to enact similar legislation since many popular fast fashion brands conduct their manufacturing process in other countries, claiming that they are US retailers rather than manufacturers.<sup>184</sup> However, the number of domestically headquartered fashion companies is not insignificant.<sup>185</sup> Even just one US fast fashion company can have wide-reaching effects, as seen in the case of Fashion Nova workers discussed earlier.<sup>186</sup>

Additionally, though the United States may not be home to many fast fashion manufacturers, the United States is still the largest apparel market in the world.<sup>187</sup> Cleverly drafted laws such as the

177. See Friedman, *supra* note 65.

178. See *supra* Section III.C.

179. See *supra* Section III.C.

180. See *supra* Section III.A.4.

181. See *supra* Section III.C; see also Pucker, *supra* note 1.

182. See *supra* Section III.C.

183. See *supra* Section III.A.4.

184. See Jamieson, *supra* note 39 ("Most clothes worn by Americans are now made overseas.").

185. See *New California Law Could Overhaul Abuse-Ridden Manufacturing Sector*, *supra* note 92.

186. See Kitroeff, *supra* note 3 (explaining that in 2018, Fashion Nova made 80 percent of its clothing in the US, although now it makes less than half of its clothing in Los Angeles).

187. See P. Smith, *U.S. Apparel Market - Statistics & Facts*, STATISTA (Dec. 15, 2022), <https://www.statista.com/topics/965/apparel-market-in-the-us/#topicOverview> [<https://perma.cc/JCN6-7P8A>].

proposed Fashion Sustainability and Social Accountability Act in New York can circumvent this issue by applying regulations to companies that do business in the United States, regardless of where the company is headquartered.<sup>188</sup> Supply chain transparency legislation would also rectify this issue.<sup>189</sup>

Another concern with this approach, and any other approach urging more regulation, is that fast fashion companies will take their business elsewhere if the industry becomes too regulated in the United States as compared to other countries.<sup>190</sup> However, the United States is historically viewed as one of the front-runners in human rights reform;<sup>191</sup> California's passage of the Garment Worker Protection Act has already garnered international attention and has inspired international garment worker campaigns to take note.<sup>192</sup> It is unlikely that fashion companies would refuse to conduct business in the United States, especially given markets like New York City, which is recognized as "a global fashion and business capital of the world."<sup>193</sup>

Finally, some institutions have expressed concern that regulations could harm the US economy and jobs.<sup>194</sup> However, the legislation may potentially create new jobs—for example, in clothing collection and sorting—or specialized industries within the fashion

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188. Friedman, *supra* note 65.

189. Stauffer, *supra* note 91.

190. See Jamieson, *supra* note 39 (explaining that some parties argue garment makers will take their business out of the country or state as a result of regulation rather than risk having to pay back wages or face liability issues).

191. Harold Hongju Koh, *Why U.S. Leadership Matters for the Global Defense, Protection and Promotion of Human Rights*, FOREIGN SERV. J., June 2020, at 31, <https://afsa.org/why-us-leadership-matters-global-defense-protection-and-promotion-human-rights> [<https://perma.cc/K3WM-NZLS>]; Friedman, *supra* note 65 ("As a global fashion and business capital of the world, New York State has a moral responsibility to serve as a leader in mitigating the environmental and social impact of the fashion industry."). But see Michael J. Abramowitz, *Democracy in Crisis*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2018/democracy-crisis> [<https://perma.cc/F4RB-TRKV>] (last visited Feb. 25, 2023) ("The United States retreated from its traditional role as both a champion and an exemplar of democracy amid an accelerating decline in American political rights and civil liberties.").

192. Chitnis, *supra* note 46 (explaining that the Garment Worker Protection Act's passage is "already driving conversations with labor groups in other countries").

193. Friedman, *supra* note 65.

194. See Chitnis, *supra* note 46 ("[T]he California Chamber of Commerce doubled down on its opposition [to SB 62], slamming SB 62 as a 'job killer.' The bill also raised the hackles of the American Apparel & Footwear Association, which said it would 'impose unprecedented joint liability on businesses with no control over garment workers.'"); Pucker, *supra* note 1 ("[F]ashion companies should not be allowed to simultaneously profess their commitment to sustainability, while opposing regulatory proposals that deliver the same end.").

sector, such as textile recycling.<sup>195</sup> McKinsey predicts that the fashion sector will change significantly in the near future, and even hypothesizes that the resale market could be bigger than fast fashion within the next decade.<sup>196</sup> There is also evidence of support among major accounting firms for the SEC to adopt a similar measure to the CSRD, suggesting that at least some of the business world sees sustainability transparency as a necessary investment rather than solely a cost.<sup>197</sup> On a related note, enacting such a broad framework could put the fashion industry at risk of regulatory capture, creating barriers to entry and pushing some existing players out of the industry.<sup>198</sup> The risk of capture should certainly be taken into account in implementing this scheme, and policy makers should ensure that public benefits exceed the costs of regulation.<sup>199</sup>

## V. CONCLUSION

The fashion industry is highly globalized,<sup>200</sup> and thus fast fashion raises issues of global importance. This Note urges the United States to enact a legal scheme that would provide legally binding standards for fast fashion companies' environmental and labor practices, using the European Union's Strategy and CSRD as guidance.<sup>201</sup> The United States' current regime is insufficiently tailored to the rising consequences of the growing fast fashion industry and

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195. ENVIRONMENTAL AUDIT COMMITTEE, FIXING FASHION: CLOTHING CONSUMPTION AND SUSTAINABILITY, 2017–19, HC 1952, ¶131 (UK).

196. Imran Amed, Anita Balchandani, Marco Beltrami, Achim Berg, Saskia Hedrich & Felix Rölkens, *The End of Ownership for Fashion Products?*, MCKINSEY & CO. (Feb. 11, 2019), <https://www.mckinsey.com/industries/retail/our-insights/the-end-of-ownership-for-fashion-products> [<https://perma.cc/JC8J-TU72>]; see also Jasmine Glasheen, *Consumers Use New Criteria to Evaluate Apparel*, ROBIN REP. (Nov. 17, 2019), <https://www.therobinreport.com/consumers-use-new-criteria-to-evaluate-apparel/> [<https://perma.cc/BEM7-6Q9L>].

197. See Soyoung Ho, *Accounting Profession Says SEC ESG Rulemaking Should Leverage Work Done by Private Standard-Setters*, THOMSON REUTERS TAX & ACCT. (July 2, 2021), <https://tax.thomsonreuters.com/news/accounting-profession-says-sec-esg-rulemaking-should-leverage-work-done-by-private-standard-setters/> [<https://perma.cc/6HL9-YNKX>] (“The [Center for Audit Quality] pointed to the European Union’s proposal for a Corporate Sustainability Reporting Directive (CSRD) that would initially require companies there to obtain limited assurance on reported sustainability information with an option to move towards reasonable assurance in the future.”).

198. Webb, *supra* note 72.

199. See Mark Calabria, *Preventing Regulatory Capture*, REGUL. REV. (June 23, 2016), <https://www.theregreview.org/2016/06/23/calabria-preventing-regulatory-capture/> [<https://perma.cc/26XE-JEEF>].

200. *EU Strategy for Textiles Roadmap*, at 2, Ares (2021) 67453 (May 1, 2021).

201. See *supra* Part IV.

lacks consistency and bite regarding enforcement.<sup>202</sup> As the trend cycle continues to shorten to keep pace with media and pop culture trends, cheaply made clothing will continue to harm the environment as long as it is manufactured with harmful chemicals and thrown away into landfills.<sup>203</sup> Meanwhile, workers will continue to bear the brunt of spending cuts as companies minimize production overhead.<sup>204</sup> Therefore, the United States should act to slow fast fashion down. As the European Commission states, “fast fashion is out of fashion.”<sup>205</sup>

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202. *See supra* Section III.A.

203. *See supra* Section II.A.

204. *See supra* Section II.B.1.

205. *EU Strategy for Sustainable and Circular Textiles*, at 2, COM (2022) 141 final (Mar. 30, 2022).

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