

1-2023

Period Poverty and Life Strains: Efforts Made to Erase Stigma and to Expand Access to Menstrual Hygiene Products

Jennifer L. Brinkley
jbrinkley@uwf.edu

Nicole Niebuhr
nniebuhr@uwf.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijlse>



Part of the [Law Commons](#), and the [Women's Health Commons](#)

Publication Citation

Jennifer L. Brinkley & Nicole Niebuhr, Period Poverty and Life Strains: Efforts Made to Erase Stigma and to Expand Access to Menstrual Hygiene Products, 11 Ind. J. L. & Soc. Equal. 1 (2023).

This Article is brought to you for free and open access by the Maurer Law Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Journal of Law and Social Equality by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Period Poverty and Life Strains: Efforts Made to Erase Stigma and to Expand Access to Menstrual Hygiene Products

Jennifer L. Brinkley and Nicole Niebuhr*

Period poverty is the inability to access clean menstrual hygiene products. It can negatively impact the lives of menstruators. The authors of this article wanted to add to the emerging scholarship in this area. Replicating a 2021 study, the authors created an anonymous survey for undergraduate students at the University of West Florida. The intent was to gauge instances of period poverty among the student body as well as determine what life strains students were under when trying to access menstrual hygiene products. Not only did 18.8% of the undergraduate students surveyed experience period poverty over the last twelve months, but 7.6% experienced it every month in the last twelve months. The results also indicate 27.6% of students surveyed used other materials, like toilet paper or fabric, when they could not access menstrual hygiene products. Additionally, 32% of students left a menstrual hygiene product in for longer than recommended by the manufacturer, placing them at risk for infection. Based on the depression score from the survey, a significant relationship between period poverty and negative mental health outcomes is suggested.

Menstrual hygiene products are required over the reproductive lifetime of the menstruator, which can be several decades. The cost to menstruators can be high, especially for indigent individuals. Most states do not exempt menstrual hygiene products from sales tax, making the cost that much higher for the consumer. There is a desperate need for legislative action at federal, state, and local levels in the United States to expand access to menstrual hygiene products.

An intense stigma surrounds menstruation. This culture of silence creates a breeding ground for discrimination and harassment of menstruators. Schools can play a part in fostering this stigma, either intentionally or unintentionally. Efforts need to continue to be made in schools, prisons, homeless shelters, and other institutions to minimize the stigma. Educating the public with medically accurate information about menstruation and the need to properly use menstrual hygiene products to avoid infection is an excellent place to begin. An open dialogue about the biological process of menstruation should not be feared but encouraged. Making menstrual hygiene products easily accessible, by exempting them from sales tax as well as providing them free of charge to students, incarcerated individuals, and low-income populations, is a step toward resolving societal inequities around

* Nicole Niebuhr, PhD, is an Assistant Professor of Criminology and Criminal Justice at the University of West Florida. Jennifer L. Brinkley is an Assistant Professor of Legal Studies at the University of West Florida and a licensed attorney in the Commonwealth of Kentucky. The authors would like to thank Autumn Lindquist for her help in researching and editing this article and Kathy Kimmons-McCoy for helping distribute the undergraduate survey. Thanks also to the law review editors who greatly improved this article: Associates Candice Croix, Kaija Herndon, Emily Peterson, Haley Powell, Bailey Steinhauer, Haleigh Chube, Mohammed Farooq, Erika Holding, Zachary Wakefield, and Lauren Weed; Articles Editors Jacob Beavin and Allison Coffey; Managing Editor Mariam Ba; Executive Editor Madeline Richmond; Senior Managing Editors Kelsey Napier and Elias Little; and Editor-in-Chief Jacy Baber.

menstruation. Through education, legislative action, and advocacy, changes in law and policy can minimize stigma and protect the mental and physical well-being of citizens.

INTRODUCTION.....	4
I. SURVEY OF UNDERGRADUATE STUDENTS.....	7
A. <i>Background</i>	7
B. <i>Methods Used</i>	8
C. <i>Results of Data</i>	10
D. <i>Discussion of Data</i>	12
II. THE STIGMA SURROUNDING MENSTRUATION.....	13
A. <i>The Impact of Stigma Specifically on High School Students</i>	14
B. <i>The Need for Schools to Eliminate Stigma</i>	16
III. A DESPERATE NEED FOR LEGISLATIVE ACTION.....	17
A. <i>Examining The Tampon Tax</i>	21
B. <i>Eliminating the Tampon Tax</i>	23
CONCLUSION.....	25

INTRODUCTION

Period poverty is defined as one's inability to access clean menstrual hygiene products (MHPs).¹ It also encompasses inadequate access to hygienic waste management, hand-washing facilities, and toilets.² Menstruation, often referred to as a period, is the body's monthly bleeding where the monthly buildup of the uterus is discarded.³ A menstrual cycle is counted from the first day of a period to the first day of the next period.⁴ Menstruation tends to start when a person is between the ages of ten and fifteen years, however, "[t]here is no 'correct' age when someone should get their first period."⁵ Menstruation will last until menopause occurs, with the average age of menopause being fifty-two in the United States.⁶

Women use various types of MHPs, including pads, tampons, menstrual cups, and period underwear. Each MHP comes with its own instructions advising consumers how long the products should be used. Most individuals change their pads after a few hours, their tampons after eight hours, rinse their menstrual cups once to twice a day, and use their period underwear for a day at a time.⁷ However, when access to clean MHPs is restricted, menstruators may use products longer than advised to ration MHPs, or they may use another material altogether, like toilet paper, cardboard, rags, or paper towels.⁸ When menstruators use products not intended as MHPs, they are placed at risk for various infections.⁹ The use of tampons and menstrual cups puts the individual at risk for toxic shock syndrome, a life-threatening complication of a bacterial infection.¹⁰ In addition to these negative health outcomes, lack of access to MHPs can cause shame, resulting in stigmatization and exclusion.¹¹ Menstruators may end up bleeding on themselves or their clothing—an especially devastating and embarrassing impact for those who cannot afford to clean or replace the bloody items.¹²

The length of time that individuals require MHPs throughout the course of their reproductive lifetimes is extensive and expensive. In the United States, the average menstruator spends \$13.25 per month on MHPs, or \$6,360 before taxes

¹ Katherine Andersh, Zanah Francis, Mary Moran & Emily Quarato, *Period Poverty: A Risk Factor for People Who Menstruate in STEM*, 18 J. SCI. POL'Y & GOVERNANCE 1 (2021).

² Ashley Rapp & Sidonie Kilpatrick, *Changing the Cycle: Period Poverty as a Public Health Crisis*, THE PURSUIT (Feb. 4, 2020), <https://sph.umich.edu/pursuit/2020posts/period-poverty.html>.

³ *Your Menstrual Cycle*, U.S. DEPT HEALTH & HUM. SERVS., OFF. ON WOMEN'S HEALTH, <https://www.womenshealth.gov/menstrual-cycle/your-menstrual-cycle> (last visited Feb. 22, 2022).

⁴ *Id.*

⁵ NADYA OKAMOTO, PERIOD POWER: A MANIFESTO FOR THE MENSTRUAL MOVEMENT 26–27 (2018) (“It is not only women who menstruate. Some transgender men and people who identify as nonbinary or genderqueer (or others) but were assigned female at birth might still experience periods.”).

⁶ *Id.* at 27.

⁷ *Id.* at 62, 68–70, 75, 93–94.

⁸ Rapp & Kilpatrick, *supra* note 2.

⁹ *Id.*

¹⁰ *Toxic Shock Syndrome*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/toxic-shock-syndrome/symptoms-causes/syc-20355384> (last visited Feb. 20, 2022).

¹¹ *The Unequal Price of Periods*, ACLU 12, <https://www.aclu.org/report/unequal-price-periods> (last visited Feb. 21, 2022).

¹² *Id.*

over their reproductive lifetime (typically between ages twelve to fifty-two).¹³ The *Huffington Post* recently calculated that over the course of their reproductive lifetime, a person spends over \$18,171 for their period, including items needed to cope with menstruation, like heating pads, pain relievers, birth control, and acne medications.¹⁴ Those who are marginalized, whether it be through lack of power or lack of resources, are at increased risk for suffering due to lack of access to adequate MHPs.¹⁵

A recent survey of 2,000 women (ages eighteen to fifty-five), commissioned by INTIMINA, found that sixty percent of respondents had needed to budget to afford MHPs.¹⁶ Four out of five respondents classified period poverty as a real problem and seventy-two percent thought MHPs should be provided free of charge by the government.¹⁷ Currently, public assistance benefits do not include MHPs. Programs for low-income families like Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) do not classify MHPs as items of necessity.¹⁸ The WIC prohibition is especially harmful for those who have recently given birth as they may need MHPs for weeks following childbirth.¹⁹ In Fiscal Year 2021, over twenty-one million households used SNAP benefits each month.²⁰ However, these benefits could not be used to purchase MHPs.

Period poverty impacts everyone—it is not merely an issue of women’s rights. It intersects with many issues highlighting societal inequity, including mental health concerns, lack of critical infrastructure like affordable housing and economic opportunities, and lack of access to hygienic sanitation options. The lack of access to MHPs creates a public health issue that should be moved to the front and center of legislative agendas in the United States. It is important for government officials to realize the importance of erasing stigma surrounding menstruation and work to support the alleviation of life strains surrounding period poverty.

Being able to meet one’s basic needs is the pathway to good health and well-being.²¹ A study of 2,870 mothers of three-year-old girls in various cities across the United States showed increased depression or anxiety when food insecurity

¹³ Allison Sadlier, *New Research Reveals How Much the Average Woman Spends per Month on Menstrual Products*, SWNS DIGIT. (Sept. 6, 2021), <https://swnsdigital.com/2019/11/new-research-reveals-how-much-the-average-woman-spends-per-month-on-menstrual-products/>.

¹⁴ Jessica Kane, *Here’s How Much a Woman’s Period Will Cost Her over a Lifetime*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/2015/05/18/period-cost-lifetime_n_7258780.html.

¹⁵ JENNIFER WEISS-WOLF, PERIODS GONE PUBLIC: TAKING A STAND FOR MENSTRUAL EQUITY 91 (2017).

¹⁶ Sadlier, *supra* note 13.

¹⁷ *Id.*

¹⁸ OKAMOTO, *supra* note 5, at 152.

¹⁹ *See What Are Postpartum Pads?*, WEBMD (Mar. 10, 2021), <https://www.webmd.com/parenting/what-are-postpartum-pads>.

²⁰ *National and/or State Level Monthly and/or Annual Data*, U.S. DEP’T AGRIC., <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited Feb. 22, 2022).

²¹ Lauren F. Cardoso, Anna M. Scolese, Alzahra Hamidaddin & Jhumka Gupta, *Period Poverty and Mental Health Implications Among College-Aged Women in the United States*, BMC WOMEN’S HEALTH 1 (Jan. 6, 2021), <https://bmcmenshealth.biomedcentral.com/articles/10.1186/s12905-020-01149-5>.

increased in the home.²² This provides evidentiary support that an inability to meet basic needs can negatively impact mental health.²³ Recent reports indicate thirty-five to fifty percent of undergraduate students may be food insecure, so it is an important group to survey to identify levels of period poverty.²⁴ “It is estimated that one in ten undergraduate students may suffer from period poverty, with the number increasing to one in five for those who are first-generation college students.”²⁵

Life strains—including depression, anxiety, and isolation—are linked to the inability to afford or access MHPs. The authors surveyed a group of undergraduate students at the University of West Florida to identify conditions created, as well as amplified, due to limited access to MHPs. Part II describes the methodologies used and the results of the original data collected. Period poverty requires a menstruator to choose between purchasing food or paying the rent and purchasing MHPs, which are necessary to allow menstruators to work, go to school, or complete other activities of daily living. It negatively impacts self-esteem and dignity when a menstruator does not feel clean and confident.²⁶ As the survey conducted by the authors will evidence below, period poverty was linked to depression for the survey respondents, as those who experienced period poverty had higher scores on the depression scale. This data can be used to implement policy change at the University of West Florida to make MHP access easier for students; however, it can also be used at other institutions. It provides statistically significant information about the connection between period poverty and mental well-being. It is important that schools use this type of data to provide free and accessible MHPs so students can focus on educational success, and to ensure stronger mental and physical health for students.

The hormonal alterations that accompany menstruation may be responsible for side effects including headaches, mood swings, fatigue, and bloating, resulting in decreased quality of life.²⁷ These side effects can amplify the stigma surrounding menstruation, resulting in a caricature of a person who menstruates. Not only do menstruators have to cope with the monthly biological process but they also defend themselves against the stigma society throws their way, which can deepen gender inequality and discrimination.²⁸ Those who menstruate are seen as “moody” or less capable of making decisions than their counterparts who do not menstruate.²⁹ This results in isolation, anxiety, and increased shame about bodily functions. Shame around menstruation also impacts a menstruator’s ability to actively participate in

²² *Id.* (citing Robert C. Whitaker, Shannon M. Phillips & Sean M. Orzol, *Food Insecurity and the Risks of Depression and Anxiety in Mothers and Behavior Problems in Their Preschool-Aged Children*, 118 *PEDIATRICS* e859, e859 (2006)).

²³ Whitaker et al., *supra* note 22, at 1.

²⁴ *Id.* at 2.

²⁵ Victoria J. Haneman, *On Period Poverty*, 10 *J. RACE, GENDER, & ETHNICITY* 1, 4–5 (2021).

²⁶ See Rapp & Kilpatrick, *supra* note 2.

²⁷ Márcia Mendonça Carneiro, *Menstrual Poverty: Enough is Enough*, 61 *WOMEN & HEALTH* 721, 721 (2021).

²⁸ *Id.* (citing Colin Sumpter & Belen Torondel, *A Systematic Review of the Health and Social Effects of Menstrual Hygiene Management*, 8 *PLOS ONE* 1 (2013)).

²⁹ *Menstruation and Human Rights - Frequently Asked Questions*, UNITED NATIONS POPULATION FUND (May 2022), <https://www.unfpa.org/menstruationfaq>.

society during times of menstruation.³⁰ Increasing education about biological functions and engaging in conversations about menstruation can help eliminate existing misconceptions about the process.³¹ An important step toward supporting bodily autonomy is erasing the stigma surrounding menstruation, which restricts widespread access to MHPs.³²

Part III describes the stigma surrounding menstruation. Part IV examines legislative efforts implemented to address the needs of those who menstruate. The ability to manage menstruation is at the heart of what it means to participate fully and equitably in society.³³ Activist and attorney Jennifer Weiss-Wolf defines menstrual equity as the need to have laws and policies that

ensure menstrual products are safe and affordable and available for those who need them. The ability to access these items affects a person's freedom to work and study, to be healthy, and to participate in daily life with basic dignity. And if access is compromised, whether by poverty or stigma or lack of education and resources, it is in *all* of our interests to ensure those needs are met.³⁴

Progress towards achieving menstrual equity is gaining ground. Articles in mainstream media identifying period poverty have increased. Lawmakers are beginning to understand this is an issue that can garner bipartisan support, but perhaps more importantly, constituent support. New legislative measures are being proposed at an increased frequency designed to make policy changes, like exempting sales and use taxes, stopping prisons from charging incarcerated individuals for MHPs, and providing free MHPs in schools.³⁵

I. SURVEY OF UNDERGRADUATE STUDENTS

A. Background

In early 2021, the authors became aware of a period-poverty and mental-health study conducted by Lauren F. Cardoso, Anna M. Scolese, Alzahra Hamidaddin, and Jhumka Gupta. The purpose of the study was to examine the frequency of period poverty among university students and identify any associations with poor mental health.³⁶ A total of 471 college-attending women completed the

³⁰ *Removing The Shame and Stigma From Menstruation*, UNITED NATIONS HUM. RTS.: OFF. OF THE HIGH COMM'R (July 8, 2022), <https://www.ohchr.org/en/stories/2022/07/removing-shame-and-stigma-menstruation>.

³¹ Bridget J. Crawford & Emily Gold Waldman, *Period Poverty in a Pandemic: Harnessing Law to Achieve Menstrual Equity*, 98 WASH. U. L. REV. 1569, 1592 (2021).

³² Andersh et al., *supra* note 1.

³³ See WEISS-WOLF, *supra* note 15, at XI.

³⁴ *Id.* at XVI.

³⁵ Michael Alison Chandler, *The Once-Whispered Topic of Women's Menstruation Now Has Political Cachet*, WASH. POST (Aug. 7, 2017), https://www.washingtonpost.com/local/social-issues/the-once-whispered-topic-of-womens-menstruation-now-has-political-cachet/2017/08/07/cdeae46e-68a2-11e7-8eb5-cbccc2e7bfbf_story.html.

³⁶ Cardoso et al., *supra* note 21, at 1.

survey.³⁷ The study concluded there was an inability of undergraduate students to afford MHPs, which impacted mental health.³⁸ Among the sample, 14.2% of women had experienced period poverty in the past twelve months, with an additional 10% experiencing period poverty monthly; the monthly past-year period-poverty respondents were the most likely to report moderate to severe depression.³⁹

After reading the research, the authors wanted to replicate the study at the University of West Florida. The authors developed a survey that included questions about respondent demographics, instances of period poverty, use of MHPs, mental-health concerns, and propensity to commit criminal acts to obtain MHPs, among others. The authors wanted to see if there was a connection between period poverty and mental health, as well as identify behaviors menstruators used when they could not easily access MHPs.⁴⁰ The authors wanted to add to the emerging scholarship examining the needs of undergraduate students by conducting this study.

In September 2021, the anonymous survey was sent to a convenience sample of female undergraduate students at the University of West Florida. The survey was titled “Period Poverty and Life Strains.” A total of 914 responses were received. After reviewing the data and identifying cases that were incomplete due to having substantial missing information—those were ultimately excluded from analysis—762 total survey responses were ready to be analyzed.

B. Methods Used

The anonymous survey was completed electronically by the respondents. The survey asked the respondents about demographics such as race/ethnicity, age, year in school, and employment status (see Table One). This gave the authors information about the personal lives of the respondents, which also included if they were a first-generation college student and if they lived on- or off-campus. The average age of the sample is 23.7 years, and the sample is predominantly white. Most of the students are enrolled part-time and live off-campus.

Table One: Sample Descriptives

N=762		
	Mean (SD)	%
	Range	

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* Additionally, the authors included questions in the survey to assess whether respondents were resorting to criminal activity, like shoplifting, in order to obtain MHPs. However, there were no significant findings, so it will not be discussed in this Article.

Age	23.7 (7.5)	-
	18-53	
Race/Ethnicity		
White	-	73.0%
Black	-	10.8%
Asian	-	6.0%
Hispanic	-	8.0%
Other	-	1.9%
Year in school		
Freshman	-	10.6%
Sophomore	-	17.1%
Junior	-	32.9%
Senior	-	39.0%
Depression scale	19.3 (6.2)	-
	0-27	
First Generation Student		
Yes	-	29.0%
No	-	71.0%
Employment Status		
Full time	-	24.6%
Part time	-	44.1%
Unemployed	-	31.1%
Housing		
Live on campus	-	24.3%
Live off campus	-	75.7%
Had Period in last year		
Yes	-	92.0%
No	-	8.0%

The respondents were asked if they had had their period in the last twelve months, in which eight percent reported they had not. Those that had not were then excluded from further analysis related to period poverty (N=722). Each respondent was asked if they “struggled to afford menstrual products in the last twelve months” and were asked if they “struggled to afford menstrual products every month in the last twelve months” (see Table Two in next section).

Additional questions regarding the habits of the women related to their menstrual cycle were also asked, such as what types of menstrual product they preferred. The respondents were asked if they had engaged in several different behaviors related to menstrual products, like if they borrowed menstrual products from friends or if they left a menstrual product in for longer than recommended by the manufacturer.

To measure the respondents level of depression, items from the Patient Health Questionnaire (PHQ-9) were included.⁴¹ The respondents were asked to report how often they experienced problems like little interest or little pleasure in doing things or feeling down, depressed, or hopeless over the last twelve months with possible responses of “not at all,” “several days,” “more than half the days,” and “nearly every day.” The range of this scale was from zero to twenty-seven and the average score on this scale was 19.3. Lastly, t-tests were conducted to see if there was a significant difference between those who could not afford menstrual products and those who could, and their depression scores (see Tables Three and Four in next section).

C. Results of Data

Table Two: Period Poverty and Menstrual Habits

	%
Struggled to afford menstrual products in the last twelve months	18.8%
Struggled to afford menstrual products every month in the last twelve months	7.6%
In the last twelve months, have you done any of the following because you did not have enough money to purchase menstrual products?	

⁴¹ See generally Laura P. Richardson, Elizabeth McCauley, David C. Grossman, Carolyn A. McCarty, Julie Richards Joan E. Russo, Carol Rockhill & Wayne Katon, *Evaluation of the Patient Health Questionnaire (PHQ-9) for Detecting Major Depression Among Adolescents*, 126 PEDIATRICS 1117 (2010).

Used toilet paper or fabric as a menstrual product	27.6%
Borrowed menstrual products from friends	33.8%
Borrowed menstrual products from coworkers	20.9%
Taken menstrual products from a store without paying for them	1.3%
Had to go without menstrual products	8.8%
Left a menstrual product in or on for longer than recommended by the product	32.0%
Type of menstrual products preferred	
Tampons	54.7%
Sanitary pads	50.4%
Menstrual cups	8.2%
Period underwear	4.4%

N=722

Table Three: Comparison of Depression Score When Struggling in the Last Twelve Months

Struggled to afford MHPs in the last twelve months	Yes	No	t-value
Depression score Mean (SD)	23.6 (6.3)	18.4 (5.7)	9.0**

** p<.01, * p<.05, † p≤.10

Table Four: Comparison of Depression Score When Struggling Every Month in the Last Twelve Months

Struggled to afford MHPs every month in the last twelve months	Yes	No	t-value
Depression Score Mean (SD)	24.6 (6.9)	19.0 (5.9)	6.6**

** $p < .01$, * $p < .05$, † $p \leq .10$

D. Discussion of Data

The results of the survey show 18.8% of the sample of undergraduate women struggled to afford menstrual products within the last twelve months, while 7.6% reported that they struggled every month for the last twelve months. The women were also asked about menstrual-related behaviors. The two most common behaviors were borrowing menstrual products from friends and leaving a menstrual product in for longer than recommended by the manufacturer. Respondents reported using fabric or toilet paper in place of MHPs. The most preferred MHPs to use were tampons, followed by sanitary pads, menstrual cups, and period underwear.

The authors also examined the respondents' depression scores in which the average was 19.3. Referring to the PHQ-9 management summary, a score of fifteen through nineteen is considered moderately severe and twenty through twenty-seven is considered severe. It is important to acknowledge that the twelve-month period asked about was during the COVID-19 pandemic. This is not an uncommon finding, as other research has found high levels of depression among college students during the COVID-19 pandemic.⁴²

Further, looking at the differences between those who experienced period poverty and those who did not, there are significant differences in their depression level scores, with those who had experienced period poverty having higher scores on the depression scale. Table Three indicates there was a significant difference in the average depression score between those who could afford menstrual products and those who could not afford menstrual products at least once over the last twelve months. This suggests that those who could not afford menstrual products had a higher depression score. Table Four looked at those who could not afford menstrual products every month and those who could, and there was a significant difference in the average depression score between the two groups. This finding also suggests that those who could not afford menstrual products every month had a higher depression score.

⁴² See Xiaomai Wang, Sudeep Hegde, Changwon Son, Bruce Keller, Alec Smith & Farzan Sasangohar, *Investigating Mental Health of U.S. College Students During the COVID-19 Pandemic: Cross-Sectional Survey Study*, 22 J. MED. INTERNET RSCH. e22817 (2020).

II. THE STIGMA SURROUNDING MENSTRUATION

Menstruators experience inequitable treatment and discrimination. There is a fear about openly discussing menstruation in public. Some code words used to describe menstruation include Aunt Flow, the Rag, and Shark Week.⁴³ By having secret discussions with secret terms, a sector of society is being kept out of understanding what menstruation entails. The stigma results in a lack of education regarding menstruation. It can be seen as a mysterious bodily function that only impacts women. However, issues related to menstruation include people who are nonbinary and transgender.⁴⁴ Nonbinary and transgender individuals especially have a difficult time accessing, using, and disposing of MHPs.⁴⁵

Professor Margaret Johnson, in her article titled “Asking the Menstruation Question to Achieve Menstrual Justice,” states menstruation is “a situs of discrimination, oppression, harassment, and microaggression.”⁴⁶ Professor Johnson identifies the goal of menstrual justice as supporting the “dignity, liberty, and equitable treatment of menstruators” and eliminating “structural intersectionality from menstrual injustices.”⁴⁷ How is that achieved? Professor Johnson suggests the following:

- Eliminating discrimination and harassment.
- Ensuring that menstruators with limited financial resources have access to affordable and safe menstrual products of their choosing and sanitation facilities.
- Achieving ample funding for research on menstrual health and related pain and illnesses.
- Rigorously testing the safety of menstrual products.
- Normalizing menstruation as opposed to amplifying stigma and taboo; including and non-essentializing persons who are transgender, genderqueer/nonbinary or intersex; including and non-essentializing persons with disability.
- Creating a movement intertwined with other social justice movements such as the movements for racial justice, gender justice, disability justice, economic justice, health justice, reproductive-health justice, housing justice, criminal justice, and data justice.⁴⁸

⁴³ OKAMOTO, *supra* note 5, at 47.

⁴⁴ Andersh et al., *supra* note 1, at 1.

⁴⁵ Stateside Staff, *A Legal Fight to End the So-Called “Tampon Tax,”* MICH. RADIO (Mar. 10, 2021, 10:53 PM), <https://www.michiganradio.org/health/2021-03-10/a-legal-fight-to-end-the-so-called-tampon-tax>.

⁴⁶ Margaret E. Johnson, *Asking the Menstruation Question to Achieve Menstrual Justice*, COLUM. J. GENDER & L. 158, 158 (2021).

⁴⁷ *Id.* at 161.

⁴⁸ *Id.*

An important step is to see menstrual health as fundamental to good reproductive health. Dr. Marcia Mendonca Carneiro, *Women & Health* Editor in Chief, advocates for policy makers to focus on period poverty. “In addition to providing hygiene products and clean water and sanitation, investments in research and education not only in the natural process involved in menstruation but also in the associated menstrual disorders such as endometriosis and abnormal uterine bleeding are of paramount importance.”⁴⁹ Those who live in poverty suffer the most from lack of access to MHPs. Dr. Carneiro submits ending period poverty is more than changing infrastructure to allow for better sanitation and providing MHPs in schools—it involves an educational campaign to teach all citizens about menstruation. “Menstruation can no longer be viewed as a curse for which there is nothing to be done except rely on women’s resilience and endurance. Menstruation should not be suffered in shame and silence. Enough is enough.”⁵⁰ To truly overhaul societal stigma regarding menstruation, policy makers must collaborate with medical professionals and teachers to educate all citizens about the necessity of MHPs and the need for good menstrual health.

A. *The Impact of Stigma Specifically on High School Students*

A study sponsored by Always, a menstrual products brand, shows one out of every five girls in the United States has missed school, or left school early, because of no access to MHPs.⁵¹ This type of absenteeism impacts a student’s ability to succeed in school. Schools provide toilet paper, soap, and paper towels in bathrooms—“MHPs should also be seen as an item of necessity in the bathroom.”⁵²

The need to provide accessible MHPs for teens may be the greatest, as they may be surprised by the start of their period, have irregular periods, more readily experience embarrassment or shame about the arrival of their period, and not have the funds to purchase what they need.⁵³ A 2015 survey of New York City high-school students indicates how difficult it is for students to be engaged in class, or to be present in school at all, when they do not have enough MHPs.⁵⁴ Students reported they experience increased anxiety when their parents cannot afford to buy MHPs, so they try to ration their products.⁵⁵ They also reported that though there may be available MHPs in the nurse’s office at their school, they feel embarrassed or intimidated by having to ask permission to go to the nurse’s office.⁵⁶ One respondent reported she had to endure a long wait at the nurse’s office with an

⁴⁹ Carneiro, *supra* note 27, at 721.

⁵⁰ *Id.* at 722.

⁵¹ Sammy Gibbons, *The Pandemic Shed Light on Another Public Health Crisis: Period Poverty*, ROCKLAND/WESTCHESTER J. NEWS (June 14, 2021, 5:01 AM), <https://www.lohud.com/story/news/2021/06/14/pandemic-shed-light-another-public-health-crisis-period-poverty/7107729002/>.

⁵² Andersh et al., *supra* note 1, at 2.

⁵³ WEISS-WOLF, *supra* note 15, at 86.

⁵⁴ *Id.*

⁵⁵ *Id.* at 87.

⁵⁶ *Id.*

improperly signed hall pass, resulting not only in missed class time but after-school detention.⁵⁷ Respondents further reported it was hard to concentrate when they were concerned about leaks, stains, or where they would obtain their next MHP.⁵⁸ The students said they wanted MHPs provided in the bathrooms, alleviating the need to have to ask someone or wait in line for one.⁵⁹ Providing free MHPs in schools, that are easy to access by students, would improve attendance numbers, support a menstruator's physical and mental well-being, and address issues of period poverty.⁶⁰

A 2019 study commissioned by Thinx & PERIOD of 1,000 teenagers, ages thirteen to nineteen, shows students face many barriers in accessing MHPs, including intense shame.⁶¹ That study shows one in five teenagers have struggled to afford MHPs or were not able to purchase them at all.⁶² More than four in five students have missed class time, or know someone who has missed class time, because of lack of access to MHPs.⁶³ The study results are quite enlightening and important to scrutinize:

- 61% have worn a tampon or pad for more than 4 hours because they did not have enough access to period products (puts them at risk of infection and [toxic shock syndrome]).
- 83% think lack of access to period products is an issue that is not talked about enough.
- 64% believe society teaches people to be ashamed of their periods.
- 66% do not want to be at school when they are on their period.
- 51% feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 80% feel there is a negative association with periods, that they are gross or unsanitary.
- 79% feel that they need more in-depth education around menstrual health.
- 76% think we are taught more about the biology of frogs than the biology of the human female body in school.
- Two-thirds of teens have felt stress due to lack of access to period products.⁶⁴

Education is critical in improving public health outcomes. Menstruators need to understand the risk of rationing—or improperly using—MHPs. Risk of infection

⁵⁷ *Id.*

⁵⁸ *Id.* at 88.

⁵⁹ *Id.*

⁶⁰ Andersh et al., *supra* note 1, at 2

⁶¹ *State of the Period*, THINX & PERIOD 1 (2021), https://cdn.shopify.com/s/files/1/0795/1599/files/State-of-the-Period-white-paper_Thinx_PERIOD.pdf?455788 (last visited Feb. 22, 2022).

⁶² *Id.* at 2.

⁶³ *Id.*

⁶⁴ *Id.*

is a real concern. The above survey results of high-school teenagers provide evidence for a need to increase efforts to alleviate stigma around periods. Providing accessible, free MHPs is a critical step in addressing the shame and stress of menstruating, but so is increased education. Silence about the process and the negative discussion surrounding menstruation are “obstacles to the flourishing of all people.”⁶⁵

B. *The Need for Schools to Eliminate Stigma*

Teachers and schools can play a unique role in eliminating stigma. Teachers and administrators can intentionally, or unintentionally, perpetrate stigma around menstruation, which opens the door for discrimination and harassment.⁶⁶ A federal lawsuit was filed in 2020 alleging a Texas after-school program violated federal disability and sex discrimination laws when it kicked a female student out of the program because she began menstruation.⁶⁷ C.S., a student with Down syndrome, wore pull-ups and needed some assistance in changing. Once the school administration was made aware C.S. had started her period, the mother was informed C.S. could no longer attend the program as accommodations would not be made.⁶⁸ Lawyer Lia Davis, one of the attorneys representing C.S., said the school was asked to reconsider before the lawsuit was filed, but the school refused the request.⁶⁹ Ms. Davis reminds us that “antidiscrimination laws are in place to make sure girls like C.S. are not discriminated against on the basis of disability or gender.”⁷⁰

A chief way to eliminate stigma is to talk about menstruation and period poverty. Students desire education on biological processes, including menstruation. Currently, education about reproduction is inconsistently taught in the United States.⁷¹ Thirty-eight states and the District of Columbia require some form of sex education to be taught—however, only seventeen states mandate sex education be medically accurate.⁷² School-based education especially benefits students who are not learning about sex education within the home. This education provides important information about menstruation.⁷³ The information should be accurate

⁶⁵ Bridget J. Crawford, Margaret E. Johnson, Marcy L. Karin, Laura Strausfeld & Emily Gold Waldman, *The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism*, 26 MICH. J. GENDER & L. 341, 387 (2020).

⁶⁶ Margaret E. Johnson, Emily Gold Waldman & Bridget J. Crawford, *Title IX & Menstruation*, HARV. J.L. & GENDER 225, 235 (2020).

⁶⁷ Press Release, Stein & Vargas, LLP, Afterschool Program Sued for Disability and Sex Discrimination After Kicking Girl Out When She Got Her Period (July 10, 2020), http://www.steinvargas.com/wp-content/uploads/2020/07/Girl-With-Down-Syndrome-Kicked-Out-of-School-When-She-Got-Her-Period.pdf?fbclid=IwAR2wMVMq7AaFCrL1kSko9p8uOa_tD4rGYN4ZYGmWx-NnfY34J8qEXIpCcg.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Johnson et al., *supra* note 66, at 258.

⁷² *State Laws and Policies: Sex and HIV Education*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education> (Aug. 1, 2022).

⁷³ Johnson et al., *supra* note 66, at 259.

and timely. If menstruation typically starts between ages ten and fifteen, sex education in high school is too late to help students understand what is happening to their bodies. The failure of schools to educate students about menstruation only perpetuates stigma, which can lead to harassment of menstruators.⁷⁴ It is imperative schools work to provide accurate education for all members of the student body. Efforts must be made “to ensure that menstruation does not prevent students from full and equal access to all educational opportunities.”⁷⁵ Accessible and correct dialogue is an important step in shifting societal attitudes surrounding menstruation. Professor Bridget Crawford makes a convincing argument when she writes, “Open discussion and uncensored representation of menstruation will help move law and society in the direction of recognizing the biological needs of approximately half the population.”⁷⁶

III. A DESPERATE NEED FOR LEGISLATIVE ACTION

Prior to the pandemic hitting the United States in 2020, women were already struggling with poverty. The National Women’s Law Center notes nearly one in nine women, or 13.9 million women, were living in poverty in 2019.⁷⁷ COVID-19 disproportionately, and negatively, impacted women. Minority women were on the front lines in various professions while facing increased rates of food insecurity, loss of employment within their households, and inability to pay for housing.⁷⁸ In September 2020, about six months into the pandemic, 856,000 women left the workforce in the United States.⁷⁹ The exodus of women workers went to levels not seen since 1988.⁸⁰ The loss of income for women workers was substantial, with a myriad of impacts. “Periods don’t stop for pandemics . . . at one point we were getting hundreds and hundreds [of menstrual product requests] a week,” said Dana Marlowe, executive director of I Support the Girls, a nonprofit group that sends MHPs to those who cannot access them.⁸¹

Diamond Cotton, a working mother of three in Indianapolis, experienced period poverty.⁸² Her paychecks from cleaning local hospitals barely covered her rent.⁸³ She was able to procure food with SNAP benefits and from accessing a local food pantry, but Ms. Cotton struggled with finding MHPs for herself and her two

⁷⁴ *Id.* at 260.

⁷⁵ *Id.* at 279.

⁷⁶ Crawford et al., *supra* note 65, at 386.

⁷⁷ Amanda Fins, *National Snapshot: Poverty Among Women & Families, 2020*, NAT’L WOMEN’S L. CTR. 1 (Dec. 2020), <https://nwlc.org/wp-content/uploads/2020/12/PovertySnapshot2020.pdf>.

⁷⁸ See Jasmine Tucker & Claire Ewing-Nelson, *One in Six Latinas and One in Five Black, Non-Hispanic Women Don’t Have Enough to Eat*, NAT’L WOMEN’S L. CTR. (Nov. 2020), <https://nwlc.org/wp-content/uploads/2020/11/pulseFS11.pdf>.

⁷⁹ Pallavoi Gogoi, *Stuck-At-Home Moms: The Pandemic’s Devastating Toll on Women*, NPR (Oct. 28, 2020), <https://www.michiganradio.org/families-community/2020-10-28/stuck-at-home-moms-the-pandemics-devastating-toll-on-women>.

⁸⁰ *Id.*

⁸¹ Gibbons, *supra* note 51.

⁸² *Id.*

⁸³ *Id.*

daughters.⁸⁴ She had been able to rely upon her daughters' schools for MHPs before, but schools had shut down due to COVID-19.⁸⁵ This is not a unique story. I Support the Girls saw a thirty-five percent increase in requests for MHPs at the start of the pandemic in spring 2020.⁸⁶

One of the initial lessons of the pandemic was the inequitable access people had to basic goods, like toilet paper, food, and MHPs. As seen in the original data from the University of West Florida survey in Part II, persons who menstruate often use toilet paper as a makeshift MHP. However, in the beginning of the pandemic in the United States, many consumers hoarded toilet paper, making it difficult to find on store shelves.⁸⁷ Previously, those who menstruate were sometimes able to find MHPs at institutions like schools (those that provided them for free) or nonprofit groups.⁸⁸ When schools shut down for COVID-19 lockdowns, many students were cut off from their primary source of MHPs.⁸⁹ As institutions, shelters, and nonprofit agencies also shut down or limited services, and individuals quarantined, many were thrust into period poverty.

In March 2020, Congress passed the Coronavirus Aid, Relief and Economic Security Act ("CARES Act").⁹⁰ The CARES Act, passed in the United States during the pandemic to provide financial relief, did allow individuals to use pre-tax dollars to buy MHPs, classifying them as "medical expenses."⁹¹ While the CARES Act made MHPs eligible for purchase with flexible spending accounts or health savings accounts, uninsured individuals could not access this benefit.⁹² Jennifer Weiss-Wolf recognizes the importance of the CARES Act in making continued, meaningful change. "[Classifying MHPs as medical expenses] demonstrates in the most full-throated way that both menstrual products and menstruation impact people in a way that when they're dealing with other economic crises it's important to acknowledge and elevate that and not leave it off the table."⁹³

At the federal level, there is only one law that addresses menstrual equity.⁹⁴ In 2018, Congress codified an existing Bureau of Prisons regulation requiring free MHPs to be provided in federal women's facilities in the First Step Act.⁹⁵ A criticism of the Act is that it simply states the MHPs should be available but does not specify how to make them available to incarcerated individuals.⁹⁶ This Article focuses on educational institutions instead of correctional facilities; however, it is important to

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Crawford & Gold Waldman, *supra* note 31, at 1579.

⁸⁸ Gibbons, *supra* note 51.

⁸⁹ Crawford & Gold Waldman, *supra* note 31, at 1578.

⁹⁰ CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

⁹¹ Gibbons, *supra* note 51.

⁹² Shelby Davies, Grace Clarke & Noreena Lewis, *Period Poverty: The Health Crises We Don't Talk About*, CHILD.'S HOSP. OF PHILA. POLICYLAB (Apr. 6, 2021), <https://policylab.chop.edu/blog/period-poverty-public-health-crisis-we-dont-talk-about>.

⁹³ Gibbons, *supra* note 51.

⁹⁴ ACLU, *supra* note 11, at 5.

⁹⁵ First Step Act of 2018, Pub. L. No. 115-391, § 611, 132 Stat. 5194, 5247 (2018).

⁹⁶ Margaret Johnson, *Menstrual Justice*, UC DAVIS L. REV 1, 49 (2019).

briefly introduce the reader to some of the exclusive barriers faced by incarcerated individuals.

Kimberly Haven is a formerly incarcerated woman who had to have an emergency hysterectomy due to toxic shock syndrome caused by using makeshift tampons while in prison.⁹⁷ Ms. Haven, testifying before the Maryland legislature in 2018, stated incarcerated women who were menstruating would refuse visits from families and attorneys due to the required strip search following a visit.⁹⁸ She testified that the female would have to throw the pad away following the strip search, risking “bleeding through your clothes and you don’t have access to laundry facilities.”⁹⁹ Incarcerated individuals often have to ration MHPs, if they have them at all, and they are often of low quality.¹⁰⁰ At a prison in Alabama, incarcerated women were compelled to submit to unwanted sexual advances by correctional officers to obtain MHPs or access to laundry services.¹⁰¹ Incarcerated women reported inadequate access to clean clothing and MHPs, especially for those who were indigent.¹⁰² They reported staff either took MHPs for themselves or they would be unevenly distributed based on staff “favorites”—with some menstruators going two to three months without MHPs.¹⁰³ A Department of Justice investigation found these reports to have credibility after on-site observations.¹⁰⁴ A report detailing the investigation’s findings states MHPs “are necessities, not luxuries.”¹⁰⁵ The report went on to state the prison’s failure to ensure equitable distribution of MHPs means incarcerated individuals will have to borrow or barter for MHPs, which can lead to an unwanted sexual relationship as “sex is one form of currency.”¹⁰⁶

On May 28, 2021, Congresswoman Grace Meng introduced the Menstrual Equity for All Act of 2021.¹⁰⁷ The bill expands access to free MHPs in certain locations—federal and state correctional institutions and federal buildings—and requires Medicaid to cover MHPs.¹⁰⁸ It also establishes a grant program to support free MHPs to be provided on campuses and institutions of higher learning¹⁰⁹ and permits elementary and secondary schools to use certain grant funding to provide MHPs to students.¹¹⁰ The bill also requires employers with 100 or more employees

⁹⁷ ACLU, *supra* note 11, at 4.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Chandra Bozelko, *Prisons That Withhold Menstrual Pads Humiliate Women and Violate Basic Rights*, THE GUARDIAN (June 12, 2015, 7:30 AM), <https://www.theguardian.com/commentisfree/2015/jun/12/prisons-menstrual-pads-humiliate-women-violate-rights>.

¹⁰¹ Letter from Jocelyn Samuels, Acting Assistant Att’y Gen., to Robert Bentley, Gov. of Ala. 14–15 (Jan. 17, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/01/23/tutwiler_findings_1-17-14.pdf.

¹⁰² *Id.*

¹⁰³ *Id.* at 14.

¹⁰⁴ *See id.*

¹⁰⁵ *Id.* at 15.

¹⁰⁶ *Id.*

¹⁰⁷ Menstrual Equity for All Act of 2021, H.R. 3614, 117th Cong. (2021).

¹⁰⁸ *Id.* § 5, 7, 9.

¹⁰⁹ *Id.* § 4.

¹¹⁰ *Id.* § 3.

to provide free MHPs for employees.¹¹¹ The bill has not progressed beyond its initial introduction in the House of Representatives.¹¹²

Illinois passed House Bill 156, effective August 13, 2021, requiring school districts with grades four through twelve to provide free MHPs in bathrooms.¹¹³ The act found that MHPs are necessary health care items, and that access is a “serious and ongoing need in this [s]tate.”¹¹⁴ It goes on to state that when students have limited access to affordable MHPs, they may miss multiple days of school per month.¹¹⁵ When students have access to quality MHPs, they can continue their days with much less interruption.¹¹⁶

California and Illinois were the first states to provide free MHPs to public school students in early 2018, followed by New York in late 2018, and New Hampshire in 2019.¹¹⁷ Georgia decided by budget to provide free MHPs in low-income schools in 2020.¹¹⁸ Illinois followed in 2021 by providing MHPs to all schools.¹¹⁹ As of September 25, 2021, there were more than 140 bills in thirty-seven states, including eight bills at the federal level, to require free access to MHPs, to eliminate the tampon tax, or to seek ingredient disclosure in MHPs.¹²⁰ Many of these bills will die in committee without reaching a vote; however, the number of states working to provide equity among those who menstruate is a hopeful sign.

Effective January 1, 2022, Illinois House Bill 155 states that should the United States Department of Agriculture issue a waiver to the states permitting recipients of SNAP or WIC public assistance benefits “to purchase diapers or menstrual hygiene products such as tampons, sanitary napkins, and feminine wipes, then the Department of Human Services shall apply for the waiver.”¹²¹ State Representative Barbara Hernandez sponsored the bill, saying:

Far too many working-class women are being forced to put their health at risk to save money, and it's past time we put an end to that. This legislation is a good first step to ensure that no woman will ever have to see menstrual hygiene as a financial burden again. For the health

¹¹¹ *Id.* § 8.

¹¹² Shirin Ali, *The US Movement to Make Period Products Free is Going*, THE HILL: CHANGING AMERICA (Aug. 16, 2022), <https://thehill.com/changing-america/respect/accessibility/3604347-the-movement-to-make-period-products-free-is-growing-in-the-u-s/>.

¹¹³ Pub. Act 102-0340, 102d Gen. Assemb., Reg. Sess. (Ill. 2021); *Illinois House Bill 156 Educ: Menstrual Hygiene Product*, TRACKBILL, <https://trackbill.com/bill/illinois-house-bill-156-educ-menstrual-hygiene-product/1981924/> (last visited Nov. 9, 2022).

¹¹⁴ *Id.* § 5(a)(2).

¹¹⁵ *Id.* § 5(a)(3).

¹¹⁶ *Id.* § 5(a)(4).

¹¹⁷ Kaanita Iyer, *New Zealand Schools Will Offer Free Menstrual Products. Where is the US on Period Equity? Far Behind, Experts Say*, USA TODAY, <https://www.usatoday.com/story/news/nation/2021/02/19/united-states-period-poverty-free-products-tampon-tax-new-zealand/6797036002/> (Feb. 22, 2021, 2:34 PM).

¹¹⁸ *Id.*

¹¹⁹ Pub. Act 102-0340; *Illinois House Bill 156 Educ.*, *supra* note 113.

¹²⁰ Jamie McConnell, *Period Health Policies: Is Your State Working to Make Menstrual Equity a Priority?*, WVE 3, <http://www.womensvoices.org/2021/01/11/period-health-policies-is-your-state-working-to-make-menstrual-equity-a-priority/> (Sept. 2021).

¹²¹ Pub. Act 102-0248, 102d Gen. Assemb., Reg. Sess. (Ill. 2021).

of women everywhere, we need to make this necessity accessible to all those who need it.¹²²

Representative Hernandez also co-sponsored House Bill 310, effective January 1, 2022.¹²³ This law created the Feminine Hygiene Products for the Homeless Act.¹²⁴ It provides that MHPs shall be available free of charge at all homeless shelters that provide temporary housing assistance.¹²⁵

Advocacy for needs at all levels of government is important in four critical areas: the free provision of MHPs in correctional institutions (both state and federal); the free provision of MHPs in K-12 schools and institutions of higher learning; the free provision of MHPs in homeless shelters; and the need for menstrual equity in product taxation (for example, the elimination of the tampon tax).¹²⁶ It is not enough to pass laws requiring the free provision of MHPs—these mandates must also come with funding sources. The American Civil Liberty Union and Period Equity have created a menstrual equity legislative toolkit, which provides a road map for legislators.¹²⁷ It contains model legislative and policy language, talking points, examples of op-eds, letters of support to send to legislators, and interviews with advocates about how to make progress in the menstrual equity movement.¹²⁸

It is critical for lawmakers to feel comfortable discussing menstruation so to effectuate much needed policy change. By educating themselves, lawmakers can then educate their constituents. The difficult impacts menstruation and period poverty can have on families and households need to be brought within the spotlight of public discourse.

A. *Examining The Tampon Tax*

Professor Margaret Johnson, in her article titled “Menstrual Justice,” highlights the structural inequities resulting from disproportionate taxation:

Rather than treating menstruation as a natural monthly bodily event that is linked to reproduction, society expects menstruators to hide menstruation, to be shamed by menstruation, and to be solely and invisibly responsible for the care of and the effects of their menstruation. This leads to society’s unwillingness to build such structures as the workplace and our tax code with deep consideration of menstruation as normal, common, and a communal responsibility.

¹²² Press Release, Ill. Sen. Democratic Caucus, Menstrual Hygiene Products Can Be Purchased with SNAP and WIC Benefits Under Villa Law (Aug. 5, 2021), <https://www.illinoisenatedemocrats.com/caucus-news/72-senator-karina-villa-news/2886-menstrual-hygiene-products-can-be-purchased-with-snap-and-wic-benefits-under-villa-law>.

¹²³ Pub. Act 102–0249, 102d Gen. Assemb., Reg. Sess. (Ill. 2021).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ ACLU, *supra* note 11, at 5–6.

¹²⁷ *Id.* at 9.

¹²⁸ *Id.*

As a result, menstruators experience economic disadvantage. Some of the disadvantages include having to pay a tax on all menstrual products, generally receiving no paid leave for menstruation or menstrual pain, income depreciation, and persistent menstrual harassment and discrimination.¹²⁹

The tampon tax is a sales tax on MHPs categorizing them as nonessential items.¹³⁰ It is estimated 800 million people around the world are menstruating at any given moment.¹³¹ With that many people on their period at any one time, it is difficult to understand how MHPs can be seen as nonessential for sales-tax purposes. However, it is important to note that MHPs create a large revenue stream for governments. When governments cut the tampon tax, they must increase tax rates for other items.¹³² For example, eliminating the tampon tax in New York is estimated to account for a fourteen-million-dollar reduction in annual revenue.¹³³

“Sales tax is primarily a state issue.”¹³⁴ Sales taxes were first implemented in the United States in the 1930s, with states exempting food and other items deemed necessities of life from sales tax.¹³⁵ MHPs traditionally have not been exempted from sales tax, with thirty states currently imposing sales tax on period products.¹³⁶ State and local sales taxes can add up to ten percent to the cost of MHPs.¹³⁷ While in office, President Barack Obama was asked why MHPs are taxed. He stated he was unsure but suspected “it’s because men were making the laws when those taxes were passed.”¹³⁸ Professor Victoria J. Haneman, in her article titled “On Period Poverty,” discusses the ways in which taxes represent value judgments embedded within statutes.¹³⁹ She notes types of other items exempted from taxation in various states that still tax MHPs.¹⁴⁰ For example, Tennessee exempts fishing tournament registration fees, Iowa exempts cotton candy, Georgia exempts tattoos, and North Carolina exempts fraternity meals.¹⁴¹

Professor Haneman argues that “men cannot unilaterally establish a gender-differentiated hygiene management baseline that implicitly requires women to bear the expense of deviation from the baseline . . . It falls upon every woman to advocate for access.”¹⁴² There needs to be a real effort to challenge inequities embedded in

¹²⁹ Johnson, *supra* note 96, at 6–7. The authors highly recommend anyone interested in menstrual equity and injustice to read Professor Johnson’s article. It is incredibly thorough and thoughtful.

¹³⁰ Leah Rodriguez, *The Tampon Tax: Everything You Need to Know*, GLOB. CITIZEN 2 (June 28, 2021), <https://www.globalcitizen.org/en/content/tampon-tax-explained-definition-facts-statistics/>.

¹³¹ *Id.*

¹³² *Id.* at 3.

¹³³ *Id.*

¹³⁴ WEISS-WOLF, *supra* note 15, at 124.

¹³⁵ *Id.* at 125.

¹³⁶ Gibbons, *supra* note 51.

¹³⁷ ACLU, *supra* note 11, at 2.

¹³⁸ WEISS-WOLF, *supra* note 15, at 136.

¹³⁹ See Haneman, *supra* note 25, at 3.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* (citing *30 States Have Until Tax Day 2021 to Eliminate Their Tampon Tax*, TAX FREE PERIOD, <https://www.taxfreeperiod.com> (last visited Mar. 20, 2021)).

¹⁴² *Id.* at 5.

places like antiquated tax statutes. Professor Haneman further recommends individuals who are not marginalized to vocally advocate for free and accessible MHPs. Transformative change requires “normalizing period talk to reduce stigma” and “supporting political candidates who will work to eliminate tampon taxes.”¹⁴³

B. Eliminating the Tampon Tax

Eliminating the tampon tax can accomplish several objectives—lifting a small financial burden, challenging laws that are applied in a discriminatory fashion, improving economic parity and gender equity, and encouraging people to talk and think about how policies can impact those who menstruate.¹⁴⁴ Some states and local governments have removed the tax in recent years. Chicago was the first city to remove the tampon tax in 2016 when it passed its own ordinance, eliminating the portion of sales tax Chicago residents would be charged for MHPs.¹⁴⁵

Nevada placed eliminating the tampon tax on its ballot in 2018.¹⁴⁶ In its informational booklet for Nevadans regarding the upcoming ballot questions, the Secretary of State presented the proposed ballot language, along with arguments for and against passage.¹⁴⁷ Voters were asked to eliminate the “discriminatory sales and use taxes to lower the cost of feminine hygiene products, increase access to these necessities, and improve women’s health and welfare.”¹⁴⁸ The argument for passage also included the following:

Feminine hygiene products should be treated like other medical products that are exempt from Nevada’s sales and use taxes, such as splints, bandages, and prosthetic devices. This is consistent with the U.S. Food and Drug Administration’s classification of tampons as a type of medical product. There is no equivalent medical product that is used only by one sex on a monthly basis for decades. These sales and use taxes are especially unjust for low-income women who struggle to pay for basic necessities each month. Feminine hygiene products need to be more accessible, and eliminating these taxes on sanitary napkins and tampons will make them more affordable.¹⁴⁹

The argument against passage was based on loss of revenue from the elimination of the sales and use tax:

¹⁴³ *Id.*

¹⁴⁴ WEISS-WOLF, *supra* note 15, at 127–128.

¹⁴⁵ *Id.* at 137.

¹⁴⁶ Jana Kasperkevic, *Nevada’s “Tampon Tax” Ballot Initiative Brings Up Questions About Fairness and Gender Equality*, MARKETPLACE (Nov. 1, 2018), <https://www.marketplace.org/2018/11/01/nevada-s-tampon-tax-ballot-initiative-brings-questions-about-fairness-and/>.

¹⁴⁷ OFF. OF SEC’Y OF STATE, BARBARA K. CEGAVSKE, STATEWIDE BALLOT QUESTIONS 2018, 14–22 (2018), <https://www.nvsos.gov/sos/home/showdocument?id=5824>.

¹⁴⁸ *Id.* at 16.

¹⁴⁹ *Id.* at 15.

A broader tax base generally leads to lower rates and is better suited to accommodate upturns and downturns in the economy. Instead of broadening the tax base, this exemption will narrow the tax base, creating the potential for more volatility in sales and use tax revenue and complicating the administration of these taxes with no gain in terms of tax policy. Nevada's sales and use taxes are not discriminatory and do not tax products based on sex. Rather, products sold in Nevada are generally subject to these taxes regardless of who buys or uses them. As a result, many products that are considered necessities, such as soap, toothbrushes and toilet paper, are not exempt from sales and use taxes.¹⁵⁰

Also included in the informational booklet was the State Demographer's projections regarding the proposed financial impact should the sales and use tax be repealed. "[T]here were approximately 867,000 females between ages [twelve] and [fifty-five] living in Nevada on July 1, 2017."¹⁵¹ The Demographer assumed the average monthly consumption of MHPs would be between seven and ten dollars per person. Based on this estimate, the total taxable sales generated would be between six and eight million dollars each month.¹⁵² The estimated revenue loss per fiscal year total was between four and seven million dollars.¹⁵³ The estimated revenue loss per fiscal year represented between 0.13% and 0.19% of the actual revenue collected in Fiscal Year 2017.¹⁵⁴ In November 2018, Nevada became the tenth state to scrap the tampon tax when a majority of voters voted to exempt MHPs from the state sales tax.¹⁵⁵

In 2021, Michigan removed the six percent sales and use tax applicable to MHPs.¹⁵⁶ This legislation had been introduced in Michigan for the previous five years, without successful support for passage.¹⁵⁷ The average Michigander who menstruates has 456 periods and uses 17,000 tampons or pads over the course of their reproductive lifetime.¹⁵⁸ The recent legislation will reduce revenue by about

¹⁵⁰ *Id.* at 16.

¹⁵¹ *Id.* at 17.

¹⁵² *Id.*

¹⁵³ *See id.*

¹⁵⁴ *Id.* at 17–18 (“[T]he State and local governments, including school districts, may lose additional sales tax revenue from this exemption for tampons and sanitary napkins purchased in Nevada by tourists and other nonresidents. However, the amount of these products that may be purchased by such nonresidents, and the resulting loss in revenue to these governmental entities, cannot be determined with any reasonable degree of certainty.”). *Id.* at 18.

¹⁵⁵ *See* Cory Stieg, *A 10th State Just Eliminated the Tampon Tax*, THE REFINERY (Nov. 9, 2018), <https://www.refinery29.com/en-us/2018/11/21/6530/nevada-luxury-tax-on-tampons-pads>.

¹⁵⁶ Craig Mauger, *Gov. Gretchen Whitmer Signs “Tampon Tax” Repeal*, THE DETROIT NEWS (Nov. 4, 2021), <https://www.detroitnews.com/story/news/politics/2021/11/04/michigan-tampon-tax-repeal-feminine-hygiene-products-governor-gretchen-whitmer-signs-new-law/6285702001/>.

¹⁵⁷ Stateside Staff, *supra* note 45

¹⁵⁸ Press Release, Off. of Gov. Gretchen Whitmer, Gov. Whitmer Signs First Bill Repealing Tampon Tax, Drives Down Cost for Families (Nov. 4, 2021), <https://www.michigan.gov/whitmer/0,9309,7-387-90499-571973--,00.html>.

\$6.3 million per year.¹⁵⁹ However, the legislation is expected to save “families from paying taxes on up to \$4,800 in spending over the course of a lifetime.”¹⁶⁰

Efforts are being made internationally to improve menstrual equity as well. Scotland became the first country to provide free and universal access to MHPs, requiring schools, colleges, and universities to provide MHPs for free and the delivery of free MHPs to low-income households.¹⁶¹ A survey in Scotland showed one in five women had to go without period products and one in ten women had to prioritize food over purchasing MHPs.¹⁶² The poll cited the most common alternative used when there was no access to MHPs was toilet paper, followed by old clothes and newspapers.¹⁶³ Scottish Labour’s health spokesperson, Monica Lennon, noted how important this progress will be for Scotland, stating, “It’s an important message in the middle of a global pandemic that we can still put the rights of women and girls high up the political agenda.”¹⁶⁴ As of January 1, 2021, the United Kingdom abolished the tampon tax and has been working to provide free MHPs in state schools and colleges.¹⁶⁵ In February 2021, New Zealand announced free MHPs would be available in schools for the next three years.¹⁶⁶

CONCLUSION

The original data collected from the University of West Florida survey indicates that undergraduate menstruators are experiencing period poverty. It further suggests a significant association between period poverty and negative mental health outcomes. This supports the findings in the Cardoso study.¹⁶⁷ Additional research should be conducted to identify prevalence of period poverty among different groups of menstruators and to identify opportunities to increase access to MHPs.

It is past time to consider MHPs a basic need of daily living. Access to menstrual hygiene products achieves better mental and physical health outcomes. United States policy makers must recognize MHPs are necessary, essential items.¹⁶⁸ More cities and states should repeal the tampon tax and declare publicly that MHPs are items of daily life, not items of luxury. Public assistance benefits should allow

¹⁵⁹ Mauger, *supra* note 156.

¹⁶⁰ *Id.*

¹⁶¹ Libby Brooks, *Scotland Becomes First Nation to Provide Free Period Products for All*, THE GUARDIAN (Nov. 24, 2020), <https://www.theguardian.com/uk-news/2020/nov/24/scotland-becomes-first-nation-to-provide-free-period-products-for-all>.

¹⁶² *See id.*

¹⁶³ Libby Brooks, *Period Poverty: Scotland Poll Shows Women Go To Desperate Lengths*, THE GUARDIAN (Feb. 5, 2018) <https://www.theguardian.com/society/2018/feb/05/period-poverty-scotland-poll-shows-women-go-to-desperate-lengths>.

¹⁶⁴ Brooks, *supra* note 161.

¹⁶⁵ Joelle Goldstein, “*Tampon Tax*” Abolished on Menstrual Products in the UK: ‘A Long Road to Reach this Point,’ PEOPLE (Jan. 4, 2021), <https://people.com/human-interest/tampon-tax-abolished-on-menstrual-products-uk/>.

¹⁶⁶ Iyer, *supra* note 110.

¹⁶⁷ *See* Cardoso et al., *supra* note 21.

¹⁶⁸ Rodriguez, *supra* note 130.

waivers for purchase of MHPs. Free MHPs should be provided in public schools, homeless shelters, prisons, and other public agencies.¹⁶⁹ The benefits of improved educational success and positive mental and physical well-being are too big to ignore.

In closing, Professor Bridget Crawford writes of the critical need for the law to recognize the importance of working toward, and ultimately achieving, menstrual equity:

The invitation to make the law more responsive to human needs necessarily requires critiquing, re-envisioning, and possibly even dismantling structures and systems that encourage or tolerate gender unfairness. Drawing a distinction between menstruators and non-menstruators need not create division between a group that is predominantly female and a group that is predominantly male. All parts of public life become enriched when every member of society has the opportunity to participate, unhindered by biological differences. The work continues.¹⁷⁰

Indeed it does.

¹⁶⁹ See generally Cardoso et al., *supra* note 21.

¹⁷⁰ Crawford et al., *supra* note 65, at 388.