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Fashion(ing) a Political Statement: A Review of the Legal & Social Issues that Arise from Banned Political Clothing and Other Controversial Fashion Items in Light of the U.S. Supreme Court's Decision in *Minnesota Voters Alliance v. Mansky*

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Cover Page Footnote

Professor of Administration and Economics, The Collins College of Professional Studies at St. John's University; Adjunct Professor, St. John's University School of Law; LL.M. (Intellectual Property), J.D., M.B.A., B.S. Many thanks to Dean Katia Passerini and Dr. Almerinda Forte for their guidance. I thank my parents, John and Veronica, my husband, Vincent, and my daughter, Hope, for their love and support.

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Voters Alliance v. Mansky*

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Does the U.S. Supreme Court believe that the Free Speech Clause of the First Amendment includes freedom of expression in our clothing? The answer is yes! This Article will show that fashion can make a strong political statement (or misstatement) in the court of law as demonstrated by the U.S. Supreme Court's recent decision striking down Minnesota's ban on wearing "political apparel" to vote in Minnesota Voters Alliance v. Mansky. The discussion of this case will include quotes from J. David Breemer, Esq., the attorney who represented the Minnesota Voters Alliance. This Article will examine related U.S. Supreme Court cases that uphold Constitutional protections not just in political speech and association, but also in clothing.

If, despite the Supreme Court's holdings in these cases, you have any doubts about whether fashion can make a strong statement with social and legal ramifications, you need only consider the court of

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popular opinion—for instance, social media. Social media, as well as traditional media, have openly criticized designers who have created insensitive items such as Prada's PRADEMALIA charms, Katy Perry's shoes, and a particular Gucci sweater—all of which appeared to portray racist black-faced images. Another issue—accusations of cultural appropriation—has impacted an African-American rapper Lil Nas X, who was accused of stealing (white) “cowboy culture,” as well as Kim Kardashian, who has been accused of appropriating West African hairstyles and of having chosen a Japanese name (“Kimono”) for a new business venture (which was eventually dropped). Also, media backlash should be expected when someone designs clothes using real fur or ivory and/or the clothing is made by children or under unsafe conditions.

*The U.S. Supreme Court may continue to support our rights under the First Amendment Free Speech Clause to freedom of expression in our clothing, but that does not mean that society protects us from the social or economic ramifications from making such statements with our fashion choices. Remember that Oscar Wilde famously wrote in *An Ideal Husband* that “fashion is what one wears oneself. What is unfashionable is what other people wear.”*

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INTRODUCTION

When you think of “style influencers,” you might envision celebrities walking the red carpet at an awards show, or fashion bloggers posting their OOTD (“outfit of the day”) on social media websites. But would you have thought about legislators in Minnesota in the late 1800s? Until very recently, the politicians who drafted Minnesota’s Statute 21B.11 influenced what citizens of that state could wear to cast their votes.¹ This legislation may have been motivated by an awareness that apparel and makeup can send a strong message. Indeed, the Supreme Court of the United States recognized that clothing is capable of serving as an important medium of communication in *Minnesota Voters Alliance v. Mansky*,² which held that Minnesota’s ban on political apparel inside a polling place on Election Day violated the Free Speech Clause of the First Amendment. The Supreme Court seems to have reached the same conclusion as the court of public opinion (i.e., society at large) that clothing (and sometimes makeup) can communicate political, cultural, and religious messages quite powerfully.

Part I of this Article will examine examples of such strong communications in case law, from the U.S. Supreme Court’s holding in *Cohen v. California*,³ a case in which a man expressed his opinion about the military draft by writing an expression with a curse word on the back of his jacket and walking through the Los Angeles County Court, to the Supreme Court’s more recent decision in *Minnesota Voter’s Alliance v. Mansky*,⁴ which dealt with apparel with a political message in a polling place. Part I will also explore the legal protections for clothing worn for religious purposes and the trademark implications on free speech, such as when designer/artist Erik Brunetti attempted to file a trademark for his brand which sounds like a curse word and therefore was initially denied registration because it was thought to be “immoral or scandalous” under the Lanham Act.

¹ See *infra* text accompanying notes 33–35.

² See *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018).

³ See *Cohen v. California*, 403 U.S. 15 (1971).

⁴ See *Mansky*, 138 S. Ct. at 1876.

Part II will explain how legal protections for political, religious, and “immoral” messages on clothing do not end the story, by discussing examples of society condoning fashion choices, including cultural appropriation, blackface makeup, the use of banned materials like fur or ivory, or banned manufacturing methods such as child labor or unsafe factory conditions—all of which get exposed in the court of public opinion—i.e., social media and traditional media. I conclude by arguing that our society should take more responsibility for the consequences of our fashion statements—whether it is recognizing the unintentional, inflammatory messages our clothing might send or making conscious decisions to support brands and designers using sustainable materials and humane manufacturing methods.

I. FASHION STATEMENTS IN THE COURTS OF LAW

A. *The Thread Between Clothing and Speech*

Something as simple as the color of the clothing a person chooses to wear can become a method of transmitting a message. For example, gangs use certain colors to identify themselves: Bloods use red;⁵ Crips, blue.⁶ In another example, women wore black at the 2018 Golden Globe Awards as part of the Time’s Up and #MeToo movements, thereby expressing their “solidarity” with those whom former movie mogul Harvey Weinstein had allegedly assaulted and with other sexual assault victims.⁷ As Vanessa Friedman, the Fashion Director and Chief Fashion Critic for The New York Times, observed, “By choosing to wear all black, the women of Hollywood...aren’t taking fashion off of the table. They

⁵ See *Bloods*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Bloods> [<https://perma.cc/AKJ3-GJT7>].

⁶ See *Crips*, BRITANNICA, <https://www.britannica.com/topic/Crips> [<https://perma.cc/D7P5-7BDV>].

⁷ See Cara Buckley, *On the Golden Globes Red Carpet, Fighting Back in Black*, N.Y. TIMES (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/movies/times-up-golden-globes-red-carpet.html> [<https://perma.cc/FF5Q-H8RT>].

are putting it at the very center of the table.”⁸ At the other end of the color spectrum, women in Congress wore white for President Trump’s State of the Union Address on February 5, 2019: “The white outfits dozens of female lawmakers wore to the State of the Union address Tuesday night were a visual tribute to the U.S. suffragists and an attempt to spark the same kind of publicity.”⁹

The U.S. Supreme Court has already confronted cases where clothing has been used as a conduit of political speech, for example, in the 1969 case *Tinker v. Des Moines Independent Community School District*.¹⁰ In *Tinker*, a group of students decided to show their support for a truce in the Vietnam War by wearing black armbands to school.¹¹ After learning of the plan, the school approved a policy stating that any student wearing an armband would be asked to take it off, and that refusal to do so would result in suspension.¹² Mary Beth Tinker, John Tinker, and Christopher Eckhardt were suspended after refusing to remove their armbands.¹³ Their parents sued on their behalf, alleging that the school district had violated the students’ First Amendment right of free speech.¹⁴

The District Court dismissed the case and upheld the school district’s actions as reasonable to uphold school discipline, and the Eighth Circuit Court of Appeals affirmed the decision without issuing an opinion.¹⁵ However, the U.S. Supreme Court reversed the lower courts’ decisions and found in favor of the students, holding

⁸ See Vanessa Friedman, *Why Everyone Is Wearing Black at the Golden Globes*, N.Y. TIMES (Jan. 5, 2018), <https://www.nytimes.com/2018/01/07/fashion/black-red-carpet-golden-globes.html> [<https://perma.cc/5AAK-WA5E>].

⁹ Marisa Iati, *Why Did Women in Congress Wear White for Trump’s State of the Union Address*, WASH. POST (Feb. 6, 2019), <https://www.washingtonpost.com/history/2019/02/05/why-are-women-lawmakers-wearing-white-state-union/> [<https://perma.cc/JT2F-YQ9K>] (quoting author Rebecca Boggs Roberts). “In demonstrations and parades, the suffragists donned white dresses meant to generate photo coverage in the daily newspapers. The color choice also echoed England’s suffrage movement, which used purple, white and green as its official colors.” *Id.*

¹⁰ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

¹¹ See *id.*

¹² See *id.* at 504.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 258 F. Supp. 971 (S.D. Iowa 1966), *aff’d*, 383 F.2d 988 (8th Cir. 1967), *cert. granted*, 390 U.S. 942 (1968).

that wearing the armbands “involves direct, primary First Amendment rights akin to ‘pure speech.’”¹⁶ Writing for the majority, Justice Fortas observed that “[the petitioners’] deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide They caused . . . no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.”¹⁷ While the Supreme Court in *Tinker* seemed to base its holding on the small, non-intrusive size of the black armbands, the Court in subsequent cases has expanded free speech protection to larger swaths of clothing.¹⁸

In *Cohen v. California*, the Supreme Court again found that the First Amendment protects speech communicated via clothing.¹⁹ In

¹⁶ See *Tinker*, 393 U.S. at 508.

¹⁷ *Id.* at 514. There appears to be an endless number of cases in which middle and high school students challenge their school dress codes. See, e.g., *Dariano v. Morgan Hill Unified Sch. Dist.*, 745 F.3d 354 (9th Cir. 2014) (upholding the school district’s ban on clothing bearing the American flag after violence broke out between Caucasian and Mexican students during the Cinco de Mayo celebration); *Hardwick v. Heyward*, 711 F.3d 426 (4th Cir. 2013) (upholding South Carolina middle school and high school dress code which permitted the ban of clothing bearing the confederate flag); *Bear v. Fleming*, 714 F. Supp. 2d 972 (D.S.D. 2010) (holding that school board’s requirement that plaintiff, Aloysius Dreaming Bear, a Lakota student, must wear a cap and gown over his traditional tribal clothing at graduation does not violate his First Amendment rights); *Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502 (5th Cir. 2009) (upholding the school district’s ban on shirts containing printed messages); *B.W.A. v. Farmington R-7 Sch. Dist.*, 508 F. Supp. 2d 740 (E.D. Mo. 2007) (dismissing plaintiffs’ claims and granting defendants’ motion for summary judgment after plaintiffs sued over punishment for wearing clothing depicting the confederate flag in a high school that had experienced three notable racially related incidents prior to the school year in question—2006); *Jacobs v. Clark Cty. Sch. Dist.*, 373 F. Supp. 2d 1162 (D. Nev. 2005) (holding that mandatory school dress code did not violate students’ First Amendment expression); *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005) (holding that First Amendment free speech clause did not protect student from restrictions of school dress code); *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437 (5th Cir. 2001) (affirming summary judgment in favor of the Bossier Parish School Board in Louisiana when parents challenged school board’s mandatory uniform policy as violating the students’ First Amendment rights); *Littlefield v. Forney Indep. Sch. Dist.*, 108 F. Supp. 2d 681 (N.D. Tex. 2000) (granting defendants’ motions to dismiss plaintiffs’ complaints in which they challenged the mandatory school uniforms policy on Constitutional grounds).

¹⁸ See, e.g., *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019) (immoral or scandalous messages on clothing); *Equal Emp’t Opportunity Comm’n v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015) (religious articles of clothing); *Cohen v. California*, 403 U.S. 15 (1971) (political messages on clothing).

¹⁹ See *Cohen v. California*, 403 U.S. 15 (1971).

Cohen, Paul Robert Cohen had been sentenced to thirty days in jail for violating Section 415 of the California Penal Code, which prohibited “willfully disturb[ing] the peace . . . by . . . offensive conduct.”²⁰ Cohen was convicted based on an incident in which he wore a jacket decorated with the words “F—k the Draft” in the hallway of the Los Angeles County Courthouse.²¹ The California Court of Appeals found that “offensive conduct” means “behavior which has a tendency to provoke others to acts of violence,” and used this definition to uphold Cohen’s conviction.²² After the California Supreme Court denied review, the U.S. Supreme Court granted *certiorari* and reversed the California Court of Appeals decision.²³

Writing for the majority, Justice Harlan noted that the defendant did not engage in any violent behavior or make disruptive noise,²⁴ and concluded that Cohen’s conviction “rest[ed] squarely upon his exercise of the ‘freedom of speech.’”²⁵ Furthermore, the Court found that Cohen’s jacket did not fit into any of the categorical exceptions to the normal rule that the First Amendment severely limits the government’s power to regulate speech on the basis of its content or the viewpoint it reflects.²⁶ According to the Court, the jacket was neither obscene²⁷ nor constituted “fighting words,”²⁸ even if some “unwilling ‘listeners’”²⁹ would prefer to be free from what they might regard as “unwanted expression.”³⁰ Indeed, the Court rejected the notion that profanity is automatically devoid of value, observing that “one man’s vulgarity is another’s lyric.”³¹ In deciding to reverse Cohen’s conviction for wearing his “F—k the Draft” jacket in a courthouse, Justice Harlan drew on the wisdom of

²⁰ *Id.* at 16 (quoting CAL. PENAL CODE § 415).

²¹ *Id.*

²² *Id.* at 17.

²³ *See id.*

²⁴ *See id.* at 16–17.

²⁵ *Id.* at 19.

²⁶ *Id.* at 19–20.

²⁷ *Id.* at 20.

²⁸ *Id.*

²⁹ *Id.* at 22.

³⁰ *Id.* at 22–23 (citing *Tinker*, the Court remarked, “[w]e have been shown no evidence that substantial numbers of citizens are ready to strike out physically at whoever may assault their sensibilities with execrations like that uttered by Cohen.”).

³¹ *Id.* at 25.

former Justice Frankfurter: “[O]ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation.”³²

These cases concerning messages actually written on clothing (*Cohen*) and the use of clothing to communicate messages symbolically (*Tinker*) form important jurisprudential background to the case on which this Article is focused: *Minnesota Voters Alliance v. Mansky*.

B. It’s a Fashion Revival: Minnesota Voters Alliance v. Mansky

The Minnesota statute at issue in *Mansky* prohibited anyone inside a polling place on Election Day from wearing “[a] political badge, political button, or other political insignia.”³³ This “political apparel ban” covered “articles of clothing and accessories with political insignia upon them.”³⁴ However, the statute did not define any of the following terms: “political badge,” “political button,” or “political insignia.” Under the statute, violation of this ban carried a penalty of fines up to \$300.³⁵

Just before the November 2010 election, the Minnesota Voters Alliance (“MVA”), a non-profit organization which seeks better government through election reforms, and other plaintiffs, challenged this law on First Amendment grounds.³⁶ In an effort to clarify enforcement of the statute, Minnesota government authorities distributed an “Election Day Policy” document specifically banning “[i]ssue oriented material designed to influence or impact voting,” and “[m]aterial promoting a group with recognizable political views.”³⁷ On Election Day, the MVA’s Executive Director, Andrew Cilek, attempted to enter a polling

³² *Id.* at 26 (quoting *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944)).

³³ MINN. STAT. § 211B.11(1) (Supp. 2017), *invalidated by* Minn. Voters All. v. Mansky, 138 S. Ct. 1876 (2018).

³⁴ Minn. Voters All. v. Mansky, 138 S. Ct. 1876, 1883 (2018).

³⁵ *Id.*; see also Rodney A. Smolla, *Regulation of Political Apparel in Polling Places: Why the Supreme Court’s Mansky Opinion Did Not Go Far Enough*, 2017 CATO SUP. CT. REV. 225, 228 (2017–2018).

³⁶ *Mansky*, 138 S. Ct. at 1879.

³⁷ *Id.*

station wearing a “Please I.D. Me” button and a T-shirt bearing the Revolutionary-era slogan “Don’t Tread on Me” as well as the Tea Party Patriots logo.³⁸ He was turned away.³⁹

The MVA, Cilek, and Election Judge Susan Jeffers brought an action in the U.S. District Court under 42 U.S.C. § 1983,⁴⁰ claiming that Minnesota Statute Section 211B (1) was unconstitutional both on its face and as applied.⁴¹ The District Court granted the State’s motion to dismiss.⁴² The Eighth Circuit Court of Appeals affirmed the dismissal of the facial challenge, but remanded the case on the as-applied challenge.⁴³ The District Court then granted summary judgment for Minnesota on the as-applied challenge,⁴⁴ a decision which the Eighth Circuit affirmed.⁴⁵ At that point, the plaintiffs petitioned for review of their facial First Amendment claim, but not the as-applied claim.⁴⁶ The Supreme Court granted the plaintiffs’ petition for *certiorari* on the facial First Amendment claim.⁴⁷

Since Minnesota’s political apparel ban applied only in a specific location (inside a polling place), it triggered the Court’s “forum based” approach for analyzing this case.⁴⁸ Writing for the majority, Chief Justice Roberts explained that “[g]enerally speaking, our cases recognize three types of government-controlled spaces: traditional public forums, designated public forums and nonpublic forums.”⁴⁹ Chief Justice Roberts concluded that “[a] polling place in Minnesota qualifies as a nonpublic forum,”⁵⁰ which is a forum “that is not by tradition or designation a forum for public communication.”⁵¹ Regarding a nonpublic forum, “the government

³⁸ *Id.* at 1879; *see also infra* Appendix, Figure 1.

³⁹ *Mansky*, 138 S. Ct. at 1879.

⁴⁰ *Id.*

⁴¹ *Id.* at 1884.

⁴² *Minn. Majority v. Mansky*, F. Supp. 2d 1112, 1133 (D. Minn. Apr. 29, 2011).

⁴³ *Minn. Majority v. Mansky*, 708 F.3d 1051, 1052 (8th Cir. 2013).

⁴⁴ *Minn. Majority v. Mansky*, 849 F.3d 749, 751–52 (8th Cir. 2017).

⁴⁵ *Id.* at 753.

⁴⁶ *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1879 (2018).

⁴⁷ *Id.*

⁴⁸ *Id.* at 1885.

⁴⁹ *Id.*

⁵⁰ *Id.* at 1886.

⁵¹ *Id.* at 1885 (*internal quotation marks omitted*).

has much more flexibility to craft rules limiting speech.”⁵² Accordingly, the government need only prove that “the regulation on speech is *reasonable*.”⁵³

Ultimately, the key question in the Court’s First Amendment analysis in this case was “whether Minnesota’s ban on political apparel is ‘reasonable in light of the purpose served by the forum’: voting.”⁵⁴ The Court held that the term “political” in the Minnesota statute was too vague, and that the State had not shown that it had drawn a clear line between speech permitted in a polling station and speech deemed harmful to the forum’s functionality for voting purposes.⁵⁵ Accordingly, the Court reversed and remanded.⁵⁶

In order to reach this conclusion, the Court had to distinguish the instant case from *Burson v. Freeman*, which upheld a Tennessee statute which imposed a 100-foot campaign-free zone around polling place entrances.⁵⁷ The Court was able to distinguish *Burson* since it “considered only ‘active campaigning’ outside the polling place by campaign workers and others trying to engage voters approaching the polls....Minnesota’s law, by contrast, prohibits what MVA characterizes as ‘passive, silent self-expression by voters themselves when voting.’”⁵⁸ Clearly, the Court was persuaded by J. David Breemer, the Senior Attorney with the Pacific Legal Foundation, who argued on behalf of the successful petitioners.

When asked whether he approached the freedom of speech issues in *Mansky* differently, given that the political expression was on apparel, Breemer replied:

Yes. The silent, passive nature of the speech on apparel was central to some of our arguments. We contended that Political [sic] speech written on clothing is less invasive, less disruptive and more

⁵² *Id.*

⁵³ *Id.* (emphasis added).

⁵⁴ *Id.* at 1880.

⁵⁵ *Id.* at 1891.

⁵⁶ *Id.* at 1892.

⁵⁷ *Burson v. Freeman*, 504 U.S. 191 (1992).

⁵⁸ *Mansky*, 138 S. Ct. at 1887.

unlikely to result in conflict than more active/vocal forms of speech and protesting.⁵⁹

The Court also referred to two other “nondisruptive” nature-of-expression cases—*Jews for Jesus* (wearing of a T-shirt or button that contains a political message in an airport)⁶⁰ and *Tinker*⁶¹ (students wearing black armbands to protest the Vietnam War).⁶²

One important element of *Mansky* turned on the Minnesota statute’s “unmoored use of the term ‘political’”⁶³ in the context of prohibiting anyone at a polling station from wearing a “political button, or other political insignia.”⁶⁴ This vagueness was compounded by “haphazard interpretations the State has provided in official guidance and representations to this Court.”⁶⁵ This ambiguity led to interesting questions during the oral argument of *Mansky*, when the Justices and Breemer (Attorney for Petitioners) discussed whether the following items would be banned because they are “political”: shirts reading “AFL-CIO,” “Chamber of Congress,” or “NAACP” (Breemer);⁶⁶ a button or shirt that said “Restrain Government Spending” (Justice Sotomayor);⁶⁷ and, a “Please I.D. Me” button (Justice Ginsburg).⁶⁸ Moreover, Chief Justice Roberts observed:

[T]he Election Day Policy...poses riddles that even the State’s top lawyers struggle to solve. A shirt declaring “All Lives Matter”...could be “perceived”

⁵⁹ E-mail from J. David Breemer, Senior Attorney, Pacific Legal Foundation, to Joyce Boland-DeVito (May 29, 2019, 9:50 AM) (on file with author).

⁶⁰ *Mansky*, 138 S. Ct. at 1887 (quoting *Board of Airport Comm’rs of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569, 576 (1987)). This case involved a religious, rather than political, First Amendment claim by a minister of a religious group who was prevented from distributing religious literature at Los Angeles International Airport due to a ban on all First Amendment activities within the Central Terminal Area. *Board of Airport Comm’rs of Los Angeles*, 482 U.S. at 571.

⁶¹ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 508 (1969).

⁶² *Mansky*, 138 S. Ct. at 1887.

⁶³ *Id.* at 1888.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Transcript of Oral Argument at 13–14, *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018) (No. 16-1435).

⁶⁷ *Id.*

⁶⁸ *Id.* at 15.

as political....How about a shirt bearing the name of the National Rifle Association? Definitely out....[A] shirt displaying a rainbow flag could be worn, “*unless* there was an issue on the ballot” that “related somehow...to gay rights.”⁶⁹

Based on the fact that the Election Day Policy did not define the term “political,” Breemer argued that “in this instance it sweeps in so much material that’s not reasonabl[y] related to those interests.”⁷⁰ He also argued that “[a] lot of this material is not worn as advocacy or to influence but simply as self-expression,”⁷¹ and furthermore made the point that since “Minnesota’s statute bans all conventional political expression on apparel,” the law is “overbroad and unconstitutional.”⁷² If not overturned, this overbroad and unconstitutional ban on political apparel could have continued to result in a chilling effect on protected speech. Ultimately, a majority of the Court—Chief Justice Roberts joined by Associate Justices Kennedy, Thomas, Ginsburg, Alito, Kagan, and Gorsuch—concluded that Minnesota Statute Section 211B (1) violated the Free Speech Clause of the First Amendment.⁷³

C. *The Free-Speech Protection of Religious Identity Conveyed in Clothes*

Our clothing choices can make a “statement” not just about politics, but also our religious identity. For instance, a person who wears a cross on a necklace would most likely be a Christian, and Yarmulkes on men are an indicator of the Jewish faith. The Supreme Court analyzed this issue in *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, a case concerning the wearing of a headscarf as a religious practice.⁷⁴

⁶⁹ *Mansky*, 138 S. Ct. at 1891.

⁷⁰ Transcript of Oral Argument at 12, *Mansky*, 138 S. Ct. 1876 (2018) (No. 16-1435).

⁷¹ *Id.* at 24–25.

⁷² *Id.* at 3.

⁷³ In *Minnesota Voters Alliance v. Mansky*, Justice Sotomayor (joined by Associate Justice Breyer) filed a dissenting opinion in which they believed that “...Minnesota State courts should have had ‘a reasonable opportunity to pass upon’ and construe the statute.” 138 S. Ct. at 1893 (Sotomayor, J., dissenting).

⁷⁴ See *Equal Emp’t Opportunity Comm’n v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028 (2015).

When Samantha Elauf, a practicing Muslim, wore a headscarf when she applied for a position at an Abercrombie store, Heather Cooke, the assistant manager, evaluated Elauf and found her to be qualified to work at the store.⁷⁵ However, Cooke was concerned that Elauf's headscarf would violate Abercrombie's "Look Policy" which stated that employees could not wear a "cap."⁷⁶ Cooke asked her manager for clarification, but she did not receive an answer.⁷⁷ She subsequently asked Randall Johnson, the district manager.⁷⁸ Cooke told Johnson that she believed that Elauf wore her headscarf because of her religion.⁷⁹ Johnson told Cooke not to hire Elauf because her headscarf would be in violation of the Look Policy and that this rule applies to all headwear, religious or otherwise.⁸⁰ The Equal Employment Opportunity Commission ("EEOC") sued Abercrombie & Fitch on Elauf's behalf alleging that Abercrombie's refusal to hire Elauf was a violation of Title VII of the Civil Rights Act of 1964.⁸¹ The District Court granted the EEOC summary judgment on the issue of liability and held a trial on damages, awarding \$20,000.⁸²

On appeal, the Tenth Circuit reversed, awarding Abercrombie summary judgment.⁸³ The Tenth Circuit found that an employer ordinarily cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his or her need for an accommodation.⁸⁴ The U.S. Supreme Court granted *certiorari*.⁸⁵ Justice Scalia, in the majority opinion, set forth the laws on which the EEOC based its claims:

⁷⁵ *Id.* at 2031. *See also infra* Appendix, Figure 2.

⁷⁶ *Abercrombie & Fitch Stores*, 135 S. Ct. at 2031.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See* Equal Emp't Opportunity Comm'n v. Abercrombie & Fitch Stores, Inc., 731 F.3d 1106 (10th Cir. 2013).

⁸⁴ *Id.* at 1131.

⁸⁵ *Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. at 2028.

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, prohibits two categories of employment practices. It is unlawful for an employer: “(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”⁸⁶

Justice Scalia then analyzed the differences between “motive” and “knowledge” with regard to Title VII:

Motive and knowledge are separate concepts. An employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not his motive. Conversely, an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed. Thus, the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant’s religious practice, confirmed or otherwise, a factor in employment decisions.⁸⁷

Next, Justice Scalia discussed the role that Elauf’s headscarf plays in this case:

⁸⁶ *Id.* at 2031–32 (citing Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e–2(a)).

⁸⁷ *Id.* at 2033.

While a knowledge requirement cannot be added to the motive requirement, it is arguable that the motive requirement itself is not met unless the employer at least suspects that the practice in question is a religious practice—i.e., that he cannot discriminate “because of” a “religious practice” unless he knows or suspects it to be a religious practice. That issue is not presented in this case, since Abercrombie knew—or at least suspected—that the scarf was worn for religious reasons.⁸⁸

The majority reversed the judgment and remanded the case.⁸⁹ This case represents the economic ramifications, such as being denied an employment opportunity, that can occur from invidious assumptions about one’s religious beliefs based on an article of clothing.

Unfortunately, legal protections can only work retroactively, and do not prevent hate bias from occurring in the first instance. For example, on April 11, 2019, two high school girls in East Brunswick, New Jersey got into a fight over a seat in a common area on a public school campus.⁹⁰ One girl was arrested after pulling off the other girl’s hijab and screaming anti-Muslim statements which were captured on video and uploaded onto social media.⁹¹ The fight was determined to have been a bias incident according to East Brunswick Public Schools Superintendent Victor Valeski.⁹² The Middlesex County prosecutors charged the attacker with simple assault, harassment, cyber harassment, and disorderly conduct.⁹³ On the following Thursday night, hundreds of students and their

⁸⁸ *Id.* at 2033 n.3.

⁸⁹ *Id.* at 2034. Justice Scalia wrote for the majority, which consisted of himself, Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, Sotomayor and Kagan. Justice Alito concurred in the judgment. Justice Thomas concurred in part and dissented in part.

⁹⁰ See Brian Thompson & Checkey Beckford, *NJ Student Arrested After Pulling Off Girl’s Hijab, Shouting Anti-Muslim Slurs During Fight: Prosecutors, Superintendent*, NBC N.Y. (Apr. 11, 2019), <https://www.nbcnewyork.com/news/local/NJ-Student-Arrested-After-Pulling-Off-Girls-Hijab-Shouting-Anti-Muslim-Slurs-During-Fight-Prosecutors-Superintendent-508450341.html> [<https://perma.cc/QNL2-S7J9>].

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

families attended a school board meeting to talk about the incident.⁹⁴ Many were stunned to learn that the victim was also suspended under the school's zero tolerance policy, and one student wondered why the girl was suspended for merely defending herself.⁹⁵

D. The Intersection of Free-Speech Protections and Trademark-Registration Restrictions in Clothing Branding

Instead of religious expression, let us consider free speech in clothing in the commercial sphere—i.e., what if your brand name is unmentionable, or, more specifically, immoral or scandalous? The Supreme Court addressed this issue in *Iancu v. Brunetti*.⁹⁶ Erik Brunetti, an artist and entrepreneur, developed a brand based on the mark “FUCT”—an acronym of the expression “Friends U Can’t Trust” that is socially acceptable if articulated letter-by-letter but “may also be pronounced as a word with less savory connotations.”⁹⁷ In 2011, Brunetti filed an application to register his trademark “for use in connection with ‘athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps; children’s and infant’s apparel, namely, jumpers, overall sleepwear, pajamas, rompers and one-piece garments.’”⁹⁸ However, the examining attorney refused to register the mark under Section 2(a) of the Lanham Act, since it was “immoral or scandalous matter.”⁹⁹ Brunetti requested reconsideration and appealed to the Trademark Trial and Appeal Board, which affirmed the examining attorney’s refusal to register the mark.¹⁰⁰ The U.S. Court of Appeals for the Federal Circuit found that, although the Board did not err in concluding the mark should be excluded under Section 2(a) of the Lanham Act, the portion of Section 2(a) allowing an immoral or scandalous mark to be

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

⁹⁷ Rob Maier, *Supreme Court Strikes Down Prohibition on Immoral or Scandalous Trademarks*, N.Y. L.J. (July 23, 2019), <https://www.law.com/newyorklawjournal/2019/07/23/supreme-court-strikes-down-prohibition-on-immoral-or-scandalous-trademarks/?slreturn=20190712120102> [https://perma.cc/Z26F-3WAV]; see also *infra* Appendix, Figure 3.

⁹⁸ *Id.*

⁹⁹ *Iancu*, 139 S. Ct. at 2298.

¹⁰⁰ *Iancu v. Brunetti—Facts of the Case*, OYEZ, <https://www.oyez.org/cases/2018/18-302> [https://perma.cc/CTV2-5ATS].

refused registration was itself an unconstitutional restriction of free speech.¹⁰¹

Since a lower court had struck down a portion of a federal statute, the Supreme Court decided to grant *certiorari*.¹⁰² Justice Kagan delivered the opinion of the Court.¹⁰³ She stated that, in *Matal v. Tam*,¹⁰⁴ the U.S. Supreme Court invalidated the Lanham Act's bar on the registration for a trademark for a band name "The Slants" because it was a "disparaging" trademark.¹⁰⁵ The Court held unanimously that the provision violated the First Amendment because it discriminated on the basis of viewpoint.¹⁰⁶ In *Iancu v. Brunetti*, Justice Kagan wrote that the Court must consider a First Amendment challenge to a neighboring provision of the Act prohibiting the registration of "immoral or scandalous" trademarks.¹⁰⁷ The Court held that this provision infringes the First Amendment for the same reason: it too disfavors certain ideas.¹⁰⁸

II. FASHION STATEMENTS (AND MISSTATEMENTS) IN THE COURT OF POPULAR OPINION

One's choice of clothing and makeup can send a strong message, even if the message is an unintended one. Sometimes, what was acceptable or tolerated in the past no longer will be as the nation is more "woke."¹⁰⁹ Social media can spread these "messages" quickly throughout the world.

¹⁰¹ *Id.*

¹⁰² *Iancu*, 139 S. Ct. at 2298.

¹⁰³ Kagan, J., delivered the opinion of the Court, in which Thomas, Ginsburg, Alito, Gorsuch and Kavanaugh, JJ., joined. Alito, J., filed a concurring opinion. Roberts, C. J., and Breyer, J., filed opinions concurring in part and dissenting in part. Sotomayor, J., filed an opinion concurring in part and dissenting in part, in which Breyer, J., joined. *Id.* at 2294.

¹⁰⁴ *See Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

¹⁰⁵ *In re Tam*, 808 F.3d 1321, 1331 (Fed. Cir. 2015) (quoting 15 U.S.C. § 1052(a)). Simon Tam is the lead singer of a musical group "The Slants." *Id.* Even though the U.S. Patent and Trademark Office denied the application because it found that the name would likely be disparaging towards "persons of Asian descent," Simon chose this name in order to "reclaim" and "take ownership" of stereotypes about people of Asian ethnicity. *Id.*

¹⁰⁶ *Iancu*, 139 S. Ct. at 2297.

¹⁰⁷ *Id.* (quoting 15 U.S.C. § 1052(a)).

¹⁰⁸ *Id.* at 2297, 2302.

¹⁰⁹ Merriam-Webster Dictionary defines "woke" as American slang for being "aware of and actively attentive to important facts and issues (especially issues of racial and social

A. Politicians and Social Media Leaks of Racist Photos

Politicians often bear the brunt of scandalous social media leaks, as these figures are subjected to heightened, diligent media scrutiny. For instance, Prime Minister Justin Trudeau of Canada has promoted himself as a liberal who supports women's and Indigenous rights and welcomes immigrants.¹¹⁰ He casts himself as someone who stands up to President Trump and who fights climate change and, most importantly for this article, racism.¹¹¹ Therefore, many people were shocked when pictures and a video surfaced of Justin Trudeau made-up in blackface with an Afro wig (in high school) and in brownface (dressed as "Aladdin" at an Arabian Nights party) in the early 1990's and in 2001.¹¹² The social media firestorm that ensued nearly cost Trudeau his re-election as Canada's Prime Minister, but he narrowly won the race.¹¹³

In a similar scandal in the United States, *The Washington Post* reported that Virginia Governor Ralph Northam admitted that he appeared in a picture in his 1984 Eastern Virginia Medical School yearbook depicting one man wearing blackface makeup and another man wearing a Ku Klux Klan robe, although he did not identify which of the two he himself was.¹¹⁴ A day later, Governor Northam

justice)." *Woke*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/woke> [<https://perma.cc/25DM-7P8G>].

¹¹⁰ See, e.g., Catherine Tunney, *Trudeau Says Deaths and Disappearances of Indigenous Women and Girls Amount to 'Genocide'*, CBC (June 4, 2019, 1:32 PM), <https://www.cbc.ca/news/politics/trudeau-mmiwg-genocide-1.5161681> [<https://perma.cc/KSQ7-754Y>].

¹¹¹ See Dan Bilefsky & Ian Austen, *Will Canada Forgive Justin Trudeau?*, N.Y. TIMES (Oct. 21, 2019), <https://www.nytimes.com/2019/10/21/world/canada/trudeau-election.html> [<https://perma.cc/HZ3E-M25A>].

¹¹² These pictures were exposed just a few weeks before the Prime Minister elections. See Dan Bilefsky & Ian Austen, *New Video Surfaces Showing Trudeau in Blackface, Compounding Scandal*, N.Y. TIMES (Sept. 19, 2019), <https://www.nytimes.com/2019/09/19/world/canada/justin-trudeau-brownface-image.html> [<https://perma.cc/4STB-269G>].

¹¹³ See Jessica Murphy, *Justin Trudeau: The Good News—and Bad—for Canada's PM*, BBC (Oct. 22, 2019), <https://www.bbc.com/news/world-us-canada-50130391> [<https://perma.cc/D4UQ-GFAA>].

¹¹⁴ Laura Vozzella, Jim Morrison & Gregory S. Schneider, *Virginia Politics—Gov. Ralph Northam Admits He Was in 1984 Yearbook Photo Showing Figures in Blackface, KKK Hood*, WASH. POST (Feb. 1, 2019), <https://www.washingtonpost.com/local/virginia-politics/va-gov-northams-medical-school-yearbook-page-shows-men-in-blackface-kek->

denied that he was either of the people in this photograph.¹¹⁵ Eastern Virginia Medical School hired an independent law firm to investigate the photograph, but the results were inconclusive.¹¹⁶ This political crisis has left Governor Northam with a “believability¹¹⁷ problem,” not surprising considering Northam, as a pediatric neurologist, is not a “natural politician” and demonstrated an astounding lack of foresight and crisis management, both traits that are increasingly necessary in today’s political environment that feasts off of social media to break the latest news.¹¹⁸ Republicans have given Governor Northam the nickname “Governor Blackface,”¹¹⁹ because he disclosed that in 1984 he used shoe polish to darken his face to dress up as Michael Jackson at a dance contest.¹²⁰

This is not the only misstep that a Virginia politician has made. Mark Herring, the Attorney General of Virginia, has acknowledged that he wore blackface to look like a rapper when he went to a party in 1980 as an undergraduate at the University of Virginia.¹²¹ Although Governor Northam and Attorney General Herring have retained their jobs, television talk show host Megyn Kelly lost hers after she made comments during a broadcast on October 23, 2018 that appeared to defend the wearing of blackface on Halloween.¹²²

robe/2019/02/01/517a43ee-265f-11e9-90cd-dedb0c92dc17_story.html?utm_term=.767745241763 [https://perma.cc/6TF5-7XCQ].

¹¹⁵ Gregory S. Schneider & Laura Vozzella, *How Virginia Gov. Ralph Northam and Aides Made His Blackface Scandal Even Worse*, WASH. POST (May 26, 2019), https://www.washingtonpost.com/local/virginia-politics/how-va-gov-ralph-northam-and-aides-made-his-blackface-scandal-even-worse/2019/05/25/9a096912-7da0-11e9-8ede-f4abf521ef17_story.html?utm_term=.ea7e1193c6a6 [https://perma.cc/W947-DWWS].

¹¹⁶ *Id.*

¹¹⁷ *Id.* (quoting Marcus Messner, Associate Director of Virginia Commonwealth University’s School of Media and Culture).

¹¹⁸ *See id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Dan Mangan & Kevin Breuninger, *Virginia Attorney General Mark Herring, Third in Line for Governor, Wore Blackface in College*, CNBC (Feb. 6, 2019), <https://www.cnbc.com/2019/02/06/virginia-attorney-general-mark-herring-wore-blackface-in-college.html> [https://perma.cc/B7Z3-4SR9].

¹²² *See* Maeve McDermott, *Megyn Kelly Addresses Blackface Controversy on the Air: ‘I Was Wrong, and I Am Sorry’*, USA TODAY (Oct. 24, 2018), <https://www.usatoday.com/story/life/people/2018/10/24/megyn-kelly-addresses-blackface-controversy-today-show-criticism-backlash/1748355002/> [https://perma.cc/9JG3-NARQ]; *see also* Megyn Kelly, WIKIPEDIA, https://en.wikipedia.org/wiki/Megyn_Kelly [https://perma.cc/JKG4-Q65Q].

Although she apologized the next day, NBC pulled the “Megyn Kelly Today” hour-long program off the air, and she left NBC in January of 2019.¹²³

B. Cultural Gaffes by Major Fashion Houses and Designers

However, politicians are not the only major figures to make social and cultural missteps. Even luxury designers can wind up sending garbled or “tone deaf” messages through their fashion statements. In November of 2018, Prada distributed its *Pradamalia* line of products ranging in price from \$260 to \$860, which their website described as “a new family of mysterious tiny creatures that are one part biological, one part technological, all parts Prada.”¹²⁴ However, Prada evidently did not recognize that “one part” was offensive. One of the seven characters was made into:

some merchandise depicting monkey-like figures with black faces and large red lips. New York-based civil rights attorney Chinere Ezie spotted the products at the Prada store in Manhattan’s SoHo shopping district by happenstance . . . after recently returning from a conference in Washington. While in the nation’s capital, she visited the Smithsonian National Museum of African American History and Culture. She wrote on Facebook that she was struck by how the items looked similar to images she saw in an exhibit on blackface at the museum and that seeing the products left her “shaking with anger.”¹²⁵

Prada withdrew the offending products the following month and apologized in a tweet stating: “#Prada Group abhors racist imagery. The Pradamalia are fantasy charms They are imaginary creatures not intended to have any reference to the real world and certainly not blackface.”¹²⁶

¹²³ See Megyn Kelly, *supra* note 122.

¹²⁴ See Laura Ly, *Prada Pulls Products After Accusations of Blackface Imagery*, CNN (Dec. 14, 2018), <https://www.cnn.com/style/article/prada-pulls-products-blackface-imagery/index.html> [<https://perma.cc/P74M-XSB8>].

¹²⁵ *Id.*

¹²⁶ PRADA (@Prada), TWITTER (Dec. 14, 2018, 8:25 AM), <https://twitter.com/prada/status/1073614897207017481?lang=en> [<https://perma.cc/NP9V-W753>].

Likewise, Gucci withdrew a sweater costing \$890 that had a pull-up neck with a cut-out mouth and “cartoonish red lips.”¹²⁷ Gucci’s creative Director, Alessandro Michele, said that he was saddened that “people who saw in one of my creative projects an intolerable insult.”¹²⁸ He explained that the sweater was inspired by Leigh Bowery, a performance artist and designer who often used over-the-top face makeup and costumes, not by blackface.¹²⁹

Singer Katy Perry found herself in a similar position to Prada and Gucci when shoes that were part of her fashion line, Katy Perry Collections, appeared to have blackface elements.¹³⁰ The shoes were available in nine different colors, including black, and were decorated with eyes, a wide triangular nose and large red lips.¹³¹ Katy Perry apologized: “I was saddened when it was brought to my attention that it was being compared to painful images reminiscent of blackface Our intention was never to inflict any pain. We have immediately removed them from <http://katyperrycollection.com>.”¹³²

Racial insensitivity is not the only type of gaffe a fashion house or designer has committed. In 2015, CNN reported that clothing retailer Urban Outfitters had received a letter from the Anti-Defamation League condemning its sale of shirts which looked like the prison uniforms that gay prisoners were forced to wear during the Holocaust—grey and white striped tops with a pink

¹²⁷ *Gucci Creative Head Breaks Silence Over ‘Blackface’ Sweater*, AP NEWS (Feb. 12, 2019), <https://apnews.com/6dbb88f741a747f7b082e4598d603679> [<https://perma.cc/XP4L-CUNL>]; see also Tiffany Hsu & Elizabeth Paton, *Gucci and Adidas Apologize and Drop Products Called Racist*, N.Y. TIMES (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/business/gucci-blackface-adidas-apologize.html> [<https://perma.cc/D8X8-PCHJ>].

¹²⁸ AP NEWS, *supra* note 127.

¹²⁹ Hsu & Paton, *supra* note 127.

¹³⁰ See Christina Caron, *Katy Perry Pulls Shoes Resembling Blackface: ‘Our Intention Was Never to Inflict Any Pain’*, N.Y. TIMES (Feb. 12, 2019), <https://www.nytimes.com/2019/02/12/style/katy-perry-blackface-shoes.html> [<https://perma.cc/G7TB-3JSW>].

¹³¹ *Id.*

¹³² *Id.* Other fashion statements that sent the wrong message include H&M’s advertisement for a sweatshirt with the inscription “Coolest Monkey in the Jungle” that was on a young African-American model. See Hsu & Paton, *supra* note 127. Adidas had a misstep with its all-white sneaker which was intended to commemorate Black History Month. *Id.*

triangle—as “deeply offensive.”¹³³ Zara, the Spanish fashion retailer, offered a shirt that sent a similarly wrong message. Even though it was advertised as a “sheriff shirt” because of the large yellow star on the chest, the shirt was reminiscent of the striped uniform shirts worn by concentration camp inmates during World War II.¹³⁴

Moreover, Urban Outfitters’ insensitivity to the Holocaust was not the first time that this organization made the wrong “fashion statement” with their clothing. The retailer also sold vintage-style sweatshirts labeled “Kent State,” decorated with what appeared to be bullet holes stained with blood.¹³⁵ This design had great potential to cause offense because Kent State had been the site of a Vietnam War protest in 1970 in which four university students were killed and nine were wounded.¹³⁶ In another example of a controversial design choice, PacSun upset some customers when it offered rapper A\$AP Rocky’s T-shirt for sale because the garment featured an upside-down American flag,¹³⁷ which can be viewed as a sign of desecration or distress.¹³⁸

C. Cultural Inspiration vs. Cultural Appropriation—Is Social Media Overreacting?

Fashion misstatements can be based on expressions of hate, such as KKK garb displayed on Governor Northam’s yearbook, or they can be based on racist caricatures¹³⁹ (e.g., blackface).

¹³³ See Melonyce McAfee, *Urban Outfitters Product ‘Reminiscent’ of Holocaust?*, CNN (Feb. 10, 2015, 10:44 AM), <https://www.cnn.com/2015/02/10/living/feat-urban-outfitters-adl-holocaust-triangle/index.html> [<https://perma.cc/DL5Y-GD6L>].

¹³⁴ See *id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See Michael L. Betsch, *Upside-Down Flag Angers Veterans*, CNS NEWS (July 7, 2008, 8:03 PM), <https://web.archive.org/web/20140324224554/http://cnsnews.com/news/article/upside-down-flag-angers-veterans> [<https://perma.cc/Z933-T6PU>].

¹³⁸ *Id.*

¹³⁹ Ernesto Londoño, *Vogue Brazil Fashion Director Resigns Over Photos That Evoke Slavery Era*, N.Y. TIMES (Feb. 15, 2019), <https://www.nytimes.com/2019/02/15/world/americas/vogue-brazil-fashion-director-quits-slavery.html?login=smartlock&auth=login-smartlock> [<https://perma.cc/6YYY-7NM5>].

Fashion misstatements can also arise from cultural appropriation.¹⁴⁰ Professor Susan Scafidi, founder of the Fashion Law Institute at Fordham University School of Law, addressed a prime example of cultural appropriation in a *Time* article discussing African-American musician Pharrell wearing a Native American headdress on the magazine cover for *Elle UK*: “Where do we draw the line between cultural inspiration and cultural appropriation? And if cultural cross-dressing is a particularly dangerous game, especially in the era of the all-seeing Internet, why do stars and stylists alike continue to risk offense?”¹⁴¹ Currently, Lil Nas X, an African-American artist who raps the song “Old Town Road” while Billy Ray Cyrus sings, is being accused of stealing “cowboy culture.”¹⁴² Lil Nas X raps about “Wrangler on my booty.”¹⁴³ Wrangler entered into an agreement with the rapper and they introduced the new Wrangler Lil Nas X Collection. “But the collection, which features the song’s title and catchy lyrics on Wrangler jeans and tees, appears to be attracting the wrong kind of attention. In fact, many fans have threatened to boycott the company in what they deem to be ‘cultural appropriation.’”¹⁴⁴

Even an eighteen-year-old girl going to prom is not off-limits. Keziah Daum, who appears to be white, wore a *cheongsam* (a red, Chinese dress) to her prom in Utah and posted pictures on Twitter.¹⁴⁵ Jeremy Lam, a Twitter user, retweeted her post and accused Keziah of being a racist and of culturally appropriating Chinese fashion and

¹⁴⁰ SUSAN SCAFIDI, *WHO OWNS CULTURE?: APPROPRIATION AND AUTHENTICITY IN AMERICAN LAW* 10 (Rutgers Univ. Press 2005).

¹⁴¹ Susan Scafidi, *When Native American Appropriation Is Appropriate*, *TIME* (June 6, 2014), <http://time.com/2840461/pharrell-native-american-headdress/> [https://perma.cc/FCY3-6VVK].

¹⁴² Cydney Henderson, *Wrangler’s Lil Nas X ‘Old Town Road’ Collection Slammed as Cowboy ‘Cultural Appropriation’*, *USA TODAY* (May 24, 2019, 7:53 AM), <https://www.usatoday.com/story/life/entertainthis/2019/05/23/wranglers-old-town-road-slammed-cowboy-cultural-appropriation/1214099001/> [https://perma.cc/5R5W-QKBM].

¹⁴³ Mike Thiel, *Lil Nas X Has Released a Wrangler Collab and Reactions Are Mixed*, *TASTE OF COUNTRY* (May 21, 2019), <https://tasteofcountry.com/lil-nas-x-wrangler-jeans/> [https://perma.cc/5SGM-33HH].

¹⁴⁴ Henderson, *supra* note 142.

¹⁴⁵ Samantha Schmidt, *‘It’s Just a Dress’: Teen’s Chinese Prom Attire Stirs Cultural Appropriation Debate*, *WASH. POST* (May 1, 2018, 5:09 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2018/05/01/its-just-a-dress-teens-chinese-prom-attire-stirs-cultural-appropriation-debate/> [https://perma.cc/65ZR-WGPE].

history.¹⁴⁶ His post stated: “My culture is NOT your goddamn prom dress.”¹⁴⁷ This post went viral, and the story was even picked up by the South China Morning Post, which supported Ms. Daum.¹⁴⁸ Ms. Daum claims that she “admires Chinese culture and loved the beauty of the dress.”¹⁴⁹ In contrast to the apologies for the controversial fashion statements discussed above, Ms. Daum said that she does not regret choosing the dress and would wear it again.¹⁵⁰ One could argue that Ms. Daum is expressing “cultural appreciation”¹⁵¹ of the Chinese dress, not “cultural appropriation.”¹⁵²

A French designer, Isabel Marant, was criticized for copying a traditional shirt design that is made by a small community of indigenous Southern Mexican women.¹⁵³ They complained that “Isabel Marant is committing a plagiarism because the Etoile spring-summer 2015 collection contains the graphical elements specific to the Tlahuitoltepec blouse....”¹⁵⁴ The Mexican women initially sought “reparation” damages,¹⁵⁵ but later stated they “do not want any money, but that their work be recognized.”¹⁵⁶ Strangely, in a

¹⁴⁶ Daniella Greenbaum, *Nonsensical Critics Are Accusing an 18-year-old Girl of Cultural Appropriation and Racism—and They’re Missing Something Much Bigger*, BUS. INSIDER (May 2, 2018, 4:51 PM), <https://www.businessinsider.com/keziah-daum-twitter-dress-controversy-racism-2018-5> [<https://perma.cc/QK7V-XCVW>].

¹⁴⁷ *Id.*; see also Jere Bare (@jere_bare), TWITTER (Apr. 27, 2018, 2:34 PM), https://twitter.com/jere_bare/status/989981023076208640?lang=en [<https://perma.cc/2MVM-8UZL>].

¹⁴⁸ See Louise Moon, *Chinese Dress at US Prom Wins Support in China After Internet Backlash*, S. CHINA MORNING POST (May 1, 2018, 6:30 PM), <https://www.scmp.com/news/china/society/article/2144207/qipao-us-prom-wins-support-china-after-internet-backlash> [<https://perma.cc/FEB5-DF6V>].

¹⁴⁹ See Greenbaum, *supra* note 146.

¹⁵⁰ See *id.*

¹⁵¹ SCAFIDI, *supra* note 140, at 6.

¹⁵² Scafidi, *supra* note 141.

¹⁵³ Naomi Larsson, *Inspiration or Plagiarism? Mexicans Seek Reparations for French Designer’s Look-alike Blouse*, GUARDIAN (June 17, 2015), <https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant> [<https://perma.cc/H2L7-3GZQ>].

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Julianne Escobedo Shepherd, *Court Rules High-End French Label Doesn’t Own Rights to Indigenous Oaxacan Design*, JEZEBEL (Dec. 7, 2015, 1:45 PM), <https://themuse.jezebel.com/court-rules-high-end-french-label-doesnt-own-rights-to-1746670361> [<https://perma.cc/6YG2-PJBV>].

suit not brought by the Southern Mexican women, the French high court ruled that the shirt design did indeed belong to those women.¹⁵⁷ The original blouse is sold for approximately 300 pesos in Mexico and the French piece was offered for sale on Net-A-Porter for an amount that is worth approximately 4500 pesos.¹⁵⁸ The women, who are members of the Mixe Community in Santa Maria Tlahuitoltepec, Oaxaca in southern Mexico, believe that their traditional dress is a “symbol of their identity.”¹⁵⁹

Kim Kardashian West¹⁶⁰ has faced multiple accusations of cultural appropriation. In one instance, the reality television star has been criticized for her choice of a name for her new business venture. Kardashian West was about to file for trademarks for a new brand of shapewear (similar to Spanx) called “Kimono.”¹⁶¹ Daisaku Kadokawa, the mayor of Japan’s former capital city, Kyoto, criticized Kardashian West in a letter addressed to her that he publicly posted on his Facebook page.¹⁶² In the letter, he shared his thoughts

¹⁵⁷ See *id.* The suit was brought by a competitor of Marant, Antik Batik, who tried to seek copyright for themselves on the shirt design.

¹⁵⁸ See Larsson, *supra* note 153.

¹⁵⁹ *Id.*

¹⁶⁰ As an interesting aside, and somewhat ironically, Kim Kardashian is currently studying as an apprentice to become an attorney in California. See Sara Bliss, *Kim Kardashian Is Becoming a Lawyer: What Her Move Can Teach You About Making a Career Leap*, FORBES (Apr. 18, 2019, 1:38 PM), <https://www.forbes.com/sites/sarabliss/2019/04/18/kim-kardashian-is-becoming-a-lawyer-what-her-move-can-teach-you-about-making-a-career-leap/#4ea42b2148d2> [<https://perma.cc/2QWE-SYST>]. This is a rarity. California is only one of four states to allow apprenticeships along with Washington, Vermont and Virginia. *Id.* In 2017, only seventy of the approximately 70,000 people sitting for the California bar exam had taken the apprenticeship route. *Id.* Kim is studying with two attorneys, Erin Haney (National Policy Director) and Jessica Jackson (Co-founder) of #cut50, an initiative of the Dream Corps, which aims to reduce the number of people in our prisons and jails while making our communities safer. See DREAM CORPS #CUT50, www.the.dreamcorps.org/our-programs/cut50/ [<https://perma.cc/EM9S-LPVR>]. The goal of #cut50 is to reduce crime and incarceration across all fifty states. See *id.* Kardashian was inspired to study law (and join the same profession as her late father, one of O.J. Simpson’s attorneys, Robert Kardashian) when she helped the criminal justice reform group #cut50 to win the release of sixty-three-year-old nonviolent drug offender Alice Marie Johnson. See Bliss, *supra* note 160.

¹⁶¹ Lauren Thomas, *Kim Kardashian Is Renaming Her ‘Kimono’ Company After Causing an Uproar*, CNBC (July 1, 2019, 1:17 PM), <https://www.cnn.com/2019/07/01/kim-kardashian-is-renaming-her-kimono-company-after-causing-uproar.html> [<https://perma.cc/GBE7-RDP6>].

¹⁶² *Id.*

about the term “Kimono,” and encouraged Kardashian West to think about changing the name “Kimono” in her trademark¹⁶³:

Kimono is a traditional ethnic dress fostered in our rich nature and history with our predecessors’ tireless endeavours and studies, and it is a culture that has been cherished and passed down with care in our living....I would like you to visit Kyoto, where many Japanese cultures including Kimono have been cherished, to experience the essence of Kimono Culture and understand our thoughts and our strong wish.¹⁶⁴

Due to the backlash, Kardashian West announced that she will change the name of the new brand.¹⁶⁵ On the other hand, Kardashian West, who is white, has not backed down from her choice to wear Fulani braids.¹⁶⁶ The beauty icon and entrepreneur wore the West-African-inspired braids to the MTV Movie & TV Awards on June 16, 2018.¹⁶⁷ Commenting on her motives and the public’s response, she said: “I actually didn’t see backlash. I actually did that look because North said she wanted braids and asked if I would do them with her. So we braided her hair and then we braided my hair....”¹⁶⁸ Kardashian West and her biracial five-year-old daughter, North, have worn matching braided hairstyles.¹⁶⁹ Kardashian West’s comment raises the fine line between cultural appreciation and cultural appropriation, and it would be interesting to see if she is educating her daughter North on the cultural history of the fashion choices she and her mother Kim are making.

Certain items of clothing are more overt in their controversy by *literally* making a statement. For example, designer Off-White’s

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Sara Tan, *Kim Kardashian Explains Why She Wears Fulani Braids Despite All the Internet Backlash*, BUSTLE (June 20, 2018), <https://www.bustle.com/p/kim-kardashian-explains-why-she-wears-fulani-braids-despite-all-the-internet-backlash-9505337> [<https://perma.cc/7F6Z-GFE6>].

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

little black dress has contrasting white lettering “Little Black Dress” vertically along the side of the garment.¹⁷⁰ Similarly, Viktor & Rolf’s Soir Fall/Winter 2019 line of dresses has expressions on them like “No photos please,” “Trust me I am a liar,” “I want a better world,” and some with explicit profanity.¹⁷¹ By boldly presenting messages in literal lettering on the clothes themselves, these designers are sending manifest fashion statements, in contrast to the fashion statements described in the next Section.

D. Fashion as a Demonstrator and Instigator of Protest

However, sometimes fashion need not be so overt as Viktor & Rolf’s fashion line to make a clear political statement. For instance, during President’s Barack Obama’s administration, a piece of clothing made a defiant political comment on the death of Trayvon Martin and controversy in the public discourse surrounding his death. Martin was described as wearing “a dark hoodie, a gray hoodie”¹⁷² by George Zimmerman, a twenty-eight-year-old neighborhood watch volunteer in a gated community in Sanford, Florida. Zimmerman described the “suspicious guy” in this manner to a 911 dispatcher before shooting Martin dead on February 26, 2012, later claiming self-defense.¹⁷³ Linton Weeks described the arc of the hoodie-focused controversy in an article for *NPR*:

On Friday, Geraldo Rivera said on the Fox & Friends TV show that “the hoodie is as much responsible for Trayvon Martin’s death as George Zimmerman was.” Rivera warned parents not to let their children wear hoodies—unless it is raining or they are at a track-and-field event. He said it sends a sinister signal. “You cannot rehabilitate the hoodie,” Rivera

¹⁷⁰ See Tora Northman, *Off-White™’s Latest Piece Is Literally a “LITTLE BLACK DRESS”*, HYPEBAE (Oct. 11, 2018), <https://hypebae.com/2018/10/off-white-virgil-abloh-little-black-dress-print> [<https://perma.cc/886R-PQ4P>].

¹⁷¹ Amy Verner, *Spring 2019 Couture—Viktor & Rolf*, VOGUE (Jan. 23, 2019), <https://www.vogue.com/fashion-shows/spring-2019-couture/viktor-rolf> [<https://perma.cc/9XHA-FGTY>].

¹⁷² Linton Weeks, *Tragedy Gives the Hoodie a Whole New Meaning*, NPR (Mar. 24, 2012), <https://www.npr.org/2012/03/24/149245834/tragedy-gives-the-hoodie-a-whole-new-meaning> [<https://perma.cc/S4ND-7XTY>].

¹⁷³ *Id.*

said. “Stop wearing it.” But supporters of Martin and his family are saying the opposite. As a sign of solidarity, a number of Americans are donning hoodies and marching. “We are all...Trayvon Martin,” they chant. Hundreds of supporters walked in a Million Hoodie March in New York earlier in the week. On Saturday, another group plans to rally in Washington, and gatherings have been scheduled for other cities, too.¹⁷⁴

Another example of fashion as a medium of political discourse arose from the death of Eric Garner. A video recording of Officer Daniel Panteleo using a chokehold on Mr. Garner on July 17, 2014, as he and other officers tried to subdue Mr. Garner for selling loose cigarettes in Staten Island, New York, shows Mr. Garner repeatedly saying, “I can’t breathe.”¹⁷⁵ Mr. Garner’s death was seen as “a watershed moment, forcing a reckoning over how the department engaged with its residents. Across the country, his last words—‘I can’t breathe’—became a battle cry for the Black Lives Matter movement”¹⁷⁶ Richmond County (Staten Island) District Attorney Daniel Donovan Jr. stated that the case against Daniel Panteleo would go to a grand jury.¹⁷⁷ On December 3, 2014, the grand jury decided not to indict Officer Panteleo.¹⁷⁸ At that point in time, professional athletes such as NFL players (e.g., Reggie Bush, Ryan Davis, Cecil Shorts III, Marqise Lee, Ace Sanders, and Allen Hurns) and NBA players (e.g., LeBron James, Kobe Bryant, Kyrie Irving, Kevin Garnett, Derrick Rose, Jarrett Jack, and Deron Williams) wore T-shirts bearing the phrase “I can’t

¹⁷⁴ *Id.*

¹⁷⁵ See Ashley Southall, Ali Watkins & William K. Rashbaum, *Daniel Panteleo, N.Y.P.D. Officer in Eric Garner’s Death, Should Be Fired, Judge Says*, N.Y. TIMES (Aug. 2, 2019), <https://www.nytimes.com/2019/08/02/nyregion/eric-garner-daniel-panteleo.html> [<https://perma.cc/3ERP-92VM>].

¹⁷⁶ *Id.*

¹⁷⁷ See Andrew Siff, *Eric Garner Death Case Will Go to Grand Jury, Staten Island District Attorney Says*, NBC N.Y. (Aug. 19, 2014, 11:20 AM), <https://www.nbcnewyork.com/news/local/Staten-Island-Prosecutor-Donovan-Eric-Garner-Death-Chokehold-Grand-Jury-Police-Investigation-Homicide-271850281.html> [<https://perma.cc/99F7-BBLN>].

¹⁷⁸ See *Timeline: Eric Garner Death*, NBC N.Y. (Dec. 3, 2014, 4:12 PM), <https://www.nbcnewyork.com/news/local/Timeline-Eric-Garner-Chokehold-Death-Arrest-NYPD-Grand-Jury-No-Indictment-284657081.html> [<https://perma.cc/G6PT-FA53>].

breathe” during pregame warmups.¹⁷⁹ In addition, an entire NBA team, the Phoenix Suns, wore the T-shirts.¹⁸⁰ Both President Obama and Attorney General Holder praised LeBron James for wearing the shirt.¹⁸¹ The Georgetown University Men’s Basketball team wore “I can’t breathe” T-shirts, as well as the members of the University of Notre Dame Women’s Basketball team.¹⁸²

Conversely, fashion can sometimes make an inadvertent political statement and spark backlash. For example, on June 21, 2018, President Donald Trump’s wife and First Lady, Melania, visited a Texas holding center that housed undocumented children who were temporarily placed there after they had been separated from their parents. The First Lady wore a jacket with printing on the back that

¹⁷⁹ See, e.g., Curtis Crabtree, *Jaguar Players Wear ‘I Can’t Breathe’ Shirts in Pregame Warm Ups*, NBC SPORTS: PRO FOOTBALL TALK (Dec. 19, 2014, 12:35 AM), <https://profootballtalk.nbcsports.com/2014/12/19/jaguars-players-wear-i-cant-breathe-shirts-in-pregame-warm-ups/> [https://perma.cc/U82M-YVTJ]; Ed Payne, *NBA and NFL Players Join Demonstrations Against Police Violence*, CNN (Dec. 9, 2014, 2:35 PM), <http://www.cnn.com/2014/12/09/us/athletes-police-protest/> [https://perma.cc/D8EC-HTFS]; William C. Rhoden, *Social Convictions Don’t Tuck Neatly Into N.B.A.’s Interests*, N.Y. TIMES (Dec. 9, 2014), <https://www.nytimes.com/2014/12/10/sports/basketball/adam-silver-likes-show-of-support-but-not-with-i-cant-breathe-pregame-shirts.html?smid=pl-share> [https://perma.cc/SW7R-MVSC]; Chris Greenberg, *Kobe Bryant, Lakers Teammates Wear ‘I Can’t Breathe’ T-Shirts*, HUFFINGTON POST (Dec. 10, 2014), https://www.huffpost.com/entry/kobe-lakers-i-cant-breathe-shirts_n_6298944 [https://perma.cc/5VVC-X7NV].

¹⁸⁰ See *Phoenix Suns Don ‘I Can’t Breathe’ T-Shirts Before Game vs. Milwaukee Bucks*, ARIZ. SPORTS (Dec. 21, 2014, 8:19 AM), <https://web.archive.org/web/20141216233250/http://arizonasports.com/41/1791769/Phoenix-Suns-don-I-Cant-Breathe-T-shirts-before-game-vs-Milwaukee-Bucks> [https://perma.cc/5TLZ-XJAZ].

¹⁸¹ Charlotte Alter, *Obama Says LeBron ‘Did the Right Thing’ for Wearing ‘I Can’t Breathe’ Shirt*, TIME (Dec. 18, 2014), <https://time.com/3641145/obama-praises-lebron-james-eric-garner-shirt/> [https://perma.cc/4BVF-H6HD]; Justin Sink, *Holder Praises NBA Stars for ‘I Can’t Breathe’ Shirts*, HILL (Dec. 15, 2014, 11:28 AM), <https://thehill.com/homenews/administration/227133-holder-praises-nba-stars-for-i-cant-breathe-t-shirts> [https://perma.cc/4NXW-R6TG].

¹⁸² See Des Bieler, *Hoyas Wear ‘I Can’t Breathe’ Shirts*, WASH. POST (Dec. 10, 2014, 10:09 PM), <https://www.washingtonpost.com/news/dc-sports-bog/wp/2014/12/10/hoyas-wear-i-cant-breathe-shirts/> [https://perma.cc/74ZL-GWSZ]; Al Lesar, *Notre Dame Women’s Players Wear ‘I Can’t Breathe’ T-Shirts*, ELKHART TRUTH (Dec. 14, 2014, 7:47 AM), <https://archive.is/20141221005222/http://www.elkharttruth.com/sports/college-sports/notre-dame-university/2014/12/14/Notre-Dame-women-s-players-wear-I-Can-t-Breathe-T-shirts-1.html> [https://perma.cc/XH9Y-CNHJ].

stated: “I don’t really care, do u?”¹⁸³ The olive green hooded military style jacket with graffiti style white printing came from Zara, the Spanish fast fashion¹⁸⁴ brand, and was part of their Spring-Summer 2016 season with a retail price of \$39.00.¹⁸⁵ The First Lady changed into a light yellow jacket before landing in McAllen, Texas and visiting the Upbring New Hope Children’s Center, which holds fifty-five migrant children.¹⁸⁶ The First Lady changed back into the green jacket before being photographed by the throng of photographers who had gathered to take pictures of her return to Washington, D.C.¹⁸⁷ Rebecca Jennings issued the following report on the controversy for racked.com:

When Melania Trump wore a jacket with the phrase “I really don’t care, do u?” scrawled on the back to visit detained migrant children at the US-Mexico border, it was almost unbelievable, at least at first. Political commentators were quick to ask how the First Lady could possibly make such a tone-deaf choice on such a high-stakes engagement—didn’t she have a stylist and a team of professionals on hand specifically to avoid this sort of thing? According to recently ousted White House aide and former *Apprentice* contestant Omarosa Manigault-Newman,

¹⁸³ Gina Martinez, *Melania Trump: ‘I Don’t Really Care’ Jacket Was a Message to ‘Left-Wing’ Critics*, TIME (Oct. 13, 2018), <https://time.com/5424073/melania-trump-i-dont-really-care-jacket-message/> [<https://perma.cc/8V5B-R5BE>]; see also *infra* Appendix, Figure 4.

¹⁸⁴ Merriam-Webster’s Dictionary defines “fast fashion” as “an approach to the design, creation, and marketing of clothing fashions that emphasizes making fashion trends quickly and cheaply available to consumers.” *Fast Fashion*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/fast%20fashion> [<https://perma.cc/74EM-4E7K>].

¹⁸⁵ Leanne Italie & Darlene Superville, *Melania Trump Dons ‘I Really Don’t Care, Do U?’ Jacket*, AP NEWS (June 22, 2018), <https://apnews.com/cf927d4412604313af8ac0d81b8c540f> [<https://perma.cc/ZU33-V7WC>].

¹⁸⁶ *Id.*

¹⁸⁷ Katie Rogers, *Melania Trump Wore a Jacket Saying ‘I Really Don’t Care’ on Her Way to Texas Shelters*, N.Y. TIMES (June 21, 2018), <https://www.nytimes.com/2018/06/21/us/politics/melania-trump-jacket.html> [<https://perma.cc/VE79-ACJN>].

however, it was actually a form of intermarital [sic] sabotage.¹⁸⁸

Omarosa Manigault-Newman had alleged in her book *Unhinged: An Insider's Account of the Trump White House* that:

I believe Melania uses style to punish her husband. It's my opinion that Melania was forced to go to the border that day in June, essentially, to mop up her husband's mess. She wore that jacket to hurt Trump, setting off a controversy that he would have to fix, prolonging the conversation about the administration's insensitivity, ruining the trip itself, and trying to make sure that no one asked her to do something like that again. Not that Melania doesn't have compassion for immigrant children; I'm sure she does. But she gladly, spitefully, wrecked her husband's directives to make him look foolish.¹⁸⁹

The First Lady's "fashion statement" set off discussions in the media, such as on CNN.¹⁹⁰ At first, Stephanie Grisham, the First Lady's spokesperson, claimed that there was no message behind Mrs. Trump's choice of apparel. "It's a jacket," she said in response to media inquiries. "There was no hidden message."¹⁹¹ Later, in an ABC News interview, the First Lady told journalist Tom Llamas that, during her trip to Africa in October of 2018, she had chosen to wear the "I really don't care, do u?" jacket "for the people and for the left-wing media who are criticizing me. And I want to show them that I don't care."¹⁹² This statement is in line with the President's

¹⁸⁸ Rebecca Jennings, *Omarosa Says Melania's Jacket Was Actually Sabotage*, RACKED (Aug. 15, 2018, 12:20 PM), <https://www.racked.com/2018/8/15/17690684/omarosa-unhinged-melania-trump-jacket> [<https://perma.cc/CTD7-2TAE>].

¹⁸⁹ OMAROSA MANIGAULT-NEWMAN, *UNHINGED: AN INSIDER'S ACCOUNT OF THE TRUMP WHITE HOUSE* 327 (2018).

¹⁹⁰ See, e.g., Chris Cillizza, *Melania Trump Totally Changed Her Story on the 'I Really Don't Care' Jacket*, CNN (Oct. 14, 2018, 10:47 AM), <https://www.cnn.com/2018/10/13/politics/melania-trump-jacket-i-really-dont-care-do-u/index.html> [<https://perma.cc/BY87-R2RS>].

¹⁹¹ *Id.*

¹⁹² *Id.*

explanation when the First Lady originally made her trip to the border in June of 2018.¹⁹³ A CNN analyst observed:

So, Melania and Donald Trump are now on the same page. But Melania Trump from June and Melania Trump from October are not. At one level, this is all dumb. Who cares about the jacket the First Lady wore? Did it impact in any meaningful way either her interactions with the kids separated from their parents at the border or her husband's immigration policies? Almost certainly not.

At the same time, why not just tell the truth? Why lie about something so dumb? It's not as though the Trumps had some great relationship with the media back in June that she was concerned about jeopardizing. Literally nothing has changed between June and now in terms of how the Trumps interact with the press. They were disdainful of the media then, they are disdainful of the media now.¹⁹⁴

At the very least, the First Lady's fashion statement demonstrates the power words written on a jacket can have and the intense scrutiny public figures can be subjected to from both social media and traditional media.

In another example of a media firestorm, questions arose about what kind of a message Kylie Jenner was sending when she threw a *Handmaid's Tale*-themed party for her friend, Stassie Karanikolaou, a social media "influencer."¹⁹⁵ Did the attendees know that as they put on the plain red gowns and white bonnets that they were acting

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Yohana Desta, *Kylie Jenner Throws Handmaid's Tale Party, Doesn't Seem to Understand Handmaid's Tale*, VANITY FAIR (June 10, 2019), <https://www.vanityfair.com/hollywood/2019/06/kylie-jenner-handmaids-tale-party>. A "social media influencer" is a "user on social media who has established credibility in a specific industry. A social media influencer has access to a large audience and can persuade others by virtue of their authenticity and reach." See *What Is a Social Media Influencer?*, PIXLEE, <https://www.pixlee.com/definitions/definition-social-media-influencer> [<https://perma.cc/BU5N-GDNR>].

out a very sad tale?¹⁹⁶ Margaret Atwood's fictional book and the show are "about a dystopian future world in which fanatical religious rule has taken over the U.S., and women are forced to be completely subservient to men. Handmaids themselves are a class of women who are brutally and ritualistically raped, so that they can give birth to children who are then taken and raised by Gilead society's mostly infertile upper class."¹⁹⁷ This is not the type of theme that one usually associates with birthday parties.

One author has suggested that perhaps Jenner did not really understand that *The Handmaid's Tale* focuses on such weighty themes.¹⁹⁸ Yet even if this suggestion is correct, there are others making an impact on social discourse who do understand that *The Handmaid's Tale* reflects disturbing aspects of today's reality:

Atwood's novel, with help from the Hulu series starring Elisabeth Moss, is frequently cited as a fictional parallel for the modern-day attack on women's rights. In the past several years, activists have adopted its signature costumes—blood red gowns and white bonnets—as protest attire. Most recently, they did so for the first day at work for US Supreme Court [J]ustice Brett Kavanaugh, who was confirmed by the Senate despite allegations of sexual assault.¹⁹⁹

Women's rights activists have also worn *The Handmaid's Tale* outfits to protest abortion bans in Alabama and Georgia.²⁰⁰ As this is not the first time that Jenner has faced public backlash from cultural insensitivity,²⁰¹ it seems unlikely that Jenner threw a *Handmaid's*

¹⁹⁶ See Desta, *supra* note 195.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Sangeeta Singh-Kurtz, *Kylie Jenner Just Gave "The Handmaid's Tale" an Ill-Conceived Makeover*, QUARTZY (June 10, 2019), <https://qz.com/quartz/1639861/kylie-jenners-tone-deaf-handmaids-tale-party-gets-sharp-criticism/> [https://perma.cc/XA2F-36XM].

²⁰⁰ See Desta, *supra* note 195.

²⁰¹ In 2017, a Pepsi television advertisement in which Jenner starred as a leading protester was pulled after accusations erupted that the advertisement trivialized the Black Lives Matter movement. See Daniel Victor, *Pepsi Pulls Ad Accused of Trivializing Black Lives*

Tale-themed party with a women's rights protest in mind. At the very least, though, Jenner's action, where intentional or not, raised awareness about a cause and sparked a public discourse about a fashion choice that is inextricably tied to a statement on women's rights.

Let us turn now from how fashion can make a political statement at the national level to how it can send a political message into the international market. Versace²⁰² has found itself facing scrutiny from China due to a fashion misstatement on one of its T-shirts.²⁰³ The T-shirt in question had a list of cities spelled out in dark color in block letters contrasting with the light color shirt.²⁰⁴ At issue are the listing of cities (e.g., Miami) followed by countries (e.g., USA), specifically the listings of Hong Kong and Macau.²⁰⁵ They are listed as "Hong Kong—HONG KONG" and "Macau—MACAU").²⁰⁶ China has taken offense to this because both Hong Kong and Macau are part of China.²⁰⁷ They are both "Special Administrative Regions" that have a much higher degree of autonomy than other parts of China, but they are nevertheless a part of China.²⁰⁸

As a result, on August 10, 2019, actress Yang Mi, who was Versace's brand ambassador in China, announced that she would end her affiliation with the company.²⁰⁹ Versace then apologized²¹⁰

Matter, N.Y. TIMES (Apr. 5, 2017), <https://www.nytimes.com/2017/04/05/business/kendall-jenner-pepsi-ad.html> [https://perma.cc/W95Q-UKT2].

²⁰² Matt Sebra, *Michael Kors Owns Versace Now*, GQ (Sept. 25, 2019), <https://www.gq.com/story/michael-kors-versace-capri-holdings-acquisition> [https://perma.cc/R2NQ-ZS3G].

²⁰³ Nikhil Sonnad, *Versace Is the Latest Major Brand to Express Its 'Deepest Apologies' to China*, QUARTZ (Aug. 11, 2019), <https://qz.com/1685587/versace-the-latest-brand-to-express-deepest-apologies-to-china/amp/> [https://perma.cc/TG9J-KYZS].

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Sarah Chen, *Versace Loses Chinese Brand Ambassador Amid T-Shirt Controversy*, *Bloomberg Business*, BLOOMBERG NEWS (Aug. 1, 2019 11:44 PM), <https://www.bloomberg.com/news/articles/2019-08-11/versace-loses-chinese-brand-ambassador-amid-t-shirt-controversy> [https://perma.cc/WWY8-ZJMV].

²¹⁰ Sonnad, *supra* note 203 ("In recent days Versace has seen widespread discussion of one of our t-shirts. We would like to express our deepest apologies for this incident. Our design incorrectly labeled the country names for some cities....This is our company's

and ordered that the shirts be destroyed.²¹¹ In 2018, Dolce & Gabbana also experienced a negative reaction to its advertisement in which a Chinese model was frustrated in her attempts to eat spaghetti and pizza with chopsticks.²¹² In addition, Spanish retailer Zara had improperly listed Taiwan as a country on its website,²¹³ and Gap produced a T-shirt decorated with a map of China that did not include Taiwan.²¹⁴ As these examples demonstrate, China has major clout as a world power and fashion houses are reluctant to offend this major player in any fashion, even with something as seemingly trivial as a T-shirt.

Clothing and makeup can also move beyond design and text on clothes to be imbued with symbolic associations that heighten or sharpen their power to project messages. As discussed above, the choice of color can articulate a political protest: black for the 2018 Golden Globes Awards and white for women in Congress during President Trump's State of the Union speech can make an impact.²¹⁵ Thus, fashion can articulate social or political messages through symbolism. As another example of fashion's power to convey a message, artists, producers, and executives wore white roses to the 60th Annual Grammy Awards in 2018 to symbolize a showing of unity for the #MeToo movement.²¹⁶ In a subtle twist, New Zealand singer Lorde wore a red Valentino dress to the 2018 Grammy awards, which included a statement from artist Jenny Holzer sewn

mistake and we express our deepest apologies for any harm it may have caused. Versace affirms that we love China and resolutely respect the sovereignty of its territory.”).

²¹¹ Chen, *supra* note 209.

²¹² *Id.*

²¹³ Sonnad, *supra* note 203.

²¹⁴ *Id.*

²¹⁵ See *supra* Part I.A.

²¹⁶ Joe Coscarelli, *The White Rose Makes Its Grammys Debut in Support of #MeToo*, N.Y. TIMES (Jan. 28, 2018), <https://www.nytimes.com/2018/01/28/arts/music/grammys-white-rose-metoo.html> [<https://perma.cc/A8PE-CDGZ>]. #MeToo is an anti-sexual violence movement that gained fervor after the allegations surrounding Hollywood producer Harvey Weinstein surfaced. See Alix Langone, *#MeToo and Time's Up Founders Explain the Difference Between the 2 Movements—and How They're Alike*, TIME (Mar. 22, 2018, 5:21 PM), <https://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/> [<https://perma.cc/Ry6T-5GRT>].

onto the back of her gown.²¹⁷ Lorde claimed that it was her version of a white rose.²¹⁸ As another example of fashion as symbolic imagery, pink “pussyhats” became a symbol of “support and solidarity for women’s rights and political resistance” that were worn at the Women’s March in January 2017 in Washington, D.C.²¹⁹

E. The Rise of Sustainable, Humane Manufacturing in Response to Outcry in the Court of Public Opinion

How an item of fashion is made can make a strong statement—or misstatement—through the materials used or the circumstance of the item’s manufacture. African elephant ivory, for instance, was subject to an almost total commercial ban (enacted on July 6, 2016)²²⁰ in order to stop the incentive to poach these elephants, which have been endangered since 1976.²²¹ In 2017:

[C]ontroversy erupted after the U.S. Fish and Wildlife Service decided to lift the ban on elephant trophy imports from Zimbabwe and Zambia. After President Trump tweeted his dissatisfaction with the decision, the Fish and Wildlife Service reversed course and decided to evaluate all applications to import elephant trophies from all countries on a case-by-case basis. Since then, no permits have been issued [to bring ivory into the United States].²²²

In light of the above, designers would be well-advised not to incorporate real ivory in their new designs. Does the same warning

²¹⁷ Carly Ledbetter, *Lorde Wore a Feminist Message Sewn on the Back of Her Grammys Dress*, HUFFINGTON POST (Jan. 29, 2018), https://www.huffpost.com/entry/lorde-dress-message_n_5a6f1e04e4b06e253269af35 [<https://perma.cc/LP44-QZ6Z>].

²¹⁸ *Id.*

²¹⁹ See PUSSYHAT PROJECT, <https://www.pussyhatproject.com/our-story> [<https://perma.cc/8PL6-ABTV>].

²²⁰ *What Can I Do With My Ivory?*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/international/travel-and-trade/ivory-ban-questions-and-answers.html> [<https://perma.cc/5B5B-NX5U>].

²²¹ *African Elephants*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/international/animals/african-elephants.html> [<https://perma.cc/5Q5Y-JCQL>].

²²² Rachel Bale, *Botswana Lifts Ban on Elephant Hunting*, NAT’L GEOGRAPHIC (May 22, 2019), <https://www.nationalgeographic.com/animals/2019/05/botswana-lifts-ban-on-elephant-hunting/> [<https://perma.cc/GKB4-5BQV>].

apply for fur? There is currently a proposed bill before the City Council to ban the sale of fur in New York City, the largest fur retail market in the country.²²³ Although the bill would allow the wearing of fur and the sale of used fur and new apparel made from old fur, it would ban the sale of new fur garments and accessories with violators subject to fines of \$500 to \$1500 plus the forfeiture of profits made from selling the fur.²²⁴ Los Angeles, San Francisco, and West Hollywood have already banned the sale of fur.²²⁵

Some designers have already declared that they are “fur-free,” including Versace, Michael Kors, Gucci, Tommy Hilfiger, Stella McCartney, Giorgio Armani, Prada, Burberry, Ralph Lauren, and Calvin Klein.²²⁶ The British Fashion Council announced in 2018 that no one would be showing real fur on the London Fashion Week catwalks during the Spring 2019 season.²²⁷ The British Fashion Council “supports the creativity of designers and keeps an open dialogue with the industry, from designers to media, retailers, business leaders, government and global brands while encouraging designers to make ethical choices when it comes to their selection of materials and supply chain.”²²⁸

One example of a poor selection of materials occurred when retail chain Claire’s sold several makeup products that tested positive for asbestos, a mineral that has been linked to deadly cancers.²²⁹ This revelation is a particularly bad fashion “misstatement,” since Claire’s targeted consumers are children.²³⁰ Indeed, the tainted makeup was exposed by a Rhode Island mother who worked at a

²²³ William Neuman & Jeffery C. Mays, *Proposed Fur Ban in New York Pits Animal Rights Advocates Against Black Ministers*, N.Y. TIMES (May 15, 2019), <https://www.nytimes.com/2019/05/15/nyregion/fur-ban-nyc-sales.html> [<https://perma.cc/C4BT-U3PB>].

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Colleen Kratofil, *Luxury Fashion Brands That Are Anti-Fur*, PEOPLE (May 22, 2019), <https://people.com/style/fur-free-luxury-fashion-brands/> [<https://perma.cc/Z6HU-ENPF>].

²²⁷ Natalie Theodosi, *London Fashion Week Goes Fur-Free*, WWD (Sept. 7, 2018), <https://wwd.com/fashion-news/fashion-scoops/london-fashion-week-goes-fur-free-1202790414/> [<https://perma.cc/Z4PJ-8N5E>].

²²⁸ *Id.*

²²⁹ Merrit Kennedy, *FDA Says It Found Asbestos in Makeup at Claire’s*, NPR (Mar. 6, 2019, 6:48 PM), <https://www.npr.org/2019/03/06/700830418/fda-says-it-found-asbestos-in-childrens-makeup-at-claire-s> [<https://perma.cc/9Y26-DDVW>].

²³⁰ *Id.*

law firm specializing in asbestos litigation, and had tests performed on her daughter's makeup purchase from Claire's that allegedly produced positive results.²³¹ This discovery by a layperson begs the question of whether more proactive action is needed by major fashion industry players in testing their products for dangerous substances and making more positive efforts to use sustainable, humane materials in their manufacturing processes.

Unfortunately, owners and managers also have a history of making unethical choices regarding working conditions. Susan Scafidi has described the fashion industry as a "pink-and-lavender discipline, one primarily associated with women and gay men"²³² The traditionally lower status of women, gay men, and immigrants, as well as children, has enabled substandard working conditions to develop and persist, as these marginalized communities are traditionally overlooked by conventional media.

One tragic example is the Triangle Waist Company fire, which spread through the eighth, ninth and tenth floors of the Asch Building in lower Manhattan on March 25, 1911, resulting in the deaths of 146 employees, many of whom were young women who had emigrated from Europe. This preventable industrial disaster occurred because workers could not escape. The only fire escape collapsed due to the weight of the fleeing employees and the heat of the fire. To make matters worse, other doors were locked to prevent theft. There was too little water to douse the flames and the firefighters' ladders were too short to reach the garment factory.²³³ Within eighteen minutes, the fire had claimed the lives of workers as young as fourteen, who were predominantly Italian and European Jewish immigrants who worked in sweatshop conditions—for

²³¹ *Id.*

²³² SUSAN SCAFIDI, NAVIGATING FASHION LAW: LEADING LAWYERS ON EXPLORING THE TRENDS, CASES, AND STRATEGIES OF FASHION LAW (INSIDE THE MINDS) 16 (2012).

²³³ *The Triangle Shirtwaist Factory Fire*, OSHA, <https://www.osha.gov/oas/triangle-factoryfire.html> [<https://perma.cc/ACW6-4CK8>]. Indeed, this account was confirmed by Peter J. Brennan, the elderly landlord of the building: "I lived in when I was a little girl in Woodhaven, Queens, New York. Brennan was a retired Captain in the New York Fire Department who had worked at the Triangle Waist Company fire scene. He lamented that when the fire department arrived, there was no one to save. The girls who jumped fell through the nets and died, and the fire department's equipment could not reach the upper floors of the building." *Id.*

long hours, with low pay in unsanitary and dangerous working conditions.²³⁴ Sadly, the U.S. Department of Labor's Occupational Safety & Health Administration states that "[t]he Triangle factory fire remained the deadliest workplace tragedy in New York City's history until the terrorist attacks on the World Trade Center ninety years later."²³⁵

While we may have learned our lesson about humane working conditions in the United States as a result of the Triangle Waist Company fire and related labor mistreatments, and have since shifted from a manufacturing to a service economy, laborers in other countries are not so fortunate.²³⁶ The garments we purchase are now made in Bangladesh, India, China, Vietnam, Ethiopia, Indonesia, Sri Lanka, and the Philippines,²³⁷ where, sadly, the pattern of unsafe working conditions still exists. For instance, on April 24, 2013, a clothing factory collapsed in Dhaka, Bangladesh, killing 1,127 employees.²³⁸ The factory did not meet building codes and was constructed with substandard materials.²³⁹ Similarly to the Triangle Waist Company tragedy, human error compounded the bad results. The factory owners urged workers to return to their jobs, even though there was evidence that the building was unsafe. The factory that collapsed was just one of 5,000 garment factories in Bangladesh, a country which "has become an expert powerhouse largely by delivering lower costs, in part by having the lowest wages in the world for garment workers."²⁴⁰

²³⁴ *Fire!*, CORNELL U.: REMEMBERING 1911 TRIANGLE FACTORY FIRE, <https://trianglefire.ilr.cornell.edu/story/fire.html> [<https://perma.cc/Q2WA-CLV5>].

²³⁵ *The Worst Day I Ever Saw*, OSHA, <https://www.osha.gov/oas/trianglefactoryfire-account.html> [<https://perma.cc/TM6S-BEGG>].

²³⁶ Doug Short, *Charting The Incredible Shift from Manufacturing to Services in America*, BUS. INSIDER (Sept. 5, 2011), <https://www.businessinsider.com/charting-the-incredible-shift-from-manufacturing-to-services-in-america-2011-9> [<https://perma.cc/QUC8-5TJ8>].

²³⁷ *Where Are Our Clothes Made?*, FASHION & CLOTHING, <https://sites.google.com/site/lifebeneathclothing/the-geography-of-fashion-and-clothing/where-are-our-clothes-made> [<https://perma.cc/7DDD-XQ9R>].

²³⁸ 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/P432-K6A5>].

²³⁹ *Id.*

²⁴⁰ *Id.*

Unfortunately, sweatshop conditions—e.g., underage workers, mistreated workers, unsafe working environments, long hours, and no breaks—also appear to continue in other countries. One only has to watch Director Rahul Jain’s documentary *Machines*, which was filmed in 2016 in a large textile factory in Gujarat, India, to see the “dehumanizing physical labor and intense hardship”²⁴¹ of the workers, some of whom appear to be young children, in the dark and dirty factory.

Major fashion labels contracting such labor have also come under scrutiny. For instance, in 2018, while the global media covered Colin Kaepernick’s Nike advertisement, activists and social media also pointed out Nike’s bad reputation for its employees’ low wages, long hours, and substandard working conditions.²⁴² One social media meme substituted Colin’s photo for a Nike worker’s picture with the caption “Just do it, for \$0.23 per hour.”²⁴³ The Guardian reported that more than 500 workers in Cambodian factories which make Nike, Asics, and Puma products fainted due to the extreme heat generated inside the factories.²⁴⁴ In 2018, a U.S. newspaper reported “that workers at an apparel manufacturing facility that produces Nike, Inc. and Adidas AG products were hospitalized due to exposure to fumes in the factory...more than 120 workers fainted”²⁴⁵ Unfortunately, these events demonstrate that while much progress has been made in protecting U.S. employees in dangerous workplace environments and advocating for marginalized workers’ rights, there is still a long way to go in improving the blight of such fashion manufacturing workers worldwide.

²⁴¹ *Machines—Plot*, IMDB, https://www.imdb.com/title/tt5690244/plotsummary?ref_=tt_ov_pl [<https://perma.cc/6GBB-2P3W>].

²⁴² Jason Lemon, *Nike Called Out for Low Wages in Asia Amid Colin Kaepernick Ad Promotion*, NEWSWEEK (Sept. 6, 2018), <https://www.newsweek.com/nike-factory-workers-still-work-long-days-low-wages-asia-1110129> [<https://perma.cc/2UKB-PXAS>].

²⁴³ *Id.*

²⁴⁴ See Karen McVeigh, *Cambodian Female Workers in Nike, Asics and Puma Factories Suffer Mass Fainting*, GUARDIAN (June 24, 2017), <https://www.theguardian.com/business/2017/jun/25/female-cambodian-garment-workers-mass-fainting> [<https://perma.cc/25JQ-SQYX>].

²⁴⁵ Clare Duffy, *127 Workers Hospitalized Tuesday in Factory Used by Nike and Adidas*, PORTLAND BUS. J. (Jan. 23, 2018), <https://www.bizjournals.com/portland/news/2018/01/23/127-workers-hospitalized-tuesday-in-factory-used.html> [<https://perma.cc/3LEJ-DH8T>].

CONCLUSION

The First Amendment to the U.S. Constitution grants us the right to express ourselves in what we choose to wear. Just as Americans abhor gag orders restricting free speech, we bristle at being told what we can and cannot wear. In cases such as *Mansky*, *Tinker*, and *Cohen*, the Supreme Court has found that the Constitution protects Americans' rights to express their political affiliations and affinities through their clothing. In addition, the Supreme Court in *Abercrombie & Fitch* concluded that the Constitution protects the wearing of a headscarf as an expression of religious identity, even in the workplace.

Yet, along with all of this freedom in our fashion choices, we have to take responsibility for what we choose to wear—protection from legal sanctions does not protect us from the social or economic costs of causing offense or otherwise implicating ourselves in wrongdoing. As technology advances and the court of public opinion—e.g., social media—gains increasing traction and power in speaking against cultural, racial, political, and environmental insensitivities, designers, producers, and consumers should be more aware of the “statement” that their fashions send, either via intentional or unintentional messages, the ingredients involved in their manufacture, or the human or environmental costs of making the fashion items. Indeed, one could argue that responsibly made fashions²⁴⁶ are even more beautiful, which certainly makes a fabulous fashion statement!

²⁴⁶ 35 *Ethical & Sustainable Clothing Brands Betting Against Fast Fashion*, GOOD TRADE, <https://www.thegoodtrade.com/features/fair-trade-clothing> [https://perma.cc/JKX9-WLYG].

APPENDIX

Figure 1

Andrew Cilek displaying a T-shirt which he had been banned from wearing at polling places by Minnesota Statute 21.B.11 until it was overturned by the U.S. Supreme Court in *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876 (2018).²⁴⁷

²⁴⁷ PLF's First Amendment Battle Heads to the U.S. Supreme Court, PAC. LEGAL FOUND. (Nov. 16, 2017), <https://pacificlegal.org/plfs-first-amendment-battle-heads-to-the-u-s-supreme-court/> [<https://perma.cc/XP7L-NV2X>].

Figure 2

After Samantha Elauf applied for and was refused a job by an Abercrombie & Fitch Store due to her head covering, the EEOC sued on her behalf in *Equal Employment Opportunity Commission, Petitioner v. Abercrombie & Fitch Stores, Inc.*²⁴⁸

²⁴⁸ 135 S. Ct. 2028 (2015); see also *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores*, BECKET, <https://www.becketlaw.org/case/eeoc-v-abercrombie-fitch-stores/> [<https://perma.cc/DTV7-83H6>].

Figure 3



Erik Brunetti, creator of FUCT brand, successful litigant in *Iancu v. Brunetti* (2019).²⁴⁹

Figure 4



Melania Trump's "I really don't care, do U?" jacket.²⁵⁰

²⁴⁹ Adriane de Vogue, *Justices Keep It Clean in Debate Over FUCT Trademark*, CNN (Apr. 15, 2019), <https://www.cnn.com/2019/04/15/politics/fuct-supreme-court-oral-arguments/index.html> [<https://perma.cc/C6YC-WR7D>].

²⁵⁰ *Melania Discusses Her Controversial Jacket*, CNN POLITICS, <https://www.cnn.com/videos/politics/2018/10/13/melania-trump-jacket-sot-ctn-vpx.cnn> [<https://perma.cc/97TH-FYL2>].