

Child Labor in Your Closet: Efficacy of
Disclosure Legislation and a New Way
Forward to Fight Child Labor in Fast Fashion
Supply Chains

Madeline A. James

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I. INTRODUCTION

“Fashion is an industry that has depended on the toil of the powerless and the voiceless, and on keeping them that way.”¹

Fast fashion is a modern phenomenon where large clothing corporations take the newest styles and trends, reproduce them quickly and cheaply, and offer them to consumers at the lowest possible prices.² Often the clothing is low quality because of the low cost and quick turnaround.³ Fast fashion has gone to increasing lengths to take advantage of workers for the goal of selling a cheap product to the consumer.⁴ This is often called a “race to the bottom” and ensures that fast fashion retailers and manufacturers end up using suppliers who rely on child labor because it’s an inexpensive, and often practical, form of labor.⁵ Child labor in the fast fashion industry is present at every stage of production and is often done in harsh and dangerous environments which put the lives and wellbeing of the children at risk.⁶ While child labor is a problem in every globalized industry, it is a particularly large problem in fast fashion because of this race to the bottom, high demand for cheap clothing in western countries, and the industry’s extremely complex supply chains.⁷

Companies that sell their products in the United States, but make them elsewhere, are able to rely on child labor that would be illegal if it were taking place in the United States.⁸ By most U.S. and international humanitarian standards, this kind of labor is immoral.⁹ The United States isn’t doing enough to incentivize fast fashion companies from eliminating child labor in their supply chains. The federal government of the United States has a bill before it, *Business Supply Chain Transparency on Trafficking and Slavery Act of 2020*,

¹ Tatiana Schlossberg, *How Fast Fashion is Destroying the Planet*, N.Y. TIMES (Sept. 3, 2019), <https://www.nytimes.com/2019/09/03/books/review/how-fast-fashion-is-destroying-the-planet.html> [https://perma.cc/4FQF-TTCP].

² Chloe Foussaines, *What Is Fast Fashion, and Why Is Everyone Talking About It?*, TOWN&COUNTRY MAG. (Jan. 17, 2020), <https://www.townandcountrymag.com/style/fashion-trends/a30361609/what-is-fast-fashion> [https://perma.cc/ABC6-28GD].

³ *Id.*

⁴ THE TRUE COST (Untold Creative 2015).

⁵ *Id.*

⁶ Evan Peng & Griffin Somaratne, *Child Labor in the Fast Fashion Era*, MINT MAG. (Fall 2018) https://issuu.com/mint_magazine/docs/full_pdf_1-15_without_bleeds-compre/s/73422 [https://perma.cc/TJK9-U8SQ]; Josephine Moulds, *Child Labour in the Fashion Supply Chain: Where, Why and What Can Be Done*, GUARDIAN, <https://labs.theguardian.com/unicef-child-labour> [https://perma.cc/6SH4-N2ND].

⁷ See Moulds, *supra* note 6.

⁸ The Fair Labor Standards Act regulates child labor in the United States, specifically prohibiting work in dangerous conditions. See Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

⁹ *Infra* notes 62–88.

which would require retailers and merchandisers of a certain size to disclose instances of child labor and forced labor in their supply chains.¹⁰

This note seeks to answer the question whether disclosure framework legislation, like that in the bill currently before Congress, is effective in incentivizing fast fashion retailers and manufacturers to take affirmative steps to eradicate child labor in their supply chain. The Background section of this note will summarize how fast fashion is made and distributed, emphasizing the specific difficulty of keeping track of the globalized supply chains. It will also discuss the background of child labor and its use in the fast fashion industry. It will include an overview of the different international legislative efforts to end reliance on child labor in fast fashion. Finally, it will explore analogous United States legislation, the *Dog and Cat Protection Act* and the *Fair Labor Standards Act* as potential examples of legislative frameworks that would be effective in eliminating the sale of fast fashion made by child labor.

The Analysis section of this note will analyze the efficacy of the primary type of legislation used to combat child labor in supply chains. Legislation in this area typically relies on a disclosure framework, which requires qualifying businesses to disclose reliance on child labor and forced labor in their supply chains. This note will recommend that while passing a disclosure framework law nationwide is a step in the right direction, it does not go far enough to adequately eliminate child labor in fast fashion supply chains.

This note concludes that legislation utilizing disclosure framework are not effective in adequately reducing reliance on child labor in the fast fashion industry. It argues that in order to adequately incentivize corporations to take steps to eliminate child labor in supply chains, the United States will need to pass a statute with a structure similar to the *Dog and Cat Protection Act*¹¹ or the *Fair Labor Standards Act*¹² both of which fine corporations for violating conduct seen as morally reprehensible.

II. BACKGROUND

Fast fashion is a modern, global phenomenon, whereby clothing brands like Forever21, Zara, and Shein (among others) seek to bring the newest

¹⁰ Sophia Eckert, *The Business Transparency on Trafficking and Slavery Act: Fighting Forced Labor in Complex Global Supply Chains*, 12 J. INT'L BUS. & L. 383, 396 (2013); H.R. 3226, 114th Congress (1st Sess. 2015).

¹¹ Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2010).

¹² Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

trends to consumers at the lowest prices possible.¹³ This goal drives the cost of production increasingly lower in order to improve the business' bottom line, or their income after production costs have been subtracted.¹⁴ This race to the bottom forces fast fashion manufacturers and retailers to rely on ever seedier methods of production.¹⁵ Many of these companies rely on child labor and forced labor to drive costs of production down.¹⁶

It is estimated that 170 million children are involved in child labor throughout the world.¹⁷ Child labor is nothing short of an epidemic in the fast fashion industry. Child labor in the fast fashion industry begins at the earliest stages of production.¹⁸ Young children are chosen to spend their days picking cotton, because they are docile workers and their small hands do not damage the product.¹⁹ While child labor is a problem in many industries, the massive size of the fast fashion industry and its unique supply chains makes it particularly important to shed light on its unsavory business practices.²⁰

It can be difficult to know precisely where in the supply chains child and forced labor takes place because globalization and the business models of fast fashion corporations have created increasingly complex supply chains.²¹ Popular brands rely on numerous subcontractors to create the merchandise that eventually lands on their shelves.²² While the complexity of these supply chains makes it difficult to pinpoint instances of child labor in the fast fashion supply chains, it is not impossible.²³

Current legislative efforts to end fast fashion manufacturer and retailer reliance on child labor are all designed with a disclosure framework model.²⁴ Disclosure framework requires companies of a certain size to disclose

¹³ Peng & Somaratne, *supra* note 6.

¹⁴ Chris B. Murphy, *Bottom-Line Growth vs. Top-Line Growth: What's the Difference?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/difference-between-bottom-line-and-top-line-growth> (Oct. 24, 2021) [<https://perma.cc/3EEX-XYM9>].

¹⁵ Solene Rauturier, *What Is Fast Fashion?*, GOOD ON YOU (July 26, 2021), <https://goodonyou.eco/what-is-fast-fashion> [<https://perma.cc/G2KN-B47N>].

¹⁶ THE TRUE COST, *supra* note 4.

¹⁷ Moulds, *supra* note 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Eckert, *supra* note 10, at 388.

²² *Id.* at 386

²³ *See id.* at 414.

²⁴ *See* Vadim Chaban, *What is the State of the Law for Companies When it Comes to Modern Slavery?*, THE FASHION L. (July 14, 2020), <https://www.thefashionlaw.com/what-is-the-state-of-the-law-when-it-comes-to-companies-and-modern-slavery> [<https://perma.cc/3G25-SVUW>]; Eckert, *supra* note 10 at 388.

instances of child and forced labor in their supply chains to the consumer.²⁵ These laws typically do not include strong enforcement mechanisms.²⁶ The only United States law of this nature currently in place is California's *Transparency in Supply Chains Act*.²⁷ The California law's only enforcement mechanism is the California Attorney General's right to seek injunctive relief against corporations who fail to make disclosures as the law requires.²⁸ These laws do not create a private right of action for affected consumers, and they do not make use of child labor in supply chains illegal.²⁹

A. *Defining Fast Fashion*

Fast fashion is the term used to describe companies whose business models aim at producing on-trend apparel inexpensively, with unnatural materials, with the expectation that consumers will wear the product a few times before disposing of it, then return to buy more items to replace the old.³⁰

Fast fashion is the industry from which most Americans, often unknowingly, purchase their clothes from.³¹ If you've ever shopped for your clothes at an Shein, Zara, Forever 21, Target, or similar stores, you are purchasing clothing out of the fast fashion industry.³² The industry of fast fashion is built on a business model where clothing is produced inexpensively

²⁵ See Chaban, *supra* note 24; Eckert, *supra* note 10, at 386.

²⁶ See The California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43 (2012) (the California Transparency in Supply Chains Act's only enforcement mechanism is that the California Attorney General can seek injunctive relief against corporations not in compliance with the Act. However, there is no private right of action for consumers to compel corporations to disclose their sources of production); Barber v. Nestlé USA, Inc., 154 F. Supp. 3d 954, 961–62 (C.D. Cal. 2015) (“By its own terms, § 1714.43 requires disclosure to consumers—exactly the remedy Plaintiffs seek here. And the section carefully notes that it requires *only* the limited disclosures, and not even affirmative actions to combat human trafficking. See § 1714.43(c) (requiring companies only to ‘disclose to what extent, if any,’ they take steps to avoid slavery and human trafficking in supply chains)”).

²⁷ Chaban, *supra* note 24.

²⁸ See The California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43 (2012).

²⁹ See *id.*; Barber, 154 F. Supp.3d at 962–63.

³⁰ Jennifer Carter, *Implications of the Star Athletica Decision on the Industry of Fast Fashion*, 6 JOULE: DUQ. ENERGY & ENV'T L.J. 51, 51 (2018).

³¹ See Peng & Somaratne, *supra* note 6.

³² *Id.*

and quickly based off of the latest trends.³³ “[Fast fashion] brands [take] the looks and design elements from the top fashion houses and reproduce[] them quickly and cheaply.”³⁴ The goal is to sell the trendiest items at the lowest price to maximize profit. While there is nothing inherently wrong with that concept, companies will often turn to rely on unsavory forms of labor such as child labor or human trafficking in an effort to produce clothing cheaper and quicker in order to compete in the marketplace.³⁵

Fast fashion has developed over the past sixty to seventy years.³⁶ Trends of consumerism have gone up in almost every market, but they’ve especially changed in the fashion industry.³⁷ In the 1950s people generally bought clothes only when they needed them.³⁸ Today, shopping is common enough to be considered a hobby.³⁹ In the past, not only did people buy less, but what they bought was produced in significantly different ways.⁴⁰ In the mid-19th century, the majority of clothing Americans wore was made in the U.S.⁴¹ “As recently as the 1960s [America] still made ninety-five percent of our clothes. Today we only make about three percent.”⁴² The fact that so much of the clothing purchased was made in the United States made it easier to ensure that the clothing was coming from factories which had ethical working conditions and wages.⁴³ The United States requires a certain level of safety and wages for workers within the fifty states, and it is generally well

³³ *See id.*

³⁴ Rauturier, *supra* note 15.

³⁵ THE TRUE COST, *supra* note 4; Moulds, *supra* note 6.

³⁶ *See* Dana Thomas, *The High Price of Fast Fashion*, WALL ST. J. (Aug. 29, 2019, 12:37 PM), <https://www.wsj.com/articles/the-high-price-of-fast-fashion-11567096637> [<https://perma.cc/Q6XD-SGTL>].

³⁷ *See* Rauturier, *supra* note 15 (“[Fast fashion] forms a key part of the toxic system of overproduction and consumption . . .”).

³⁸ THE TRUE COST, *supra* note 4.

³⁹ Terry Nguyen, *Fast Fashion, Explained*, VOX (Feb. 3, 2020, 7:00 AM), <https://www.vox.com/the-goods/2020/2/3/21080364/fast-fashion-h-and-m-zara> [<https://perma.cc/24RE-CZ3Z>].

⁴⁰ *See* THE TRUE COST, *supra* note 4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ This stands to reason considering the fact that the United States has stricter working conditions that must be met than many of the countries fast fashion products are currently made in. Additionally, the United States laws are generally well enforced compared to those countries that do have them. That is why it is so much more expensive to make clothing in the U.S. *See* THE TRUE COST, *supra* note 4; *see also* The Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (describing working conditions, which United States employers must uphold).

enforced.⁴⁴ This is not the case for many of the countries where our clothing is made today.⁴⁵

Fast fashion has developed from a traditional fashion system, which still exists but is much smaller now. Traditional fashion has about four seasons a year: Spring, Summer, Fall, and Winter.⁴⁶ Designers would work on designs year-round predicting trends and what consumers want,⁴⁷ and then often showcase their designs during fashion week twice a year.⁴⁸ Today, the fast fashion industry has pushed this cycle to up to fifty-two micro seasons a year, with new clothes hitting stores almost every week.⁴⁹ This new model drives consumerism and allows shopping to become a hobby because every time a person enters a store, there are new items to be bought.⁵⁰ In some cases, buying clothes can even be a job. Social media influencers can make whole careers off of purchasing clothes and creating “haul” and “styling” videos.⁵¹

Fast fashion encourages “a ‘throw-away’ culture because of both the built-in obsolescence of the products, and the speed at which trends are produced. Fast fashion makes us believe we need to shop more . . . to stay on top of trends, creating a constant sense of need”⁵² Fast fashion companies flood their shelves with new products to make what consumers

⁴⁴ The primary mechanism of enforcement in the United States is through the Fair Labor Standards Act which regulates child labor, working hours, and establishes a minimum wage, among other things.

⁴⁵ See THE TRUE COST, *supra* note 4; Moulds, *supra* note 6.

⁴⁶ Pamela Simmons, *When Do Fashion Seasons Start?*, LEAF, <https://www.leaf.tv/articles/when-do-fashion-seasons-start> [<https://perma.cc/4AYE-XQ8L>].

⁴⁷ Audrey Stanton, *What is Fast Fashion, Anyway?*, THE GOOD TRADE, <https://www.thegoodtrade.com/features/what-is-fast-fashion> [<https://perma.cc/2MWL-6J4R>].

⁴⁸ See generally Grace Gordon, *Why Are There So Many New Seasons in Fashion?*, SAVOIR FLAIR (Sept. 5, 2019), <https://www.savoirflair.com/fashion/106670/fashion-decoded-seasons-explained> [<https://perma.cc/RF4V-EFLW>] (explaining how fast fashion has disrupted the industry’s ability to respond to consumer interest following these shows, with clothes staying on store shelves for as long as six months).

⁴⁹ THE TRUE COST, *supra* note 4; Stanton, *supra* note 47.

⁵⁰ See THE TRUE COST, *supra* note 4; Nguyen, *supra* note 39.

⁵¹ Some examples of current social media influencers that make money doing this include Alisha Marie, Sierra Schultzzie, and many others. See Makenna Johnson, *Different Types of YouTube Influencer Video Content*, POWER DIGITAL MARKETING (Mar. 14, 2019), <https://powerdigitalmarketing.com/blog/different-types-of-youtube-influencer-video-content/#gref> [<https://perma.cc/PX5Y-H4SS>].

⁵² Rauturier, *supra* note 15.

bought last week already out of style.⁵³ This way, consumers want, or feel like they need, to buy more clothes to keep up with the trends.⁵⁴ This type of consumerism has “global clothing consumption . . . predicted to rise by 63 percent by 2030.”⁵⁵

However, fast fashion isn’t just about regularly flooding consumers’ closets with new products. Because each retailer has similar styles, it’s also about selling these products at the cheapest price possible, so consumers will buy one store’s products over another’s.⁵⁶ So, companies work to achieve the lowest possible price, and are still able to sell it at an enormous profit, even where the consumer feels like they are getting a great deal.⁵⁷ Kelly Maxwell explains the practice in *Bust Magazine*:

In the retail industry, the standard markup on an item is double the wholesale cost. So if a retailer pays \$5 for a piece made in a Bangladesh factory, it’ll sell the item for \$10. But an international chain like H&M may slash prices even further, knowing that while such low pricing cuts into its bottom line, it also makes it easier to sell more pieces. Therefore, it doesn’t matter if the company makes less profit on each item, because it’s selling at such a high volume.⁵⁸

By creating this race to the lowest prices, fast fashion has pushed companies to continuously lower their costs by finding “ever-cheaper sources of labour.”⁵⁹ These cheaper sources of labor are often children, who are considered the gold standard of labor to some in the industry because they are willing to work cheaply, and their small hands are well suited to many of the intricate tasks of making garments.⁶⁰ The rapid consumption of clothes from fast fashion brands like Forever 21, Zara, Shein, and Target creates a large need for tons of unskilled labor that these children are particularly suited for.⁶¹

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Manon Huckle, *When It Comes to Cleaning Up Its Act, Fast Fashion Is No Fast Fix*, THE FASHION L. (Sept. 6, 2021), <https://www.thefashionlaw.com/when-it-comes-to-cleaning-up-its-act-fast-fashion-is-no-fast-fix/> [<https://perma.cc/6H5U-NLCY>].

⁵⁶ See Sass Brown, *Are the Clothes You Buy the Result of Modern-Day Slavery?*, THE NAT’L NEWS (June 12, 2019), <https://www.thenationalnews.com/lifestyle/fashion/are-the-clothes-you-buy-the-result-of-modern-day-slavery-1.873642> [<https://perma.cc/4HHR-NKUY>].

⁵⁷ See Moulds, *supra* note 6; Brown, *supra* note 56.

⁵⁸ Kelly Maxwell, *The True Price Of Fast Fashion*, BUST MAG., <https://bust.com/style/12307-the-true-price-of-fast-fashion.html> [<https://perma.cc/63JS-2PS4>].

⁵⁹ Moulds, *supra* note 6.

⁶⁰ See *id.*

⁶¹ *Id.*

B. International Standards for Child Labor

Around the globe about 170 million children are engaged in child labor.⁶² These numbers add up to “11% of the world’s children . . . working in situations that deprive them of education, fair wages, and safe conditions.”⁶³ In India alone, it is estimated that 55 million children aged five to fourteen are working full time or have been sold into child labor and are not even being paid for their work.⁶⁴ Not all child labor is equal, however.

Child labor means different things in different contexts. It can mean, literally, labor done by individuals who are under the age of eighteen.⁶⁵ In the United States, for example, some types of child labor are legal.⁶⁶ High school students often have after school jobs to make extra spending money, learn about the value of money, or help their parents out with expenses.⁶⁷ This kind of labor can even be regarded as positive for development.⁶⁸

Child labor in the United States is governed by the United States “Child Labor Standards” which is found in the Fair Labor Standards Act of 1938 (FLSA).⁶⁹ This federal law divides children under the age of 18 into three distinct categories,⁷⁰ and different labor rules apply to each category.⁷¹ Children under the age of fourteen are not allowed to be employed at all (with limited exceptions).⁷² Children aged fourteen to fifteen years old are allowed to be employed with restrictions on the types of employment and their hours.⁷³ For children sixteen to seventeen years old, almost any employer

⁶² *Id.*

⁶³ Peng & Somaratne, *supra* note 6.

⁶⁴ Maxwell, *supra* note 58.

⁶⁵ See *What Is Child Labour*, INT’L LAB. ORG., <https://www.ilo.org/ipec/facts/lang-en/index.htm> [<https://perma.cc/KM2N-TVCE>].

⁶⁶ See *id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

⁷⁰ *Id.* at §§ 203(l), 213. See Susan Prince, Fair Labor Stds. Hdbk. For States, Local Govs. and Schools § 720 (2020) (handbook for BLR, a Simplify Compliance brand; accessible on Westlaw).

⁷¹ See Fair Labor Standards Act, 29 U.S.C. §§ 203(l), 213(c) (2018).

⁷² *Id.* at § 213(c).

⁷³ *Id.* at §§ 203(l), 213(c).

may hire them unless the job has been deemed particularly dangerous.⁷⁴ The Act provides enforcement mechanisms, such as certifying the ages of their employees and fines for certain violations of the Act.⁷⁵ The FLSA also punishes violations by creating a monetary punishment for both willful and accidental violations.⁷⁶ These sanctions keep companies and businesses that operate in the United States from taking advantage of children who live here.⁷⁷

Despite the positive aspects of work for individuals under eighteen, often, especially in other parts of the world, child labor often has a negative connotation. The type of child labor with a negative connotation, which is the focus of this note, is labor done by children in substandard and dangerous conditions, or labor done by children who are far too young to be working.⁷⁸ This type of child labor typically falls under the category of “the worst forms of child labor.”⁷⁹

The type of child labor that is at issue in the fast fashion industry is the worst forms of child labor. The International Labour Organization (ILO) defines the worst forms of child labor as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”⁸⁰ An example of this type of labor in the fast fashion industry is that many children are employed in the cotton-picking industry where their workdays can be as long as twelve hours, they are exposed to harmful pesticides and chemicals, and they are often too young to be working at all.⁸¹

Child labor laws vary by country, but there are international organizations which create goals to combat negative forms of child labor that countries are expected to meet. International organizations like the International Labour Organization (ILO) and G7, which are working to create better working conditions and reduce child labor in the fast fashion industry, have created guidelines for what kinds of labor are appropriate

⁷⁴ *Id.*

⁷⁵ *Id.* at §§ 203(l), 216(a).

⁷⁶ See Prince, *supra* note 70.

⁷⁷ Though the FLSA does a good job in helping protect American children and adult workers because of its strict regulations, it is far from a perfect system. There are still labor violations every day in the United States alone.

⁷⁸ University of Bath, *Tackling Child Labour in the Fashion Industry*, PHYS ORG (June 13, 2017), <https://phys.org/news/2017-06-tackling-child-labour-fashion-industry.html> [<https://perma.cc/78HC-DSRB>].

⁷⁹ See International Labour Organization, *Worst Forms of Child Labour Convention*, 1999, June 17, 1999, No. 182, [hereinafter *Worst Forms of Child Labour Convention*].

⁸⁰ *What is Child Labour*, *supra* note 65.

⁸¹ See University of Bath, *supra* note 78; Moulds, *supra* note 6; Brown, *supra* note 56.

internationally.⁸² The ILO has set the minimum recommended age for labor at fifteen generally, or thirteen “for light work.”⁸³ They have also set the minimum age for hazardous work at eighteen, or sixteen years old “under very strict conditions.”⁸⁴ This is outlined in the Minimum Age Conventions.⁸⁵ The ILO also created the Worst Forms of Child Labour Convention of 1999⁸⁶, which prohibits “work which is likely to harm the health, safety or morals of children.”⁸⁷ This convention requires ratifying members to take specific steps towards eradicating “the worst forms of child labor.”⁸⁸ While children’s labor in the fast fashion industry is not explicitly mentioned by the Worst Forms of Child Labor Convention of 1999, the catchall quoted above is applicable to much of the work that children are doing in the fast fashion industry.

C. *Child Labor and Fast Fashion*

Internationally, children are often tricked into dangerous labor.⁸⁹ Individuals tasked with recruitment will convince parents in poor families “to send their daughters to spinning mills with the promises of a well-paid job” among other perks like food and comfortable accommodations and payment.⁹⁰ For most families, these are enticing promises. Despite these promises, the children whose parents send them with the recruiters actually live and work in horrible and unsafe conditions which “amount to modern day slavery and the worst forms of child labour.”⁹¹

Child labor in the fast fashion industry begins at the earliest stages of production: the creation of textiles which are the fabrics that our clothes are

⁸² Mark K. Brewer, *Fashion Law: More than Wigs, Gowns, and Intellectual Property*, 54 SAN DIEGO L.R. 739, 774, Fall 2017.

⁸³ *International Labour Standards on Child Labour*, INT’L LABOUR ORG., <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang-en/index.htm> [<https://perma.cc/3TH4-F456>].

⁸⁴ *Id.*

⁸⁵ See International Labour Organization, Minimum Age Convention, 1973, June 26, 1973, No. 138.

⁸⁶ Worst Forms of Child Labour Convention, *supra* note 79.

⁸⁷ *International Labour Standards on Child Labour*, *supra* note 83.

⁸⁸ Worst Forms of Child Labour Convention, *supra* note 79.

⁸⁹ See Moulds, *supra* note 6.

⁹⁰ *Id.*

⁹¹ *Id.*

made of.⁹² Children are often employed to produce cotton seeds, pick cotton, spin yarn in the production of textiles, and cut and construct the final garments.⁹³ Children make ideal workers for these jobs for several reasons. “In cotton picking, employers prefer to hire children for their small fingers, which do not damage the crop.”⁹⁴ Children are also often one of the least expensive forms of labor, thus driving the cost of garments down.⁹⁵

Child labor is often used in the fast fashion industry because it is cheap and widely available due to abject poverty in many countries outside of developed western nations.⁹⁶ There is an incentive for fast fashion companies to use child labor because they are constantly trying to provide trends for consumers at the lowest possible price, and cheap labor aids them in doing so.⁹⁷ Using cheap child labor allows companies to decrease the cost of each garment, and thus allows them to sell it at a lower rate than their competitors.⁹⁸ This, of course, will incentivize competitors to also utilize the cheapest forms of labor in their manufacturing processes in order to compete in the marketplace. Countries which are widely known to be sources of the fast fashion industry’s worst forms of labor include Benin, Uzbekistan, India, and Bangladesh.⁹⁹

Working conditions in the fast fashion industry are notoriously horrendous. In the now infamous incident from 2013, a clothing factory in Bangladesh collapsed leaving many workers injured or killed.¹⁰⁰ More than one thousand garment makers were killed in the collapse, making it the deadliest disaster the fashion industry had ever seen.¹⁰¹ Before the collapse, cracks appeared in the building’s walls and after a subsequent inspection, an inspector warned of the safety hazards.¹⁰² The owner of the factory forced workers to continue with their work, or risk losing their jobs.¹⁰³ This impossible choice lead these workers straight into this preventable disaster.

⁹² *Id.*

⁹³ *Id.*; University of Bath, *supra* note 78.

⁹⁴ Moulds, *supra* note 6.

⁹⁵ *See* University of Bath, *supra* note 78.

⁹⁶ Moulds, *supra* note 6.

⁹⁷ *See* University of Bath, *supra* note 78.

⁹⁸ THE TRUE COST, *supra* note 4.

⁹⁹ Moulds, *supra* note 6.

¹⁰⁰ Jim Yardley, *Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame*, N.Y. TIMES (May 22, 2013), <https://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html> [<https://perma.cc/36JB-EQGX>].

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Though the Bangladeshi factory disaster is the most infamous example of dangerous conditions in the fashion industry, it is not the only one that exists. Children working in the industry in countries which do not have strict labor standards face similar working conditions every day. And though these events shock the conscience of Westerners when they occur, they, unfortunately, do not seem to make much of a difference to Western consumers when making their purchasing decisions.¹⁰⁴ The same year of the Bangladeshi factory disaster, Americans spent 340 million dollars on fashion, much of which was produced in the very country where the factory disaster happened.¹⁰⁵ This is one of the many reasons why the fashion industry falls under the ILO's Worst Forms of Child Labor Convention's catchall of work "which . . . is likely to harm the health" of children.¹⁰⁶

D. *The Complexities of Global Supply Chains in Fast Fashion*

The supply chains of modern multi-national corporations have developed into complex and opaque webs that extend across the globe. These networks have been facilitated by free trade agreements, by the possibility of operating facilities in low cost countries, and by technological advances that enable the quick physical delivery of goods.¹⁰⁷

"A supply chain is a group of linked firms that pass goods and services through a coordinated value chain that results in a final product."¹⁰⁸ The supply chain of the products people in the west regularly purchase begins at the top of the chain with the brand associated with those products.¹⁰⁹ In fast fashion these brands would include Zara, Shein, and Forever21, among others. In the supply chain context these brands are the "lead firm."¹¹⁰ The lead firm, often a western corporation, will hire intermediaries "who connect

¹⁰⁴ See Schlossberg, *supra* note 1.

¹⁰⁵ *Id.*

¹⁰⁶ Worst Forms of Child Labour Convention, *supra* note 79.

¹⁰⁷ Eckert, *supra* note 10, at 386.

¹⁰⁸ Robert C. Bird & Vivek Soundararajan, *From Suspicion to Sustainability in Global Supply Chains*, 7 TEX. A&M L. REV. 383, 388 (2020).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

lead firms with suppliers, assist in component distribution, conduct advanced assembly, manage risk, and disseminate product information.¹¹¹ The intermediaries will contract to suppliers, the base of the chain, for the initial manufacturing of the products.¹¹² There may be many base suppliers in this chain:¹¹³ one for the fabrication of the product to be sold, one for the manufacturing of the textiles that the product is to be made of, one for the cotton to make those textiles of and so on and so forth.

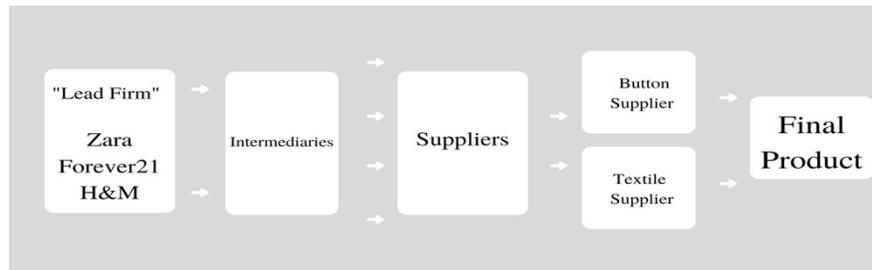


Figure 1 shows an example of a simplified version of a supply chain in the fast fashion industry. Notice how many steps there are in this version.

The complexity of these supply chains can make it very difficult for the lead firms, governments, and individual people to determine where child labor may exist.¹¹⁴ Suppliers are often physically distant from the headquarters of the lead firm, which can add to this difficulty by making it incredibly expensive to confirm whether they are operating ethically.¹¹⁵ In addition to the geographic distance, having so many subcontracted suppliers can make it hard to determine the source of labor used to create the final product that ends up on American shelves.¹¹⁶ For example, Nike, a sports clothing company, relies “on 8,000 suppliers spread over fifty-one countries.”¹¹⁷

Despite making it more difficult, this complexity does not make it impossible for western corporations to determine the sources of labor in their supply chain. In fact, western corporations are the best suited of anyone to do so because they are hiring their manufacturers.¹¹⁸ Despite this, “research conducted by Stanford Professor Hau Lee on companies’ social and

¹¹¹ *Id.*

¹¹² *Id.* at 388.

¹¹³ *Id.*

¹¹⁴ See generally Bird & Soundararajan, *supra* note 108 (arguing that a lack of trust is responsible for this complexity and the human rights abuses that result from it).

¹¹⁵ *Id.* at 390.

¹¹⁶ *Id.* at 390.

¹¹⁷ *Id.* at 391.

¹¹⁸ Eckert, *supra* note 10, at 395.

environmental monitoring showed that . . . less than one third of . . . companies examined . . . monitored their direct or indirect suppliers.”¹¹⁹ It is a common belief that “involving corporations directly in the fight against forced labor through disclosure requirements can help create lasting solutions to the issue of forced labor in certain industries where child labor or coercive labor situations are regarded as unavoidable.”¹²⁰ Western governments have typically used disclosure legislation to involve corporations in the fight against child labor.¹²¹

E. Current Legislative Initiatives to Combat Child Labor

Currently, the primary method of eliminating child labor in fast fashion supply chains comes from mandatory disclosure laws that operate in several countries, including the United States.¹²² Examples of these laws include the United Kingdom Modern Slavery Act¹²³, France’s Devoir de Vigilance Law¹²⁴, California’s Transparency in Supply Chains Act¹²⁵, and, most recently, the newly introduced United States bill, Business Supply Chain Transparency on Trafficking and Slavery Act of 2020.¹²⁶

Each of these laws rely on a disclosure framework, whereby companies of a certain size are required to disclose their reliance on forced labor and child labor in their supply chain.¹²⁷ Sometimes the laws also require disclosure of whatever the company is doing to remove this reliance.¹²⁸ None of these legislative initiatives require companies to take active steps toward

¹¹⁹ *Id.* at 386.

¹²⁰ *Id.* at 396.

¹²¹ See Chaban, *supra* note 24.

¹²² See *id.*

¹²³ Modern Slavery Act 2015, c. 30 (UK), <https://www.legislation.gov.uk/ukpga/2015/30/contents> [<https://perma.cc/4UBA-YVVQ>].

¹²⁴ EUR. COAL. FOR CORP. JUST., *French Duty of Vigilance Law - English Translation*, BUS. & HUM. RTS. RSCH. CTR. (Dec. 14, 2016), <https://www.business-humanrights.org/en/latest-news/french-duty-of-vigilance-law-english-translation/> [<https://perma.cc/V6XA-D3QG>].

¹²⁵ The California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43 (2012); Chaban, *supra* note 24.

¹²⁶ Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong.

¹²⁷ See Chaban, *supra* note 24; Eckert, *supra* note 10, at 388–89.

¹²⁸ See Chaban, *supra* note 24; Eckert, *supra* note 10, at 388–89.

eliminating forced or child labor in their supply chains.¹²⁹ Rather, the companies are simply required to disclose the sources of labor in the supply chains of the products they sell and whether or not they are taking steps to remove forced labor or child labor in them.¹³⁰ Action can only be taken against the company for failure to disclose their supply chains' reliance on child labor, not for relying on the child labor in and of itself.¹³¹ The purpose of these laws is generally to create an environment where consumers are able to make "informed" decisions about the products they choose to purchase.¹³² The theory behind these laws is that disclosure is supposed to deter companies from relying on forced labor or child labor in their supply chains because an informed customer base may choose to avoid the company's product in favor of a similar, ethically-sourced product.¹³³

There are conflicting opinions on the efficacy of a legislative framework requiring disclosure as opposed to a framework which would prohibit the sale of goods made by forced or child labor (which does not currently exist). Sophia Eckert, in her article written for Hofstra University's *Journal of International Business & Law*, states that "involving corporations directly in the fight against forced labor through disclosure requirements can help create lasting solutions to the issue of forced labor in certain industries where child labor or coercive labor situations are regarded as unavoidable."¹³⁴ Eckert also reasons that corporations are in the best position to determine whether there is forced (or child) labor in their supply chains.¹³⁵

On the other side, in an article written for Columbia University's *Journal of Transnational Law*, Jena Martin writes, "disclosure is at best a temporary stop gap measure that can lead to limited corporate change on the issue of business and human rights. At worst, disclosure is being used by corporations as a way to obtain a reputational advantage without actually making substantive changes"¹³⁶ Additionally, in a Note written for Vanderbilt's *Journal of Transnational Law*, Sasha Beatty claims disclosure legislation doesn't work properly because

¹²⁹ See Chaban, *supra* note 24; Eckert, *supra* note 10, at 388–89.

¹³⁰ Chaban, *supra* note 24; Eckert, *supra* note 10, at 389.

¹³¹ Eckert, *supra* note 10, at 389.

¹³² See Jena Martin, *Hiding in the Light: The Misuse of Disclosure to Advance the Business and Human Rights Agenda*, 56 COLUM. J. TRANSNAT'L L. 530, 536 (2018); Sasha Beatty, Note, *Justice by Proxy: Combatting Forced Labor in the Greater Mekong Subregion by Holding U.S. Corporations Liable*, 49 VAND. J. OF TRANSNAT'L L. 1109, 1135 (2016).

¹³³ See Beatty, *supra* note 132, at 1135.

¹³⁴ Eckert, *supra* note 10, at 396.

¹³⁵ *Id.* at 395.

¹³⁶ Martin, *supra* note 132, at 531.

there is no punishment mechanism that holds complicit corporations liable beyond potentially being held accountable by their consumers. Being held accountable by consumers is not enough of a deterrent for multinational corporations to discontinue using forced labor products in their supply chain, otherwise a sizeable impact on the forced labor industry would have likely occurred already.¹³⁷

1. A Closer Look at California's Transparency in Supply Chains Act

The California Transparency in Supply Chains Act was the first legislative act of its kind to go into effect in the United States.¹³⁸ It was signed into law by the California legislature in 2010 and went into effect shortly thereafter in 2012.¹³⁹ The Act applies to companies that do business in California and have a global annual revenue over one hundred million United States dollars.¹⁴⁰ The companies that meet these standards are required to disclose information on their supply chains to the public by publishing reports on their company's websites.¹⁴¹

Information must cover companies' (1) verification and evaluation of the trafficking risk in its supply chains; (2) auditing of suppliers; (3) supplier certification; (4) accountability standards and procedures for both employees and suppliers; and (5) corporate training on slavery and human trafficking. In addition, [it] requires companies to (1) specify whether they have established supplier compliance systems and (2) state whether those supplier compliance systems involve independent and unannounced audits.¹⁴²

Like other disclosure-focused laws, whether the California Transparency in Supply Chains Act is effective in eliminating child labor and forced labor in supply chains puts the onus onto consumers to make the "right" decision and not purchase products from companies that utilize forced and child

¹³⁷ Beatty, *supra* note 132, at 1135–36.

¹³⁸ Chaban, *supra* note 24.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*; Adrian Lurssen, *The California Transparency in Supply Chains Act of 2010*, JD SUPRA (Sept. 30, 2010), <https://www.jdsupra.com/legalnews/the-california-transparency-in-supply-ch-12076/> [<https://perma.cc/46RL-WWDY>].

¹⁴² Martin, *supra* note 132, at 550.

labor.¹⁴³ Also of note is that the Act does not require a company to update the disclosure as their business practices change.¹⁴⁴ So, as a company changes suppliers, which is bound to happen during its operations, it may increase or decrease its reliance on child and forced labor without being required to inform consumers of these changes.¹⁴⁵

California's Transparency Act does not provide for a private right of action against companies who fail to disclose the labor sources in their supply chains.¹⁴⁶ Instead, the enforcement mechanism written into the Act is that California's Attorney General has the jurisdiction to bring suit for injunctive relief on the behalf of California citizens for any corporate violation of this law.¹⁴⁷ "As a result, consumers' ability to access information and make purchasing decisions is contingent on companies' good faith compliance or the California Attorney General's remediation of any noncompliance."¹⁴⁸

Litigation involving violations of the California Transparency in Supply Chain Act has typically turned out in favor of corporations rather than consumers. Courts have found a "safe harbor" rule for corporations in issues tangentially related to those covered in the Act.¹⁴⁹ In *Barber v. Nestlé USA, Inc.*, the U.S. District Court for the Southern Division of California held that the California Transparency in Supply Chain Act created a "safe harbor" for corporations in causes of action brought by private citizens under other acts (like the California Unfair Competition Law, California Legal Remedies Act, and the California False Advertising Law).¹⁵⁰ Here, consumers brought suit against Nestlé for failure to disclose that the seafood used in containers of cat food may have come from a supply chain which relied on forced labor.¹⁵¹ In considering the claim, the court stated, "the California Supreme Court has held that 'safe harbors' are created from liability under the UCL when 'the Legislature has permitted certain conduct or considered a situation and concluded no action should lie.'"¹⁵² The court found that a safe harbor existed because California's Transparency in Supply Chains Act has already considered this situation and determined there was not a cause of action to be brought.¹⁵³

¹⁴³ *See id.* at 550–51.

¹⁴⁴ *Id.* at 552.

¹⁴⁵ *Id.*

¹⁴⁶ *See* The California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43 (2012).

¹⁴⁷ *See id.* § 1714.43.

¹⁴⁸ Martin, *supra* note 132, at 551.

¹⁴⁹ *See Barber v. Nestlé USA, Inc.*, 154 F. Supp. 3d 954, 961–62 (C.D. Cal. 2015).

¹⁵⁰ *See id.*

¹⁵¹ *Id.* at 957.

¹⁵² *Id.* at 958.

¹⁵³ *Id.*

This decision has major consequences in the fight to eliminate child labor in fast fashion supply chains because, without a private cause of action, the only way to enforce California's Transparency in Supply Chains Act is through the California Attorney General.¹⁵⁴ Where there are limited enforcement mechanisms, an act is likely to be less effective at achieving its intended goals. Though this Act, and subsequent litigation concerning it, is only binding precedent in California, it is persuasive precedent that future courts can take into consideration if similar laws pass. For example, there is a current bill before the U.S. House of Representatives that utilizes a disclosure framework to fight slavery and trafficking in globalized supply chains.¹⁵⁵

2. A Closer Look at the Proposed U.S. Bill, Business Supply Chain Transparency on Trafficking and Slavery Act of 2020

The proposed law, Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, was introduced to the House on March 13, 2020.¹⁵⁶ As of the writing of this note, it has been referred to the House Committee on Financial Services.¹⁵⁷ Sponsored by Representative Carolyn Maloney of New York, the bill "requires certain issuers of securities to disclose their efforts to prevent the use of forced labor, slavery, trafficked persons, and child labor in their supply chains."¹⁵⁸

Notably, Representative Maloney has previously introduced a similar bill titled Business Transparency on Trafficking and Slavery Act.¹⁵⁹ This bill was introduced on August 1, 2011, and it died in Congress without receiving a

¹⁵⁴ See The California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43 (2012); *Barber*, 154 F. Supp. 3d at 958.

¹⁵⁵ See Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong. (2020).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ CONG. RSCH. SERV., *H.R. 7089 (115th): Business Supply Chain Transparency on Trafficking and Slavery Act of 2018*, GOVTRACK (Oct. 23, 2018), <https://www.govtrack.us/congress/bills/115/hr7089/summary> [<https://perma.cc/Z4N4-ZEWB>].

¹⁵⁹ Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. (2011). Rep. Maloney's first related bill, Business Transparency on Trafficking and Slavery Act, is the subject of a law journal article from 2013 that I will reference in this note. Because the introduced bills are substantially similar, I will utilize information provided in the article as also applicable to Rep. Maloney's current bill, Business Supply Chain Transparency on Trafficking and Slavery Act of 2020.

vote.¹⁶⁰ As a matter of fact, several versions of this bill have been introduced into Congress.¹⁶¹ All have the same legislative framework, though they may be introduced under slightly different names or on different dates. The legislative framework of these bills is similar to that of the California, United Kingdom, and France laws. It requires companies of a certain size operating within its jurisdiction to disclose their reliance on forced labor and “the worst forms of child labor in their supply chains.”¹⁶² The purpose of the proposed bill, like that of the California Act, is to create an environment where the consumer can educate themselves on the sources of labor the products they purchase come from.¹⁶³ This is done in the hope that the consumer will choose to purchase ethically sourced products, thus providing an incentive for companies to work to eradicate forced and child labor from their supply chains.¹⁶⁴

Though this bill (in its various forms) has yet to be enacted, several legal journals have published articles analyzing its efficacy. These articles have taken varying sides. Sasha Beatty in the *Vanderbilt Journal of Transnational Law* stated that the law simply doesn’t go far enough in eliminating forced labor because there is no “punishment mechanism.”¹⁶⁵ Beatty states that hoping for consumer action based on disclosures simply isn’t enough of an encouragement for suppliers to end their reliance on child and forced labor.¹⁶⁶ Jena Martin says in the *Columbia Journal of Transnational Law* that “[l]aws that require corporate disclosure generally operate under a laissez-faire approach. Rather than requiring corporations to undergo specific, substantive actions, such laws purport to empower *other actors* within the framework—investors, consumers, and civil society—to obtain information and directly engage with corporations.”¹⁶⁷

¹⁶⁰ H.R. 2759 (112th): *Business Transparency on Trafficking and Slavery Act*, GOVTRACK, <https://www.govtrack.us/congress/bills/112/hr2759> [<https://perma.cc/MB4D-3RE5>].

¹⁶¹ Based on my research, I have found four versions of this bill introduced by Rep. Carolyn Maloney of New York: *Business Transparency on Trafficking and Slavery Act*, H.R. 2759 (2011); *Business Supply Chain Transparency on Trafficking and Slavery Act*, H.R. 3226 (2015); *Business Supply Chain Transparency on Trafficking and Slavery Act*, H.R. 7089 (2018); *Business Supply Chain Transparency on Trafficking and Slavery Act*, H.R. 6279 (2020).

¹⁶² Viktoria Curbelo, *What is the Business Supply Chain Transparency on Trafficking and Slavery Act of 2018? A Conversation with Amy Groff*, FASHION OF TOMORROW (Jan. 23, 2020), <https://fashionoftomorrow.org/sustainablefashionpolicyblog/2020/1/10/what-is-the-business-supply-chain-transparency-on-trafficking-and-slavery-act-of-2018> [<https://perma.cc/9C7X-MT4P>].

¹⁶³ *Id.*

¹⁶⁴ See Beatty, *supra* note 132.

¹⁶⁵ *Id.* at 1135–36.

¹⁶⁶ *Id.*

¹⁶⁷ Martin, *supra* note 132, at 535 (emphasis added).

In a similar federal law, which requires corporate disclosure of happenings in its supply chain, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) has seen limited success. This Act uses a disclosure framework similar to that of the Business Supply Chain Transparency on Trafficking and Slavery Act.¹⁶⁸ Section 1502 of the Dodd-Frank Act, also known as the “conflict minerals” section,¹⁶⁹ requires “any publicly traded company selling products that use specified minerals from the DRC¹⁷⁰ to describe their due diligence measures and provide a list to the [U.S. Securities and Exchange Commission] of any products that are not ‘conflict free.’”¹⁷¹ The global mineral trade includes similar human rights issues as the fast fashion industry, including human rights abuses and child labor.¹⁷²

Companies bound to disclosure by this law saw similar issues to fast fashion companies bound by their own disclosure laws.¹⁷³ Companies found it difficult to determine the source of their minerals.¹⁷⁴ Consumers either found it difficult to determine from the disclosure reports whether a company was a bad faith actor, or simply struggled to understand the complexities of the supply chain.¹⁷⁵ “Altogether, the results of the first round of disclosures provided consumers with little hard evidence upon which to make a decision—no company could be clearly labeled a rule violator and no company could definitively declare its products to be conflict free.”¹⁷⁶ While disclosure frameworks valiantly attempt to eliminate child labor, slave labor, and human trafficking, they are generally not effective at doing it.

¹⁶⁸ Dylan Hays, *My Brother's Keeper: A Framework for a Legal Obligation to Respect Human Rights in Global Supply Chains*, 88 GEO. WASH. L. REV. 454, 466–67 (2020).

¹⁶⁹ *US Conflict Minerals Law*, GLOB. WITNESS (Nov. 15, 2017), <https://www.globalwitness.org/en/campaigns/conflict-minerals/dodd-frank-act-section-1502/> [https://perma.cc/9FWY-R2A]].

¹⁷⁰ The DRC is shorthand for the Democratic Republic of Congo, a country known for human rights abuses in the precious minerals industry. *Id.*

¹⁷¹ Hays, *supra* note 168, at 466.

¹⁷² *US Conflict Minerals Law*, *supra* note 169.

¹⁷³ *See* Hays, *supra* note 168, at 467.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 467–68.

F. *Analogous Legislation to the Transparency in Supply Chains Act, Which Prohibits the Sale of Goods Made in Certain Ways*

There are two statutes which are analogous to California's Transparency in Supply Chains Act and the bill for the Business Supply Chain Transparency on Trafficking and Slavery Act. The first statute is the Dog and Cat Protection Act, which prohibits the importation and sale of products made with dog and cat fur.¹⁷⁷ The second statute is the Fair Labor Standards Act, specifically the section of the Act which regulates child labor in the United States. These statutes are analogous to the acts at issue in this note because all three regulate conduct which the United States has deemed morally reprehensible. The statutes are different than California's Act and the proposed bill in two important ways, however. First, they make the conduct at issue illegal.¹⁷⁸ And second, they enforce the law by punishing violators of it with fines, thus creating a financial incentive to comply.¹⁷⁹

1. The Dog and Cat Protection Act of 2000

The Dog and Cat Protection Act of 2000 was passed because of findings that many products made with dog and cat fur were being sold in the United States with deceptive labeling which hid the true content of the product.¹⁸⁰ Findings suggested that the production of these products relied on inhumane ways of raising and slaughtering the dogs and cats whose fur was used in the products being sold.¹⁸¹ The congressional findings and the Act were likely due to a nationwide outcry after the Burlington Coat Factory was found to have unknowingly sold coats with a dog fur trim in 1998.¹⁸² At the time of the Act's passing, the dog and cat fur trade was responsible for the killing of two million dogs and cats per year.¹⁸³

The Act, now passed, responds to these findings by prohibiting "the importation, exportation, introduction into interstate commerce, manufacture for introduction into interstate commerce, offer for sale, sale, transportation, or distribution in the U.S. of any products made with dog or cat fur."¹⁸⁴ The enforcement mechanism written into the Act provides for

¹⁷⁷ See Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018).

¹⁷⁸ *Id.*; Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

¹⁷⁹ See Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018); Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

¹⁸⁰ Jean C. Yasuhara, "Cruella De Vil" Revisited: The International Dog and Cat Fur Trade, 22 LOY. L.A. INT'L & COMPAR. L. REV. 403, 404 (2000).

¹⁸¹ See *id.* at 408–09 (describing the process of obtaining the dog and cat fur, including the slaughter of the animal).

¹⁸² *Id.* at 404; Gary Miller, *Exporting Morality with Trade Restrictions: The Wrong Path to Animal Rights*, 34 BROOK. J. INT'L. 999, 999 (2009).

¹⁸³ Yasuhara, *supra* note 180, at 405.

¹⁸⁴ Dog and Cat Protection Act, 66 Fed. Reg. 42163 (proposed Aug. 10, 2001).

both civil and criminal penalties of any violation to its provisions.¹⁸⁵ Actors found in violation of the Dog and Cat Protection Act can be fined for their violations.¹⁸⁶

The Dog and Cat Protection Act of 2000 is an analogous act to the California Transparency Act and the current U.S. bill, Business Supply Chain Transparency on Trafficking and Slavery Act, because it seeks to eliminate ways of producing products that are seen as morally wrong. Transparency acts affect manufactures and retailers in the fast fashion industry that rely on forced and child labor and sell their products in the United States.¹⁸⁷ The Dog and Cat Protection Act affects companies importing *and* selling products in the U.S. that were made with dog or cat fur.¹⁸⁸ Both use of dog and cat fur in products and reliance on forced and child labor in supply chains are ways of producing products which are considered morally corrupt.

While the goals of these acts are similar, there are two major differences between the Dog and Cat Protection Act and the California Act and proposed bill. The first big difference between the laws is that the Dog and Cat Protection Act makes the importation and sale of goods made with dog or cat fur illegal, whereas mere disclosure legislation does not.¹⁸⁹ The California law and proposed bill only require disclosure of the means of production. The second difference between the laws is the enforcement mechanisms written into them. Violations of the Dog and Cat Protection Act are punished with fines which creates a financial incentive for corporations to comply with the law, but violations of the California Act are only punished when the Attorney General of California seeks injunctive relief.

2. The Fair Labor Standards Act

I wish you could do something to help us girls . . . We have been working in a sewing factory, . . . and up to a few months ago we were getting our minimum pay of \$11 a

¹⁸⁵ *Id.*

¹⁸⁶ *See* Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308(c) (2018).

¹⁸⁷ *See* Chaban, *supra* note 24.

¹⁸⁸ *See* Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018).

¹⁸⁹ *See id.*

week . . . Today the 200 of us girls have been cut down to \$4 and \$5 and \$6 a week.¹⁹⁰

President Franklin Roosevelt was inspired to champion the Fair Labor Standards Act of 1938 (FLSA) after receiving the letter above from a “young girl.”¹⁹¹ The FLSA was originally signed into law by President Roosevelt in order to improve working conditions by establishing a minimum wage, a standard work week, and prohibiting oppressive child labor.¹⁹² Congress passed the FLSA in order to eliminate “labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”¹⁹³

Before the FLSA went into effect, American workplaces looked a lot different than today.¹⁹⁴ Children and adults alike could be found working in factories for up to 18 hours a day, making as little as one dollar per day.¹⁹⁵ Often these factories were also incredibly dangerous as there were no workplace safety standards. An infamous workplace tragedy is the fire at the Triangle Shirtwaist Factory in New York City.¹⁹⁶ Because of a lack of safety standards, when the fire broke out women were trapped inside and as a result 146 people, most of whom were women and girls, died.¹⁹⁷

In addition to regulating wages and workplace safety, one of the greatest changes to come as a result of FLSA is the elimination of dangerous child labor.¹⁹⁸ Today, the child labor sections of the Fair Labor Standards Act state that “[n]o employer shall employ any oppressive child labor in commerce or

¹⁹⁰ Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEP’T OF LAB., <https://www.dol.gov/general/aboutdol/history/flsa1938> [<https://perma.cc/B784-5NQQX>].

¹⁹¹ *Id.*

¹⁹² Nathaniel Ruby & Ross Eisenbrey, *Celebrating 75 Years of the Fair Labor Standards Act*, ECON. POL’Y INST. (June 25, 2013), <https://www.epi.org/blog/celebrating-75-years-fair-laborstandards/#:~:text=It%20also%20put%20adult%20Americans,of%20millions%20of%20working%20Americans> [<https://perma.cc/W4FL-ZF8W>].

¹⁹³ *Barrentine v. Ark. Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981); see also Catherine Ruckelshaus, *Fair Labor Standards Act at 80: It’s More Important Than Ever*, NAT’L EMP. L. PROJECT (June 26, 2018), <https://www.nelp.org/commentary/fair-labor-standards-act-at-80-its-more-important-than-ever/> [<https://perma.cc/BJ8K-VYUY>].

¹⁹⁴ See generally Peter Cole, *The Law That Changed the American Workplace*, TIME (June 24, 2016), <https://time.com/4376857/flsa-history/> [<https://perma.cc/N8Y9-29J6>] (explaining how the FLSA changed the employment culture in the United States).

¹⁹⁵ *Id.*

¹⁹⁶ David von Drehle, *Uncovering the History of the Triangle Shirtwaist Fire*, SMITHSONIAN MAG. (Aug. 2006), <https://www.smithsonianmag.com/history/uncovering-the-history-of-the-triangle-shirtwaist-fire-124701842/> [<https://perma.cc/2KX7-H963>].

¹⁹⁷ *Id.*

¹⁹⁸ See Cole, *supra* note 194 (explaining how laws like the FLSA have protected workers and children against unregulated capitalism).

in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.”¹⁹⁹ The Act prohibits “(1) the employment of oppressive child labor for children covered by the act, and (2) the interstate shipment of goods produced in an establishment in or about which oppressive child labor is employed.”²⁰⁰ The FLSA is enforced by the Secretary of Labor, similar to the enforcement mechanism in the California statute, but instead of only facing injunctive relief violators of the FLSA may face money damages as well.²⁰¹

Employers who violate the FLSA child labor provisions may be assessed a civil penalty of . . . up to \$11,000 for each employee who was the subject of a child labor violation, or . . . up to \$50,000 for each violation that causes the death or serious injury of a minor employee; a penalty may be doubled if the violation is a repeated or willful violation.²⁰²

Violators of the FLSA may also be subject to up to six months imprisonment.

Not only does the FLSA criminalize the act of employing children (under certain circumstances), but it also prohibits the sale of goods made by that illegal labor. The Act states, “[n]o producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed.”²⁰³ This provision relies on the Commerce Clause power within the Constitution to restrict the “interstate shipment of goods” made by child labor, or by a company employing child labor.²⁰⁴ “Child workers are protected under this provision even if they are not employed by the establishment that produces and ships the goods”, thus the FLSA applies broadly.²⁰⁵

¹⁹⁹ 29 U.S.C. § 212(c) (2018).

²⁰⁰ SARAH A DONOVAN & JON O. SHIMABUKURO, THE FAIR LABOR STANDARDS ACT (FLSA) CHILD LABOR PROVISIONS, CONG. RES. SERV. (June 29, 2016), <https://fas.org/sgp/crs/misc/R44548.pdf> [<https://perma.cc/CU6M-NATE>].

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Fair Labor Standards Act, 29 U.S.C. § 212(a) (2018) (prohibiting shipment of “hot goods”).

²⁰⁴ DONOVAN & SHIMABUKURO, *supra* note 200.

²⁰⁵ *Id.*

III. ANALYSIS

This note argues that the disclosure framework seen in both California's Transparency in Supply Chains Act and the proposed Business Supply Chain Transparency on Trafficking and Slavery Act is ineffective for incentivizing companies to end child labor in their supply chains. The lack of appropriate enforcement mechanisms in disclosure framework legislation undermines the purpose of creating a well-informed consumer base to hold corporations accountable. Even if written perfectly, however, disclosure frameworks would still not create enough of an incentive for corporations to end their reliance on child labor to make a big difference. To combat child labor in fast fashion supply chains, the United States should pass an act like the Dog and Cat Protection Act or the Fair Labor Standards Act that fines companies in violation to create a financial incentive for those companies to comply.

The United States has a duty to play a role in the ending of child labor in fast fashion supply chains as one of the biggest consumers of fast fashion. As a signatory to the International Labour Organization's Convention to end the worst forms of child labor²⁰⁶, the United States took on the responsibility to play their part in ending child labor in corporate supply chains by corporations who do business in the country. It is also in the best interest of American corporations to level the playing field by ending reliance on child labor by corporations who manufacture in other countries, because they have an unfair advantage in the marketplace.

A. *The United States' Role in Ending Corporations' Reliance on Child Labor in their Supply Chains*

By signing onto international conventions addressing these issues, the United States has taken on the responsibility to attempt, within the best of its ability, to end child labor in the supply chains of corporations that do business here.²⁰⁷ Sophia Eckert reasons in her article for the *Hofstra Journal of International Business & Law* that if passed, the Business Transparency Act would comply with

the Abolition of Forced Labour Convention's requirement that member states take effective measures to secure the abolition of forced labor 'in all its forms within the shortest possible period.' The United States is a signatory to the Convention, and as such, has the obligation to attempt to end forced labor in supply chains to the best of its ability.²⁰⁸

²⁰⁶ *Ratifications of C182—Worst Forms of Child Labour Convention, 1999 (No. 182)*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 [<https://perma.cc/NHE5-5HVX>] [hereinafter *Ratifications of C182*].

²⁰⁷ Worst Forms of Child Labour Convention, *supra* note 79.

²⁰⁸ Eckert, *supra* note 10, at 404.

The same reasoning is applicable in the specific realm of ending child labor in the supply chains of corporations doing business in the United States. The United States is a signatory to the International Labour Organization's C182 "Worst Forms of Child Labour Convention", which requires signatories to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. . . ." ²⁰⁹ Not only has the United States failed for a decade since the introduction of the first version of the Business Supply Chain Transparency on Trafficking and Slavery Act to take *any* action to comply with this convention by passing a version of disclosure framework legislation aimed at eliminating child labor in supply chains, they have also failed to take *effective* measures against child labor in supply chains.

The United States also has a responsibility to level the playing field for corporations who produce their products in the United States, and thus are subject to the requirements of the Fair Labor Standards Act (FLSA). One of the rationales for passing the FLSA in the first place was to prevent substandard labor conditions from being used as an unfair method of competition against companies with better working conditions. ²¹⁰ The FLSA is strong enough to, for the most part, effectively protect United States children from exploitation by workers because it makes it expensive for employers to defy the law. This expense tips the scales so that it is smarter financially for employers not to rely on child labor. That is the case unless, of course, employers are not subject to the FLSA because they do not manufacture their products in the United States.

The type of child labor abused by the fast fashion industry in other countries would not be legal in the United States under the FLSA. It doesn't make sense that the federal government holds companies who produce their products in the United States to a higher standard than companies who produce their products elsewhere, but still sell them in the United States. This inequity between companies who produce their products in the U.S. and companies who rely on forced and child labor in less developed countries may actually give the latter companies a leg up in the marketplace because they are able to offer their products at a lower price than companies who abide by United States labor standards and pay more for the labor they use. This is exactly the type of unfair competition that the Congress that passed the FLSA sought to avoid. ²¹¹

²⁰⁹ Worst Forms of Child Labour Convention, *supra* note 79.

²¹⁰ *See* *Barrentine v. Ark. Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981).

²¹¹ *See id.*

B. *Efficacy of Disclosure Framework in Legislation Aiming to End Child Labor in Fast Fashion*

The disclosure framework in legislation like California's Transparency in Supply Chains Act, the Business Supply Chain Transparency on Trafficking and Slavery Act, the United Kingdom's Modern Slavery Act, and France's Devoir de Vigilance does not go far enough to end fast fashion's reliance on child labor.²¹² The most effective way to force a company to take affirmative action to end reliance on child labor in their supply chains is to make child labor more expensive to use than to not use. The reason fast fashion companies rely on child labor is because their business is selling clothing to consumers at very inexpensive rates.²¹³ Child labor is cheap labor, and its use is driven by the bottom line of fast fashion companies. If it were expensive, companies would be less likely to rely on it because it would be counterproductive.

The purpose of a disclosure framework is to end reliance on child and forced labor by incentivizing companies to weed out child labor in their supply chains under threat of lost profits if consumers know they utilize unsavory methods of production and choose not to purchase their products. This is not enough of an incentive to make eliminating forced and child labor from their supply chains a priority for fast fashion companies. The ultimate goal of a corporation is to make money. Since making money is their primary motivation, corporations are heavily incentivized to do whatever is likely to increase profits. To effectively incentivize a company to eliminate child labor in their manufacturing processes when using it makes their products cheaper, it has to be more expensive to use child labor than it is to not use child labor. The theory underpinning the use of disclosure laws is that consumer choice will do this, because if consumers know child labor is used by a brand they will not shop at that brand's stores. But consumer choice does not adequately financially incentivize corporate change. Analysis of analogous laws that utilize a disclosure framework (like the Dodd-Frank Act) have found that requiring disclosure is simply too complicated to give consumers enough information to make well-informed decisions.²¹⁴

In addition to the failure of analogous laws, the supply chain disclosure laws are written in a way that undermines the theory that disclosure will lead to a well-educated consumer base. These laws lack adequate enforcement mechanisms which would make them more effective. For example, California's supply chain act doesn't include a private cause of action. It relies on the California Attorney General to bring claims against corporations for noncompliance. Even if the Attorney General does bring a claim, punishments are limited to injunctive relief rather than financial sanctions.

²¹² See *supra* notes 123–38.

²¹³ *Supra* notes 56–61.

²¹⁴ *Supra* notes 169–77.

The lack of adequate enforcement mechanisms in disclosure framework legislation means that companies may choose not to disclose their use of child and forced labor and risk no more than an injunction from the Attorney General, though even this “punishment” has yet to be seen for any company.²¹⁵ The Attorney General of California has not moved for injunctive relief in any case, though they have sent out letters requesting compliance.²¹⁶

By not including a cause of action (and in some cases precluding causes of action) for consumers to bring suit to force disclosure, these disclosure acts undermine their claimed purpose of creating an informed consumer base. The theory behind these laws is that consumers should actively seek out information regarding supply chains of corporations, in order to make informed decisions. But by not including a cause of action which consumers can use in order to force corporations into giving them the valuable information, it puts the consumers at the mercy of corporations to disclose out of the goodness of their hearts, or at the mercy of the Attorney General to bring suit for injunctive relief on their behalf.

The laws also typically do not require companies to update their disclosures.²¹⁷ This means that a company is free to change their supply chains, for the worse or for the better, and not disclose those changes to the consumer. By not requiring periodic updating of disclosure statements by retailers and manufacturers, these disclosure frameworks undermine the goal of creating a well-informed consumer base because consumers cannot be adequately informed if corporations are not required to update their disclosures as their practices change. Companies’ supply chains are subject to continuous change, as certain choices become more economically advantageous to their business practices. Their required disclosures should change with their supply chains to truly uphold the spirit of the law, but the current drafting of these acts does not require this.

Finally, disclosure laws could be written perfectly, and they still wouldn’t be enough to end the reliance of corporations on child and forced labor in their supply chains. Companies are not incentivized to make elimination of child labor in their supply chains a priority because studies show that the disclosure framework in legislation does not tip the balance to make it more expensive for companies to rely on child labor than to eliminate it. As a

²¹⁵ Martin, *supra* note 132, at 551, 553.

²¹⁶ *Id.* at 553.

²¹⁷ *Id.* at 552 (providing “no periodic reporting requirement”).

matter of fact, there is an incentive for these companies to not attempt to publicly rebuke the use of child labor. A study indicated that when a child labor scandal comes to the public, a company which has tried publicly to make their supply chains less reliant on it will often be judged more harshly than a company which never made similar efforts.²¹⁸

C. *The Efficacy of Analogous Legislation: the Dog and Cat Protection Act and the Fair Labor Standards Act*

Before the passage of the FLSA, the American working world didn't look much different than the working worlds of countries where fast fashion enterprises abuse labor today.²¹⁹ It was a world in which children as young as five and adults alike worked in hazardous conditions for up to eighteen hours a day, and workplace tragedies were the norm.²²⁰ One of the most infamous workplace incidents of the time was the Triangle Shirtwaist Factory which burned to the ground in 1911 while workers were trapped inside.²²¹

Today, it's hard to imagine a world like this existing in the United States. That is due in large part to Franklin Roosevelt and his campaign to pass the Fair Labor Standards Act. After initially being signed into law the Fair Labor Standards Act was "an unequivocal success."²²²

A special study conducted by the Bureau of Labor Statistics found that the Act would raise wages for almost 700,000 workers, reduce hours or prompt overtime pay for over one and a half million workers, and prohibit the continued employment of roughly 600,000 children aged 10 to 15. . . . The Fair Labor Standards Act succeeded in improving labor standards and actual working conditions.²²³

Unlike the Fair Labor Standards Act, the Dog and Cat Protection Act is relatively new, and relatively unknown. A consequence of this is that there is not much scholarship analyzing the efficacy of the Act, and the topic lacks the same types of studies that are available to the consequences of the FLSA. However, because the enforcement mechanisms in the Dog and Cat Protection Act are similar to those in the Fair Labor Standards Act, it may be safe to assume that those enforcement mechanisms are at least similarly effective in deterring prohibited conduct when prosecuted.

²¹⁸ University of Bath, *supra* note 78.

²¹⁹ Cole, *supra* note 194.

²²⁰ *Id.*

²²¹ Drehle, *supra* note 196.

²²² Ruby & Eisenbrey, *supra* note 192.

²²³ *Id.*

IV. RECOMMENDATIONS

The United States should pass a statute which follows a framework of statutes already in place, like the Fair Labor Standards Act and the Dog and Cat Protection Act, to more effectively target child labor in supply chains of fast fashion companies who do business in the United States. Current legislation before Congress, the Business Supply Chain Transparency on Trafficking and Slavery Act of 2020 and California's Transparency in Supply Chains Act, utilize a disclosure framework which requires certain businesses to disclose use of child and forced labor in their supply chains.²²⁴ This type of legislation does not do enough to adequately address or resolve the issue of child labor in fast fashion supply chains.

Disclosure framework legislation does not adequately address the atrocities that fast fashion retailers commit against children by utilizing child labor in their supply chains, because they do not make it illegal. By making retailer reliance on the worst forms of child labor illegal, like it is in the United States under the Fair Labor Standards Act, the United States would be making a statement by condemning the abuse of this kind of labor.

The United States has the ability, through the Commerce Clause, to regulate products which were made with child labor.²²⁵ This ability is demonstrated by the Fair Labor Standards Act. The United States has the duty to take action against child labor in fast fashion supply chains because we have voluntarily signed onto International Labour Organization's C182 "Worst Forms of Child Labour Convention," which commits signatories to take action to end child labor.²²⁶ Additionally, regulating products made by child labor in other countries will even the playing field for companies that make their products in the United States and therefore cannot rely on child labor because of the FLSA.²²⁷

The Fair Labor Standards Act and the Dog and Cat Protection Act create financial incentives for corporations to comply by fining violations of their

²²⁴ See *supra* notes 139–65.

²²⁵ The Commerce Clause is Article 1, Section 8, Clause 4 of the U.S. constitution. It grants Congress authority to regulate interstate commerce. U.S. CONST. art. 1, § 8, cl. 3 (granting Congress permission to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.").

²²⁶ *Ratifications of C182*, *supra* note 206.

²²⁷ The FLSA regulates child labor in the United States and would prohibit all of the worst forms of child labor, many of which occur in fast fashion supply chains. See Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018).

provisions.²²⁸ To effectively combat child labor in fast fashion supply chains, the United States should pass a law similar to the FLSA or DCPA because disclosure frameworks do not adequately incentivize fast fashion retailers and manufacturers to end their reliance on child labor. They do not adequately incentivize this because they do not make it illegal to rely on child labor, and they do not make it more expensive for companies to use child labor than it is for companies to not use it by charging them fines the way that the Dog and Cat Protection Act and the Fair Labor Standards Act do.

In order to adequately incentivize companies to abandon their use of child labor in their supply chains, the United States should implement a statute which makes use of child labor in the supply chain illegal. The act should punish use of child labor with similar penalties that are seen in the Dog and Cat Protection Act or the Fair Labor Standards Act. Like the DCPA and the FLSA, each instance of child labor in the supply chain should be punishable by fines.

It is within the right of the federal government to pass a law to prohibit the sale and importation of clothing made with child labor.²²⁹ The Commerce Clause creates jurisdiction for the federal government to regulate goods that move within interstate commerce.²³⁰ Goods move within interstate commerce, and thus fall within jurisdiction of Congress, when they are shipped interstate or have some sort of substantial connection to interstate commerce.²³¹ The Dog and Cat Protection Act and the Fair Labor Standards Act are both examples of acts which rely on the jurisdiction created by the Commerce Clause. These acts enforce the prohibition on labor violations (FLSA) and use of dog or cat fur (DCPA) by prohibiting the movement in interstate commerce of products which have been made in unsavory ways.

Disclosure framework legislation is a passive and weak way of addressing the problem of child labor in fast fashion. To properly address the issue, the United States, as one of the biggest importers and consumers of fast fashion, must take affirmative action to end fast fashion's reliance on child labor. To do this, the United States must pass legislation which aims to combat reliance

²²⁸ By charging companies for violations of the act, it incentivizes them to comply because it is cheaper to do so. *See* Fair Labor Standards Act, 29 U.S.C. Ch. 8 (2018); Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018).

²²⁹ *See* U.S. CONST. art. 1, § 8, cl. 4 (Commerce Clause); Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018); Fair Labor Standards Act, 29 U.S.C. §§ 201–219 (2018) (prohibiting the interstate shipment/sale of goods made by child labor *in the United States*).

²³⁰ *See* U.S. CONST. art. 1, § 8, cl. 4 (Commerce Clause).

²³¹ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964) (stating “The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate. . .”).

on child labor. Passing the proposed Business Supply Chain Transparency on Trafficking and Slavery Act will be a good, albeit relatively weak, start.

However, in order to adequately incentivize fast fashion companies to end their reliance on child labor in their supply chains, the United States should make it illegal for companies to sell or import clothing made by child and forced labor. The vague threat of consumer activism, promoted by disclosure framework legislation, is not enough of a deterrent because it doesn't directly penalize the act of utilizing child labor. Statutes like the California Transparency in Supply Chain Act and the proposed Business Supply Chain Transparency on Trafficking and Slavery Act don't even fine companies for their failure to disclose information regarding their use of child labor or forced labor in their supply chains. Without a financial incentive, corporations cannot be expected to take active steps to eliminate the use of child labor in their supply chains.

Both the Dog and Cat Protection Act and the Fair Labor Standards Act penalize violations with fines²³², thus creating a financial incentive for companies to comply. The fining system in the Dog and Cat Protection Act is tiered for each offense. Companies are fined up to 10,000 dollars for each knowing or intentional violation; 5,000 dollars for grossly negligent violations; and 3,000 dollars for simply negligent violations.²³³ Violations of the child labor provisions in the Fair Labor Standards Act are subject to a fine of up to 10,000 for each child employed.²³⁴ The United States should utilize a similar framework for a statute which would prohibit reliance on child labor for products being sold or imported into its jurisdiction altogether, and fine corporations for any failure to comply with the law. This is the only way to create a strong enough financial incentive for fast fashion corporations to cease utilizing child labor in their supply chains.

Child labor is one of the cheapest forms of labor available for fast fashion companies. It directly follows the business model of fast fashion corporations (to drive the bottom line lower and lower to provide styles at as low of prices as possible to consumers). Until it is too expensive for fast fashion companies to use child labor in the production of their products, they will continue to do so regardless of whether they are required to disclose it to their consumers. The United States will have failed to uphold the International Labour

²³² See Fair Labor Standards Act, 29 U.S.C. Ch. 8 (2018); Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018).

²³³ Prohibition on Importation of Dog and Cat Fur Products, 19 U.S.C. § 1308 (2018).

²³⁴ Fair Labor Standards Act, 29 U.S.C. Ch. 8 (2018).

Organization's Convention on ending the worst forms of child labor until they take affirmative steps to outlaw the importation and sale of fast fashion, and other products, made with child labor.

V. CONCLUSION

Child labor is a global epidemic, seeping its way into almost every industry. Fast fashion is one of the biggest industries which consistently relies on child labor in its supply chain. To begin to effectively eliminate child labor in the world, the fast fashion industry is a good place to start. Currently, efforts to end reliance on child labor center around passing disclosure and transparency laws, which require companies to disclose instances of child labor in their supply chains. These laws do not effectively incentivize fast fashion corporations to eliminate child labor in their supply chains because they do not increase the cost of utilizing child labor. The only effective incentive for corporations is to make it too expensive for them to use child labor for it to be worth doing. The best way that the United States can do this is by passing a statute similar to the Dog and Cat Protection Act or the Fair Labor Standards Act. The Dog and Cat Protection Act makes it illegal to import or sell products made with dog or cat fur in the United States. Both the Dog and Cat Protection Act and the Fair Labor Standards Act have enforcement mechanisms that fine companies who violate its provisions. This incentivizes corporations to comply, because it is more expensive to violate the Act than it is to adhere to it.