

THE CURSE OF EVE: GEORGIA'S TAX ON WOMEN'S BODIES

*Larkin Carden**

* J.D., University of Georgia School of Law, 2024; Bachelor of Arts, Auburn University, 2021.

TABLE OF CONTENTS

I. INTRODUCTION	3
II. GEORGIA’S SALES TAX: HISTORICAL OVERVIEW.....	4
A. GEORGIA’S SALES TAX	4
1. <i>Georgia’s Sales Tax Exemptions</i>	6
2. <i>The Efforts to Add Menstrual Discharge Collection Devices (MDCDs) to Exemptions in Georgia</i>	9
B. STATES EXEMPTING MDCDS FROM SALES TAX.....	11
III. REMOVING MDCDS FROM SALES TAXATION IN GEORGIA...	15
IV. THE TAX AS A PERPETUATION OF MENSTRUAL STIGMA	21
A. A BRIEF OVERVIEW OF WOMEN’S REPRESENTATION AND WOMEN’S RIGHTS IN GEORGIA	22
B. EVE’S CURSE: THE STIGMATIZATION OF WOMEN AND MENSTRUATION	24
1. <i>Menstruation and the Southern Lady</i>	24
2. <i>Religious Influences on Negative Perceptions of Menstruation</i>	32
V. CONCLUSION	36

I. INTRODUCTION

The Supreme Court justices once argued that a tax on wearing yarmulkes is a tax on Jewish people.¹ Similarly, taxing the sales of yarmulkes alone would be considered unfair and inequitable unless other religious garments faced the same levy. However, if the tax code only exempted other religious items like First Communion veils or turbans from sales taxation while maintaining a sales tax on yarmulkes, it would unmistakably constitute a tax specifically on those consumers: Jewish individuals. Certainly, situations like these are relics of the past, right? Wrong. This very scenario is unfolding in Georgia today. Unlike twenty-nine other states,² Georgia maintains a tax on women's bodies and profits to the tune of \$6.1 million.³

Currently, Georgia requires women to pay a four percent luxury tax rate for each box of menstrual products, or Menstrual Discharge Collection Devices (MDCDs), which are medically necessary products. Georgia's luxury sales tax on MDCDs, without a corresponding tax on any comparable products, is inherently unfair and inequitable, contrary both to Georgia's tax policy and to the Constitution—the products subject to the tax are intrinsically interwoven with female anatomy and amount to a tax on just that.⁴

Granting tax exemptions is not a rare phenomenon in Georgia's history,⁵ nor this 2024 legislative session,⁶ as Georgia currently exempts thousands of consumer products of greater monetary consequence and lesser necessity.⁷ However, despite at least five bills since 2017 and hundreds of emails sent to Georgia legislative leaders, exempting MDCDs from luxury sales taxation has not been given adequate attention or consideration by Georgia's leaders.⁸

¹ *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993).

² These states include Florida, Virginia, Texas, and Louisiana. See discussion *infra* Section II.B.

³ Greg S. Griffin & Kelly Farr, Fiscal Note for Senate Bill 51, Georgia Department of Audits & Accounts (Feb. 9, 2023).

⁴ For a discussion of Georgia's sales tax policy, see *infra* Section II.A.1. For a discussion of the constitutional problems with MDCD sales tax, see notes 92–96 and accompanying text.

⁵ See *infra* Section II.A.1.

⁶ See *infra* note 80 (listing examples of tax bills in 2024).

⁷ See *infra* notes 23–29 and accompanying text.

⁸ See *infra* Section II.A.2; see also *infra* note 80.

Tax law has always been a way for the government to tell its constituents how to understand the world around them: It dictates what a family is and is not, what counts as work and what does not, what constitutes high socioeconomic status and what does not, and what items are necessities, and which are not.

Tax law reflects societal norms and, therefore, often perpetuates discrimination, which explains why the greatest change in U.S. history in terms of human rights has arisen in disputing discriminatory tax codes that enshrine and enable discriminatory beliefs and practices.⁹ Eliminating the tax on MDCDs is no different. In the early days of creation, God cursed Eve and womankind for eating the apple. Was God's punishment for women to pay more in taxes?

This article is divided into three main parts. Section II provides an overview of Georgia's sales tax, tax exemptions, efforts in Georgia to exempt MDCDs, and MDCD exemptions in other states. Section III argues that Georgia must exempt MDCDs from sale taxation based on principles of equity and fairness because these medically necessary products are so closely tied to female anatomy. Through an examination of the negative history surrounding women's rights and representation in Georgia, alongside the documented instances of menstrual stigmatization across legal frameworks, literature, cultural norms, and religious doctrines, Section IV argues that Georgia should repeal the tax on MDCDs. Exempting MDCDs from Georgia's sales tax system signifies a transformative departure from the historical stigmatization of menstruation towards a future that unequivocally denounces menstrual stigma, underscores the primacy of women's health, and solidifies the imperative nature of issues pertaining to women and girls within Georgia's legislation.

II. GEORGIA'S SALES TAX: HISTORICAL OVERVIEW

A. GEORGIA'S SALES TAX

When property taxes no longer generated sufficient revenue during the Great Depression, the United States retail sales tax

⁹ See *infra* notes 85–88 and accompanying text.

emerged as a new source of income.¹⁰ Although “the states considered these taxes temporary emergency measures,”¹¹ today “[m]any state budgets are funded in greatest part by their sales tax.”¹²

In 1945, the Georgia Constitution incorporated several expansions to the state’s tax power short of enacting a sales tax.¹³ However, the inadequacy of Georgia’s traditional state taxing plans became apparent in 1947 when the state appointed a Tax Law Revision Committee.¹⁴ After the Committee’s investigation, Georgia enacted the Georgia Retailers’ and Consumers’ Sales and Use Tax Act in 1951.¹⁵

Georgia imposes a four percent tax on the “retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services.”¹⁶ Generally, the “retail seller collects the tax from the customer and then pays the tax to the state.”¹⁷ The only limitations on the sales tax comes from the United States Constitution and specific exemptions listed in Chapter 8, comprised of thousands of consumer products, including certain prescription

¹⁰ See Suzanne Herman, *A Blood-Red-Herring: Why Revenue Concerns are Overestimated in the Fight to End the “Tampon Tax.”* 48 FORDHAM URB. L.J. 595, 597 (2021); Timothy R. Hurley, *Curing the Structural Defect in State Tax Systems: Expanding the Tax Base to Include Services*, 61 MERCER L. REV. 491, 499–500 (2010).

¹¹ Hurley, *supra* note 10 at 499.

¹² *Id.* at 598. For example, Georgia’s income and state sales tax are the largest sources of revenue. See WILLIAM J. SMITH & MARY BETH WALKER, FISCAL RSCH. CTR., REP. NO. 134, REVENUE LOSSES FROM EXEMPTIONS OF GOODS FROM THE GEORGIA SALES AND USE TAX 1 (2006).

https://csf.gsu.edu/files/2014/06/revenue_losses_from_exemptions_of_goods_from_the_georgia_sales_and_use_tax.pdf [perma.cc/U9LB-8KPA]. Income taxes account for half of all funds, with sales taxes comprising less than a quarter. GA. BUDGET & POL’Y INST., *2024: Georgia Budget Primer*, (June 2023), https://issuu.com/gbpi/docs/2024_georgia_budget_primer_online [perma.cc/YY9D-DG7F]. Funds collected by these sources are included in Georgia’s budget, which is \$32.4 billion for FY 2024. Danny Kansa, *Georgia Revenue Primer for State Fiscal Year 2024*, GA. BUDGET & POL’Y INST., (June 27, 2023), <https://gbpi.org/georgia-revenue-primer-for-state-fiscal-year-2024/> [perma.cc/PD45-YDYT].

¹³ 1 DANIEL F. HINKEL, *GEORGIA REAL ESTATE LAW & PROCEDURE* § 4:3 (7th ed. 2024).

¹⁴ *Id.*

¹⁵ Retailers’ and Consumers’ Sales and Use Tax Act, No. 240, 1951 Ga. Laws 360 (current version at O.C.G.A. §§ 48-8-1–19, 48-8-30–78).

¹⁶ O.C.G.A. § 48-8-1.

¹⁷ Bridget J. Crawford & Carla Spivack, *Tampon Taxes, Discrimination, and Human Rights*, 2017 WIS. L. REV. 491, 496 (2017).

drugs, lottery tickets, durable medical equipment, and manufacturing equipment.¹⁸ Thirty states and the District of Columbia do not enforce a sales tax on MDCDs.¹⁹ Georgia is not among these thirty. According to Georgia, tampons and maxi-pads, items medically necessary for women's health, are a luxury.²⁰

1. *Georgia's Sales Tax Exemptions.* A sales tax is regressive because it taxes what consumers use rather than what the consumers earn.²¹ In recognizing that a sales tax disproportionately impacts individuals who rely on the products subject to the tax,²² states, including Georgia, generally make sales tax exemptions for items deemed a necessity of basic living.²³ For example, Georgia exempted food for home consumption that applied to most grocery

¹⁸ O.C.G.A. §§ 48-8-1, -3.

¹⁹ *Tampon Tax*, ALL. FOR PERIOD SUPPLIES, <https://allianceforperiodsupplies.org/tampon-tax> [perma.cc/NJB5-KGMT] (last visited Oct. 24, 2024). This is commonly referred to as the "tampon tax," insofar as "tampons, pantliners, menstrual cups, and other menstrual products are subject to a value-added tax or retail sales tax in many countries, states, and cities. Unlike food, clothing, and prescription drugs, menstrual products are not considered necessities." Herman, *supra* note 10, at 600.

²⁰ See Chaya Tong, *Georgia Continues Charging So-Called Tampon Tax Despite Latest Legislative Repeal Effort*, GEORGIA RECORDER (Apr. 11, 2023), <https://georgiarecorder.com/2023/04/11/georgia-continues-charging-so-called-tampon-tax-despite-latest-legislative-repeal-effort/> [perma.cc/S534-8AT6] ("Period supplies are not luxury items, and they should not be taxed as such. In states like Georgia, we're seeing that the products are being taxed at the same rate or similar rate to decor and electronics or makeup and toys.").

²¹ Governor Andrew Cuomo of New York exempted MDCDs from their state's sales tax in 2016, stating: "The signing of this bill into law represents a new dawn. Women statewide will no longer be burdened by a lingering tax that was levied at a time when women were not part of government and the decision-making process. The tampon tax is regressive, and lifting it will spare all women the extra monthly burden of paying taxes on products that are already unaffordable to many." Crawford & Spivack, *supra* note 17, at 536 (citing Press Release, Governor's Press Office, Governor Cuomo Signs Legislation to Exempt Sales and Use Taxes on Feminine Hygiene Products (July 21, 2016), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-exempt-sales-and-use-taxes-feminine-hygiene-products> [perma.cc/P8AY-J5NK]). Regressive taxes are in contrast with progressive taxes, which "require individuals with higher incomes to pay a higher percentage of their income." Herman, *supra* note 10, at 598.

²² Bridget J. Crawford & Emily Gold Waldman, *The Unconstitutional Tampon Tax*, 53 U. RICH. L. REV. 439, 448 (2019); see also *id.* at 448 n.44 ("[T]he sales tax [is] an 'upside down income tax' based on 'inability to resist rather than ability to pay.'" (citing MABEL L. WALKER, WHERE THE SALES TAX FALLS 1 (1934))).

²³ *Id.* at 449.

items in 1996.²⁴ The passage of exemptions like these are premised on fairness and equity in removing regressive taxation on necessary items.²⁵ Other examples include the sale of water, oxygen, hearing aids, and medical equipment.²⁶

In 1984, Georgia enacted another state sales tax exemption that aimed to eliminate regressive state and local taxation on necessary items: prescription drugs, glasses and contacts, and insulin.²⁷ Viagra, as a prescription drug, is included in this exemption, meaning Georgia recognizes that a medication that allows men to participate in recreational sexual activity deserves an exemption, “while products required by women’s reproductive systems do not.”²⁸

However, an item need not be a necessity to receive exemption status, nor does an item being a necessity immediately warrant exemption. Georgia looks more broadly at consumer items to exempt products based on principles of “equity, fairness, charity, and . . . economic development”²⁹ Some of these non-necessity items that receive exemptions may include tickets to a show, videotape rentals, admission to a major sporting event, grass sod, and candy.³⁰

The leader of the opposition against exempting MDCDs from sales taxation, House Speaker Pro-Tempore Jan Jones, “argues that

²⁴ O.C.G.A. § 48-8-3(57). This exemption does not include restaurant meals, alcohol, tobacco, vitamins, or minerals. Also, Georgia employs tax exemptions for political or policy reasons. For example, “[k]nowing that Georgia is the home to Coca-Cola, it isn’t surprising that soft drinks are included in the reduced-rate category of food.” SALES TAX INST., *Key Sales Tax Updates Affecting the Southeastern United States* (Dec. 7, 2023), <https://www.salestaxinstitute.com/resources/key-sales-tax-updates-affecting-the-southeastern-united-states> [perma.cc/32ZW-K59E]. However, several other southeastern states, such as Tennessee, do not include soft drinks in their food for home consumption exemption. *E.g., id.*

²⁵ *See, e.g.*, PETER S. BLUESTONE, ROBERT D. BUSCHMAN & NICHOLAS I. WARNER, FISCAL RSCH. CTR., TAX INCENTIVE EVALUATION: GEORGIA SALES TAX EXEMPTION FOR FOOD FOR OFF-PREMISES CONSUMPTION 1 (2022), <https://www.audits.ga.gov/ReportSearch/download/28852> [perma.cc/27EY-2J8Q] [hereinafter BLUESTONE ET AL., FOOD EXEMPTION] (“The passage of a grocery tax exemption was motivated, according to then-governor Zell Miller, by a desire to provide tax relief to all Georgia families on the purchase of a necessity, food.”).

²⁶ O.C.G.A. §§ 48-8-3(20), -3(51), -3(52), -3(47)(A)(ii), -3(54).

²⁷ O.C.G.A. § 48-8-3(47).

²⁸ Jennifer Bennett, *The Tampon Tax: Sales Tax, Menstrual Hygiene Products, and Necessity Exemptions*, 1 BUS. ENTREPRENEURSHIP & TAX L. REV. 183, 194 (2017).

²⁹ SMITH & WALKER, *supra* note 12, at 1.

³⁰ O.C.G.A. §§ 48-8-3(24), -57(A), -3(62) -3(97)(A), -3(100)(A).

eliminating the tax [on MDCDs] would have negligible effect on individuals in addition to costing the state treasury around \$13 million a year.”³¹ Even if this is true, Speaker Pro-Tempore Jones not only misconstrues the purpose behind exempting MDCDs, but also either *doesn’t know* or *blatantly ignores* Georgia’s tax exemption policy. Generally, in Georgia, consumer items subject to regressive taxation will be exempted based on principles of equity or fairness where there is some public benefit, even if the revenue loss is substantial,³² and the perceived economic benefit to consumers is small.³³ In fact, economic impact is an insufficient

³¹ Tong, *supra* note 20.

³² See PETER S. BLUESTONE, ROBERT D. BUSCHMAN & NICHOLAS I. WARNER, FISCAL RSCH. CTR., TAX INCENTIVE EVALUATION: GEORGIA SALES TAX EXEMPTION FOR PRESCRIPTION DRUGS, CONTACT LENSES, AND GLASSES, at i (2022), <https://www.audits.ga.gov/ReportSearch/download/28853> [perma.cc/5QHR-9WR8] [hereinafter BLUESTONE ET AL., PRESCRIPTION DRUG EXEMPTION] (“The annual cost to the state for the prescription drug exemption is estimated at \$453 million for FY 2021 . . . The net fiscal cost to the state . . . is estimated at about \$529 million for FY 2023.”); see also BLUESTONE ET AL., FOOD EXEMPTION, *supra* note 25 (“The annual tax-expenditure cost to the state for the grocery exemption is estimated at \$838 million for FY 2023.”). Georgia’s budget for fiscal year 2024 is \$32.4 billion. While the cost of the exemptions for prescriptions and most grocery items is substantial as described above (collectively exceeding \$1.2 billion), the projected cost of the exemptions for MDCDs, \$6.1 million, is not. Griffin & Farr, *supra* note 3.

³³ See, e.g., BLUESTONE ET AL., PRESCRIPTION DRUG EXEMPTION, *supra* note 32, at 13 (“[N]et fiscal effects are not the best basis for evaluating the performance of a tax preference the original intent of which was broad public benefit The prescription drug tax exemption clearly helps households afford the covered necessities In addition, the [exemption] has the effect of reducing the regressivity of the sales tax. . . .”); *id.* at ii (“[T]he cost of the prescription drug tax exemption far exceeds the benefits to the state in terms of tax revenue generated. However, unlike other tax preferences targeting economic growth, providing a positive future net revenue effect is not a presumed intent of the prescription drug exemption. The citizens of the state clearly benefit from the exemption through the tax savings on prescription drugs. In addition, the exemption helps to alleviate some of the regressivity of the sales tax. Thus, the exemption on prescription drugs helps to promote equity. . . .”). For example, the average person in Georgia spends around \$278 per month on groceries. See, e.g., 11ALIVE, *Georgia Has 12th Most Expensive Average Grocery Bill in the Country, Report Says*, (Jan. 23, 2024, 8:54 AM), <https://www.11alive.com/article/money/georgia-average-grocery-bill-12th-highest-in-country-report/85-483eb828-fe63-4077-be3b-a3b0bffd3b6d> [perma.cc/KVL7-KGML]. Removing the four percent sales tax on these items saves Georgians only about \$11 a month, yet Georgia recognized the importance of providing Georgians tax relief on a product they need, no matter how nominal the relief. See BLUESTONE ET AL., FOOD EXEMPTION *supra* note 25 (“The Georgia grocery exemption lowers the price of staple food items by 4 percent, making the cost for Georgians to feed themselves and their dependents

basis to evaluate tax exemptions where the original intent of the exemption is focused on public benefit.³⁴ In contrast with consumer items that are exempted based on economic development, items seeking exemption from regressive taxation for fairness or equity reasons are not required nor expected to demonstrate a positive effect on future net value. For example, even though the prescription drug exemption cost Georgia \$435 million in 2021, and the grocery exemption cost Georgia over \$830 million in 2023, Georgia concluded that the exemptions “promote equity” by helping Georgia residents “meet a basic need” and reducing “the regressivity of the sales taxes” regardless of their negligible effect on consumer savings.³⁵

2. *The Efforts to Add Menstrual Discharge Collection Devices to Exemptions in Georgia.* Despite Georgia’s policy for eliminating regressive taxation on items necessary for basic living,³⁶ the Georgia

more affordable. . . . The distribution of these benefits across households has the effect of making Georgia’s sales tax less regressive. Taxes on consumption with a flat rate, particularly when charged on inelastic or sustaining products like food, are regressive taxes”). Likewise, MDCDs should be exempted even though the tax relief women may receive yearly is nominal: four percent, just like the grocery tax exemption. *But see* Rachel Goldberg Perlis & Larkin Carden, *The Tampon Tax is Ready to be Eliminated in Georgia*, GEORGIA RECORDER (Feb. 22, 2024, 5:27 PM), <https://georgiarecorder.com/2024/02/22/the-tampon-tax-is-ready-to-be-eliminated-in-georgia/> [perma.cc/6E22-GNMS] (“The average woman spends about \$20.00 on MDCDs per cycle, adding up to about \$18,000 over the course of her lifetime. Because MDCDs are subject to the state sales tax, Georgia women end up paying closer to \$19,000. That means the state collects almost \$1,000 in revenue per woman over the course of her lifetime, solely because she has a period.”).

³⁴ Another reason economic impact is an insufficient basis to evaluate equity and fairness-based exemptions (or at minimum is not a reason to dismiss such exemptions) is because of consumer spending practices. When consumers spend less money on items deemed necessities of basic living, even if just four percent, consumers have additional savings, even if just four percent, to purchase other taxable goods and services in Georgia. *See, e.g.*, BLUESTONE ET AL., FOOD EXEMPTION, *supra* note 25 (“The Georgia grocery exemption lowers the price of staple food items by 4 percent . . . [and] these savings allow for more consumption of other goods and services because food becomes less expensive. This additional consumption becomes spending that grows Georgia’s economy.”). Put differently, the 0.01% that the MDCD exemption would “cost” Georgia is redistributed to the purchase of other taxable goods that the consumer now has additional savings to purchase and, therefore, contribute to the growth of Georgia’s economy.

³⁵ *Id.*; BLUESTONE ET AL., PRESCRIPTION DRUG EXEMPTION, *supra* note 32, at *ii*.

³⁶ *See e.g.*, BLUESTONE ET AL., FOOD EXEMPTION, *supra* note 25 (“The passage of a grocery tax exemption was motivated, according to then-governor Zell Miller, by a desire to provide tax relief to all Georgia families on the purchase of a necessity, food.”). Governor Kemp has

legislature has refused to grant a sales tax exemption for MDCDs, perpetuating inequity for Georgian women.³⁷

This is not for want of trying by Georgians. Efforts to exempt MDCDs began as early as 2017 when the Georgia Women’s Steering Committee adopted sales tax elimination as a mission.³⁸ In 2018, H.B. 731 was the first bill introduced into Georgia’s legislature to exempt MDCDs.³⁹ The bill was proportionally bipartisan yet never progressed out of committee.⁴⁰ There was no vote and no second hearing, causing the bill to die at the end of session. H.B. 731 was followed in 2019 by H.B. 8,⁴¹ and in 2021 by H.B. 810, which used the same language as its predecessor excluding the “feminine hygiene products” language;⁴² both bills had the same fate as their predecessor.

The original 2018 bill, H.B. 731, used the language “feminine hygiene products” to mean “products with the primary purpose of absorbing or capturing menstrual flow.”⁴³ In 2011, Georgia joined a majority of states in enacting the Streamlined Sales Tax and Use (SST) Agreement.⁴⁴ The purpose of the SST Agreement “is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance.”⁴⁵ In 2023, the Streamlined Sales Tax Governing Board approved and adopted an

also promoted tax cuts during his time in office because “hardworking Georgians deserve real relief.” Jeff Amy, *Georgia Gov. Kemp is Suspending State Gas and Diesel Taxes Again*, GA. PUB. BROAD. (Sept. 12, 2023), <https://www.pbs.org/newshour/politics/georgia-gov-kemp-is-suspending-state-gas-and-diesel-taxes-again> [perma.cc/DYQ4-ZDWB].

³⁷ “It does not require any special training in law or economics to understand that taxes on menstrual products mean less money left in the female consumer’s pocket.” Crawford & Spivack, *supra* note 17, at 546.

³⁸ *About*, GA. STOMP, <https://georgiastomp.org/about/> [perma.cc/8QNV-SWBV] (last visited Aug. 13, 2024).

³⁹ *Id.*

⁴⁰ *Id.* The movement’s bipartisan effort is a trend that continues through subsequent bills.

⁴¹ H.B. 8, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

⁴² H.B. 810, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

⁴³ H.B. 731, 154th Gen. Assemb., Reg. Sess. (Ga. 2018).

⁴⁴ *See, e.g., Streamlined Sales Tax*, DEPT OF REVENUE, <https://dor.georgia.gov/rules-policies/sales-use-taxes-fees-excise-taxes/streamlined-sales-tax> [perma.cc/QT5E-WSFH] (last visited Aug. 24, 2024).

⁴⁵ *About Us*, STREAMLINED SALES TAX GOVERNING BOARD, INC., <https://www.streamlinedsalestax.org/about-us/about-sstgb> [perma.cc/2JF8-LEHH] (last visited Aug. 24, 2024).

amendment to the SST to “change[] the classification of the items from ‘feminine hygiene products’ to ‘menstrual discharge collection devices’” for purposes of sales tax exemption.⁴⁶ The language change was significant—creating a more accurate representation of the necessity of these products for people who menstruate as opposed to framing these products as a “matter of hygiene” like deodorant and perfume.⁴⁷

In 2024, despite hundreds of Georgian citizens contacting Speaker Jon Burns and Lt. Gov. Burt Jones to voice their support, two bills died after cross-over: H.B. 123 and S.B. 51, which sought to exempt from sales tax “[t]he sale or use of products with the primary purpose of absorbing or capturing menstrual flow, including but not limited to tampon, menstrual pads and sanitary napkins, panty liners, menstrual sponges, and menstrual cups.”⁴⁸

B. STATES EXEMPTING MDCDS FROM SALES TAX

The concept of menstrual equity is not a new phenomenon, though lawyers’ involvement in this sphere is a relatively new

⁴⁶ Paul Williams, *Streamlined Board OKs Tax Change for Menstrual Products*, LEXIS LAW360 TAX AUTHORITY (July 11, 2023, 5:06 PM), <https://www.law360.com/tax-authority/articles/1764557/streamlined-board-oks-tax-changes-for-menstrual-products> [perma.cc/8KDH-L2SQ].

⁴⁷ See Angélica Serrano-Román, *Menstrual Products Definition Changes Advance at Sales Tax Group*, BLOOMBERG TAX (Nov. 6, 2023, 5:41 PM), https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-state/X9HCQH8000000?bna_news_filter=daily-tax-report-state#jcite [perma.cc/CG54-TUYA] (“[F]eminine hygiene products’ classification, according to [the nonprofit group Period Law], fails to convey that menstrual products are a necessity, not just a matter of hygiene.”). “The name change could prevent a recurrence of what happened during a 2021 Wyoming hearing when a state senator argued before an overwhelmingly male revenue committee that removing the tax on feminine hygiene products ‘favors one sex over the other’ and proposed including male hygiene products, too, such as ‘soaps and foot powder.’ The bill unsurprisingly died. The term ‘menstrual discharge collection device’ effectively eliminates the argument about whether there is a comparable category of medically necessary products used only by men. (Spoiler: There isn’t.)” Laura Strausfeld, *Opinion: This ‘Cringy’ Term Is Helping Defeat the Tampon Tax*, WASH. POST (Feb. 22, 2024, 6:45 AM), <https://www.washingtonpost.com/opinions/2024/02/22/tampon-name-tax/>.

⁴⁸ H.B. 123, 157th Gen. Assemb., Reg. Sess. (Ga. 2023); S.B. 51, 157th Gen. Assemb., Reg. Sess. (Ga. 2023).

shift.⁴⁹ In combating menstrual inequity, lawyers have largely tried to “creat[e] and enact[] ‘laws and policies that ensure menstrual products are safe and affordable and available for those who need them.’”⁵⁰

Currently, thirty states and two territories in the United States, including Florida, Louisiana, Texas, South Carolina, and Virginia, do not have luxury sales tax regimes applicable to menstrual products like tampons and maxi-pads.⁵¹ Georgia is not one of them.⁵² Additionally, states across the country including Alabama and South Carolina had active bills this past session progressing at faster rates than any of Georgia’s bills to this effect.⁵³ For example, Alabama’s bill was introduced in mid-February 2024, and by March 6, 2024, the House Committee supported the exemption.⁵⁴ Unfortunately, Alabama’s bill met the same fate as Georgia’s bills—dying at the end of session.⁵⁵ South Carolina’s State House and Senate approved their MDCD exemption bill, and it was signed into effect by Gov. Henry McMaster.⁵⁶

⁴⁹ See Bridget J. Crawford & Emily Gold Waldman, *Period Poverty in a Pandemic: Harnessing Law to Achieve Menstrual Equity*, 98 WASH. U. L. REV. 1569, 1592–93 (2021) (“Until recently, the primary actors attempting to resolve issues of period poverty were community organizations, nongovernmental organizations, and professionals in the fields of water, sanitation, hygiene, and sexual reproductive health rights.”).

⁵⁰ *Id.* at 1594. However, menstrual equity also encompasses education and the eradication of stigma. *Id.*

⁵¹ ALL. FOR PERIOD SUPPLIES, *supra* note 19. The other states and territories that do not tax MDCDs are Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Massachusetts, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, and Vermont. *Id.*

⁵² Georgia had two active bills in the House and Senate this session, but neither of them were enacted. See *supra* note 48 and accompanying text.

⁵³ See S.B. 62, 2024 Leg., Reg. Sess. (Ala. 2024); H. 3563, 125th Gen. Assemb., Reg. Sess. (S.C. 2024); S. 149, 125th Gen. Assemb., Reg. Sess. (S.C. 2024).

⁵⁴ Jemma Stephenson, *Alabama House Committee OKs Removing State Taxes from Maternal, Feminine Hygiene Products*, ALA. REFLECTOR (Mar. 6, 2024, 10:22 AM), <https://alabamareflector.com/briefs/alabama-house-committee-oks-removing-state-taxes-from-maternal-feminine-hygiene-products/> [perma.cc/78U2-Z43T].

⁵⁵ *AL HB 3236*, BILL TRACK, <https://www.billtrack50.com/billdetail/1714450> [perma.cc/US86-W7AD] (last visited Oct. 22, 2024).

⁵⁶ See Becky Budds, *SC Senate Oks Bill Eliminating ‘Tampon Tax,’* NEWS19 (Apr. 30, 2024, 6:13 PM), <https://www.wltx.com/article/news/politics/sc-senate-approves-bill-eliminating-tampon-tax/101-6a896b2f-bfd8-41f0-a75a-dd303da7c6ed> [perma.cc/S9XW-649L]; Gail Cole, *South Carolina Exempts Tampons, Effective Immediately*, AVALARA (May 17, 2024),

States that do not tax MDCDs differ on how they achieve the exemption.⁵⁷ For example, Florida and Texas explicitly carve out MDCDs in their tax codes,⁵⁸ while Virginia and Louisiana include MDCDs in a broader category with other nondurable incontinence products like diapers for exemption purposes.⁵⁹

Further, the means the states use to achieve menstrual equity differ. States utilize their congressional systems by introducing bills to exempt MDCDs. However, the sales exemption for MDCDs is the direct product of some states seeking to avoid the consequences of class action litigation.⁶⁰ In Florida, for example, a lawyer filed a class action suit in 2016 to challenge the luxury sales tax rate on menstrual products, where plaintiffs demanded remedies like tax refunds and injunctive relief.⁶¹ In addition to these remedies, plaintiffs also sought a “declaration that the Florida statute violated the Equal Protection Clauses of the United States and Florida Constitutions.”⁶²

The plaintiff pointed out the inconsistency of Florida’s tax code, focusing on Florida’s failure “to include menstrual hygiene products in the state’s tax-exempt category of related ‘common household

<https://www.avalara.com/blog/en/north-america/2024/05/south-carolina-ends-tampon-tax.html> [perma.cc/7SKE-TK2W].

⁵⁷ Maine creatively “amended their tax policy to include menstrual products as a ‘grocery staple.’” ALL FOR PERIOD SUPPLIES, *supra* note 19. Additionally, some states don’t have a sales tax at all. *Id.*

⁵⁸ FLA. STAT. § 212.08(7)(nnn); TEX. TAX CODE ANN. § 151.3132 (West).

⁵⁹ VA. CODE ANN. § 58.1-611.1; LA. STAT. ANN. § 305.75.

⁶⁰ Herman, *supra* note 10, at 611.

⁶¹ Crawford & Waldman, *supra* note 22 at 463. Florida plaintiffs were likely inspired by the result of similar litigation in New York. *Id.* In the New York case:

[P]laintiffs alleged that the New York state sales tax violated the Equal Protection Clauses of the United States and New York Constitutions and sought to permanently enjoin the state from collecting sales tax on menstrual hygiene products. The plaintiffs also sought restitution of an estimated \$14 million in sales tax collected in each of the preceding three years, as well as attorneys’ fees and costs. . . . Less than three months after the suit was filed, New York repealed its tax on menstrual hygiene products. Instead of reclassifying menstrual hygiene products as “medical products,” New York added a stand-alone exemption.

Id. at 461–62 (citing Complaint, Seibert v. N.Y. State Dep’t of Taxation & Fin., No. 151800/2016 (N.Y. Sup. Ct. Mar. 3, 2016)).

⁶² *Id.* at 463 (citing Complaint at 2, 19, Wendell v. Fla. Dep’t of Revenue, No. 2016-CA-001526 (Fla. Leon County Ct. 2016)).

remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings.”⁶³ The plaintiffs further argued that “unisex blood absorption-related products like ‘band-aids, bandages, gauze, and adhesive tape’ were tax-exempt under Florida law, as were common household remedies ‘also used by men, such as Epsom salts, athlete’s foot treatment, hair regrowth treatment, and petroleum jelly.”⁶⁴

On May 26, 2017, the Republican Governor of Florida signed a bill into law that repealed the luxury sales tax rate on menstrual products.⁶⁵ Florida’s exemption reads “[p]roducts used to absorb menstrual flow are exempt from the tax imposed by this chapter. As used in this paragraph, the term ‘products used to absorb menstrual flow’ means products used to absorb or contain menstrual flow, including, but not limited to, tampons, sanitary napkins, pantliners, and menstrual cups.”⁶⁶

Though the class action was dismissed, the potential cost and liability of the state had the class action proceeded “spurred the state legislature to act.”⁶⁷ Any hesitations by Georgia legislature to repeal sales taxes such as these based on fears of loss of revenue should be cautious in this assertion and use class action suits like the one in Florida to “compare what they would lose in sales tax revenue by exempting menstrual products with what they would spend if tampon tax challenges were brought in court.”⁶⁸

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 464.

⁶⁶ FLA. STAT. § 212.08.

⁶⁷ Crawford & Waldman, *supra* note 22, at 464.

⁶⁸ Herman, *supra* note 10, at 611. In another example, “Ohio’s Governor Mike DeWine . . . signed legislation to eliminate the tax in November 2019, following a protracted battle in the state courts. Ohio collects approximately \$3.2 million in retail sales taxes from menstrual products sold in the state. If the class action lawsuit brought there succeeded in its claim, and the court awarded the plaintiffs their proposed damages, the state would owe \$66 million.” *Id.* at 611–12. Further, “[t]his figure does not account for the revenue needed by the Office of the Ohio Attorney General to defend the case and would not account for the legal fees for the plaintiffs’ lawyers.” *Id.* at 612 n.111.

III. REMOVING MDCDS FROM SALES TAXATION IN GEORGIA⁶⁹

Fairness and equity are consistent reasons Georgia has exempted many different medically necessary products, like prescriptions, hearing aids, insulin, oxygen, and medical equipment, from the sales tax regime.⁷⁰ Efforts to provide Georgians with relief cannot end here, especially when regressive taxation continues to plague the women and girls of Georgia.⁷¹

Justice Antonin Scalia once pitched the hypothetical that “[a] tax on wearing yarmulkes is a tax on Jews.”⁷² What about the sales? It would only be deemed unfair and inequitable to tax the sales of yarmulkes if other items of religious clothing were not also subject to that same tax.⁷³ For example, if the law exempted items like First Communion veils, turbans, or Niqabs and Hijabs, but not yarmulkes, “[s]uch taxation clearly would amount to an unconstitutional tax on Jews.”⁷⁴

This situation is happening now in Georgia. Taxing MDCDs, while lacking the tax on any comparable product, is unfair and inequitable—it amounts to a taxation on women because these medically necessary products are so closely aligned with female

⁶⁹ Plentiful literature solidifies that MDCDs are a medical necessity. This article will not cite them all here. However, for illustration purposes: “There is no debate that tampons, sanitary pads, and similar menstrual hygiene products are necessities for women’s health; they absorb the flow of menstrual blood. They are also necessary for numerous weeks after childbirth to stop and absorb the flow of lochia. Women without such products must rely on unsanitary rags (which can cause serious infections), cut up their children’s diapers to create make-shift pads, place unwieldy toilet paper or napkins in their underwear, or even go without coverage. A study by researchers at the Yale University School of Medicine found that the use of tampons helps to reduce the risk of endometriosis, so tampons may be health-enhancing for women. In fact, the Food and Drug Administration classifies tampons and sanitary pads as medical devices, underscoring their objective status as necessities.” Crawford & Waldman, *supra* note 22, at 453–54; Macon-Bibb Cnty., Ga., Ordinance 23-0071 (Dec. 12, 2023) (“[M]enstrual pads or tampons are fundamental and necessary components of personal health and hygiene for people who menstruate.”).

⁷⁰ See, e.g., BLUESTONE ET AL., PRESCRIPTION DRUG EXEMPTION, *supra* note 32.

⁷¹ Amy, *supra* note 36.

⁷² Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263, 270 (1993).

⁷³ Crawford & Waldman, *supra* note 22, at 440–441.

⁷⁴ *Id.* at 440–41. For a broader discussion on ways in which the tampon tax violates the Equal Protection Clause, see BRIDGET J. CRAWFORD & EMILY GOLD WALDMAN, MENSTRUATION MATTERS: CHALLENGING THE LAW’S SILENCE ON PERIOD 34–58 (2022).

biology.⁷⁵ No other medically necessary product closely aligned with male biology receives this treatment.

Some opponents may point to condoms as a comparable product that receives a 4% taxation in Georgia. However, unlike MDCDs, condoms are readily provided for free to all Georgia residents. Georgia Department of Public Health currently has a free mail-order condom distribution program available for upon request.⁷⁶ Additionally, local Georgia counties, including Fulton County, provide a similar free condom service either by placing an order in advance for delivery or visiting during regular business hours for pickup.⁷⁷ No such systems exist for MDCDs.

⁷⁵ Copious literature exists on the discriminatory and unconstitutional nature of this tax, along with the history of successful lawsuits bringing such claims in states like Florida, Ohio, New York, and Michigan. *See, e.g.*, Crawford & Waldman, *supra* note 22, at 460–64. It would be redundant to discuss here. It is important to note, however, that success is measured in spurring the legislature to act rather than “winning” the lawsuits. *See, e.g.*, MICH. HOUSE FISCAL AGENCY, LEGISLATIVE ANALYSIS: ELIMINATE SALES AND USE TAXES ON FEMININE HYGIENE PRODUCTS 1, <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4270-3D9A6E4A.pdf> [perma.cc/23E3-9CVB].

⁷⁶ *Free Mail Order Condom Distribution Programs*, GA. DEPT OF PUB. HEALTH, <https://dph.georgia.gov/free-mail-order-condom-distribution-programs> [perma.cc/T9LX-39HD] (last visited Aug. 25, 2024).

⁷⁷ *True Talk Free Condom Program*, FULTON CNTY. BD. OF HEALTH <https://www.fultoncountyga.gov/inside-fulton-county/fulton-county-departments/board-of-health/public-health/sexual-health-and-hiv/true-talk-free-condom-program> [perma.cc/E7QS-D2N8] (last visited Aug. 25, 2024). For more information on counties providing free condom services see, for example, *Free Condom Request Form*, GA. DEPT OF PUB. HEALTH: S. HEALTH DIST., <https://southhealthdistrict.com/freecondoms/> [perma.cc/5VLD-YQGM] (last visited Aug. 25, 2024) (covering Ben Hill, Berrien, Brooks, Cook, Echols, Lanier, Lowndes, Tift, and Turner counties); *Free Condom Project* CLAYTON CNTY. HEALTH DIST., <https://www.claytoncountypublichealth.org/services/adult-health/hiv-prevention/free-condom-project/> [perma.cc/A94G-GHT9] (last visited Aug. 23, 2024); *Mail Order Condoms*, GA. DEPT OF PUB. HEALTH: SE. HEALTH DIST., <https://www.sehdph.org/services/epidemiology-and-infectious-disease/std-hiv-testing/mail-order-condoms/> [perma.cc/7BEE-BR4V] (last visited Aug. 25, 2024) (covering Appling, Atkinson, Bacon, Brantley, Bulloch, Candler, Charlton, Clinch, Coffee, Evans, Jeff Davis, Pierce, Tattnall, Toombs, Ware, and Wayne counties); GA. DEPT OF PUB. HEALTH: NORTH GA. HEALTH DIST., *Free Mail Order Condoms Now Available to North Georgians*, <https://www.nghd.org/news/media-releases/free-mail-order-condoms-now-available-to-north-georgians> [perma.cc/F6XN-WZ43] (last visited Aug. 25, 2024) (covering Cherokee, Fannin, Gilmer, Murray, Pickens, and Whitfield counties); *Condoms by Mail*, GA. DEPT OF PUB. HEALTH: NE. HEALTH DIST., <https://northeasthealthdistrict.org/services/clinic-services/hiv-testing/condoms-by-mail/> [PERMA.CC/B5MW-ZJ4Q] (covering Barrow, Clarke, Elbert, Greene, Jackson, Madison, Morgan, Oconee, Oglethorpe, and Walton counties); WALB News Team, *Southwest Georgia*

While it is commendable that the Georgia Department of Education and Department of Public Health have been allocated funds to provide MDCDs to some low-income public schools and state facilities,⁷⁸ no comparable system of free, accessible MDCDs for all residents exists in Georgia, and certainly no service exists to deliver these products to residents in need. Finally, MDCDs are a necessity in a way that condoms are not. Condoms are not an appropriate comparator because these products do not relate to an involuntary, biological process of that sex, which will occur regardless of one's personal choice.

A person desiring to prevent pregnancy has many other non-costly and tax-excused options like abstinence or prescriptions like contraceptives. Similarly, while diapers may relate to an involuntary function of the body and remain taxed, these products are not interwoven to the involuntary, biological process of only one sex. Many different people of many different ages and sexes purchase diapers for many different people of many different ages and sexes. Additionally, the excretions captured by diapers are the same for all diaper users regardless of their sexual anatomy. Diapers are not only for one sex, or even one age group. Diapers are not tied to the sex-biology of the consumer who must purchase and use them in the way that MDCDs are. Therefore, it is neither unfair nor inequitable to exclude MDCDs from taxation while simultaneously maintaining the tax on diapers and condoms.

Some may fear that by exempting MDCDs, Georgia is opening the floodgate to additional sales tax breaks, which will negatively impact state revenue.⁷⁹ However, this criticism fails where states

Health District Offering Free Safe Sex Supplies, WALB NEWS 10 (Feb. 10, 2023, 4:31 PM), <https://www.walb.com/2023/02/10/southwest-georgia-health-district-offering-free-safe-sex-supplies/> [perma.cc/4H7B-HH3P] (covering Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth counties).

⁷⁸ *Increasing Access*, GA. STOMP (last visited Aug. 25, 2024), <https://georgiastomp.org/increasing-access/> [perma.cc/ASH2-73LD].

⁷⁹ To reiterate, when passing tax exemptions on products deemed necessities of basic living based on fairness and equity, the economic impact is an insufficient basis to analyze these exemptions because the exemption is looking to create some public benefit. A public benefit is itself eliminating regressive taxation. This is why even though the impact on revenue was substantial, and the money placed back into consumers' pockets was only four percent for the grocery exemption, Georgia still exempted these products to eliminate the regressivity of the taxation. See *supra* notes 21–35 and accompanying text. However, it is worth noting that

who have already exempted MDCDs have not experienced detrimental impacts on their state revenue due to the sales tax exemptions on these products.⁸⁰ Nor have these states experienced an influx of subsequent bills seeking to add other products within

concerns for diminished tax revenue have not prevented the same opponents from pushing legislation that significantly decreases overall tax revenue. In 2024, several tax-cutting bills moved through the legislature. Some bills sought to use tax exemptions to incentivize consumers to prioritize gun safety, and others increased the homestead tax exemption, decreased income tax, or granted partial sales tax exemptions. *See* H.B. 971, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (providing tax credits for purchasers of gun safety devices); S.B. 971, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (exempting firearm safety devices from sales tax); S.B. 344, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (exempting firearms, ammunition, and firearm accessories from sales tax for eleven days each year); H.B. 1185, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) and H.B. 1019, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (exempting homesteads from ad valorem taxes); H.B. 1015, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (decreasing income tax); H.B. 283, 157th Gen. Assemb., Reg. Sess. (Ga. 2024) (partially exempting newly manufactured single-family homes from sales tax). Additionally, legislation progressed Governor Kemp’s “largest tax cut in Georgia History,” costing around \$349 million annually, or 1.07%. ERNST & YOUNG LLP, *Georgia Law Lowers Personal Income Tax Rates Starting in 2024* (May 9, 2022), <https://taxnews.ey.com/news/2022-0732-georgia-law-lowers-personal-income-tax-rates-starting-in-2024> [perma.cc/PM5C-X67N]. For comparison, MDCDs would only cost \$6.1 million, or 0.01%, of the \$32.4 billion total. Eliminating the tax on MDCDs would have a negligible impact on state revenue, but a massive public benefit to over fifty percent of its constituents by eliminating the regressive taxation on a medically necessary item intrinsically tied to the biology of that consumer. This begs the question: what *really* is preventing Georgia from exempting MDCDs?

⁸⁰ By June 2023, Virginia revenue “continued to exceed projections” with their “[o]verall revenue exceed[ing] projections by \$948 million.” Stephen E. Cummings & Steven Giachetti, *Economic and Revenue Review Update*, SENATE FINANCE & APPROPRIATIONS COMMITTEE 3 (June 2023), https://sfac.virginia.gov/pdf/committee_meeting_presentations/2023/Interim/06132023/1.%20Money%20Committees%20May%20Revenue%20Report%20FINALv2.pdf [perma.cc/5GFZ-L3TU]. Although the sales tax revenue fell below expectations, Virginia points to the “shift in consumption patterns” post-pandemic rather than any sales tax exemptions. *Id.* at 8. Likewise, in Texas, even after Texas exempted a broader category of items than proposed here, Texas state revenue totaled “\$82.84 billion, up 8.3 percent from fiscal year 2022,” with Texas state sales tax revenue rising to “\$46.58 billion, up 8.4 percent from fiscal year 2022.” *Texas Comptroller Glenn Hegar Announces State Revenue for Fiscal 2023, August State Sales Tax Collection*, TEX. COMPTROLLER OF PUBL. ACCTS. (Sept. 1, 2023), <https://comptroller.texas.gov/about/media-center/news/20230901-texas-comptroller-glenn-hegar-announces-state-revenue-for-fiscal-2023-august-state-sales-tax-collections-1693593670689> [perma.cc/BXW2-7FXK].

the definition of those exempted.⁸¹ Confining the exemption to MDCDs limits the amount of consumer products that could plausibly fall within this section.

According to the philosophy of outspoken oppositionist House Speaker Pro-Tempore Jan Jones, however, “I don’t think [exempting MDCDs from sales tax] would make a serious difference.”⁸² But this is wrong. Reforming the tax law to add an exemption for MDCDs will help eliminate the stigmatization of women, menstruation, and menstruating bodies.⁸³

Simply put, tax law is but one way in which individuals are signaled to understand the world and those in it.⁸⁴ Differing taxation regimes inform individuals “what a family is (one organized around a formal marriage) and is not (networks of dependence organized around cohabitants), what work is (labor exchanged for goods) and is not (housework) . . . [, and] which goods are luxuries and which are necessities.”⁸⁵

By maintaining a luxury sales tax on MDCDs, the tax code is informing individuals how to read and assess women’s bodies:

[The tax code tells individuals that] women’s bodies deviate from the standard body, which is male. Like those bodies that the culture reads as disabled, female bodies require “add-ons,” extra accommodations, to

⁸¹ Texas has not experienced, and currently does not have pending, a wave of bills seeking to add other products to the relevant exclusion category of family care, in fact “[c]utting sales taxes hasn’t grabbed the attention of Texas legislators.” Ryan Ash, *Texans, You May Get Another Sales Holiday with One Major Tweak*, TEX. TAXPAYERS & RSCH. ASS’N (Apr 17, 2023), <https://ttara.org/texans-you-may-get-another-sales-tax-holiday-with-one-major-tweak/perma.cc/3U3H-GSPU>. Virginia does not have bills seeking to add to the essential personal hygiene product definitions. *But see* H.B. 1536, 163rd Gen. Assemb., Reg. Sess (Va. 2024) (seeking to exempt “certain baby products” from sales tax).

⁸² Tong, *supra* note 20.

⁸³ Similar debates are happening in other countries. *See, e.g.*, Kathryn James, *Removal of the Tampon Tax: A Costless or Pyrrhic Victory*, 48 AUSTL. FEMINIST L.J. 193 (2022).

⁸⁴ *See, e.g.*, Carla Spivack, *Are Women Human? Tampon Taxes and the Semiotics of Exclusion*, 41 COLUM. J. GENDER & L. 190, 191 (2021). “U.S. tax laws present a distorted picture of what Americans value and the type of society that America aspires to be.” Anthony C. Infanti, *How U.S. Tax Laws Discriminate Against Women, Gays, and People of Color*, GA. PUB. BROAD. (Apr. 13, 2019, 3:40 PM), <https://www.pbs.org/newshour/economy/how-u-s-tax-laws-discriminate-against-women-gays-and-people-of-color> [perma.cc/MQ7F-SET4].

⁸⁵ Spivack, *supra* note 84, at 191.

make them fit for public space—or any space at all, in fact. The tax code creates differences between female and male bodies by taxing women’s physical necessities and not men’s.⁸⁶

Additionally, discrimination, particularly sexism, embedded in the U.S. tax code is nothing new.⁸⁷ For example, many prominent tax regimes reflect the belief that women should stay in the home, valuing women’s option of homemaking over other forms of employment.⁸⁸ There is a long history of the federal income taxation system “implicitly applying a ‘marriage penalty’ that disadvantages women by favoring single-earner families and undervaluing childcare expenses.”⁸⁹ While “the U.S. system of joint taxation inappropriately subjects wives’ market earnings to a higher marginal tax rate than an individual filing system would[,] . . . [h]ousekeeping and childcare, traditionally done by women, are forms of imputed income lost by gainful employment.”⁹⁰

It should thus come as no surprise that the most influential ways to overturn discriminatory practices originate in tax law.⁹¹ The fact

⁸⁶ *Id.* at 192.

⁸⁷ U.S. tax law “reinforces the social and economic marginalization of women, racial and ethnic minorities, the poor, members of the LGBTQ community, immigrants and people with disabilities.” Infanti, *supra* note 85.

⁸⁸ Herman, *supra* note 10, at 607. U.S. tax laws “give preferential treatment to those whose marriages comport with ‘tradition’—that is, with one spouse working in the labor market and the other in the home. These couples are rewarded because they pay less tax than if they earned the same amount but hadn’t married. In contrast, those in ‘modern’ marriages—with each spouse working outside the home—often suffer marriage penalties. These couples pay more tax than if they earned the same amount but hadn’t married. And ‘single’ taxpayers never receive a bonus but instead often pay more tax than a married couple with the same income.” Infanti, *supra* note 75.

⁸⁹ Herman, *supra* note 10, at 607.

⁹⁰ *Id.*

⁹¹ See, e.g., *Constitutional Amendments – Amendment 24 – “Elimination of Poll Taxes,”* RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM, <https://www.reaganlibrary.gov/constitutional-amendments-amendment-24-elimination-poll-taxes> [perma.cc/X2NT-G987] (last visited Aug. 25, 2024) (“Amendment Twenty-[F]our to the Constitution was ratified on January 23, 1964. It abolished and forbids the federal and state governments from imposing taxes on voters during federal elections,” which primarily was aimed to keep African Americans from voting.); Ria Tabacco Mar, *Ruth Bader Ginsburg’s Fight for Gender Equity Was for All of Us*, ACLU (Sept. 22, 2020), <https://www.aclu.org/news/civil-liberties/ruth-bader-ginsburgs-fight-for-gender-equity-was>

that tax codes signal our understanding of the world puts it at the center of human rights.⁹² Tax reform is a prerequisite to the eradication of discriminatory beliefs and practices.⁹³ Eliminating the tax on MDCDs is no different.

IV. THE TAX AS A PERPETUATION OF MENSTRUAL STIGMA

As examined above, tax law tends to perpetuate and normalize harmful, if not discriminatory, practices and beliefs.⁹⁴ By taxing the medical necessities of women but not men, Georgia's tax code is, at minimum, conveying that women's health is secondary, women's medical needs are luxuries, and women's bodies are commodities.⁹⁵ To understand this negative message it is important to examine the history of the ways our laws, literature, culture, and religions significantly impact the public's perception of menstruation and menstruating bodies. It is incumbent on Georgia's legislature to

for-all-of-us [perma.cc/A2FS-4MCJ] (describing Ginsburg's influential case that challenged gender inequality within the tax code, which she argued before the Supreme Court); Joseph Bishop-Henchman, *Supreme Court Decides Same-Sex Marriage Estate Tax Case*, TAX FOUND. (June 26, 2013), <https://taxfoundation.org/blog/supreme-court-decides-same-sex-marriage-estate-tax-case/> [perma.cc/WQ8R-55EN] (describing *United States v. Windsor*, 570 U.S. 744 (2013), in which the Supreme Court upheld the right of same-sex couples to receive estate tax exemptions for the surviving spouse).

⁹² Georgia proponents of the Pro-Life movement would agree that tax reform is a way to protect human rights and further public policy—in response to the Eleventh Circuit Court of Appeals holding in *Sistersong v. Kemp*, 40 F.4th 1320 (11th Cir. 2022), that any unborn child with a heartbeat is eligible as an individual in Georgia, the Georgia Legislature passed the Living Infants and Fairness Equality (LIFE) Act. *Guidance Related to House Bill 481, Living Infants and Fairness Equality (LIFE) Act*, DEPT OF REVENUE (Aug. 1, 2022), <https://dor.georgia.gov/press-releases/2022-08-01/guidance-related-house-bill-481-living-infants-and-fairness-equality-life> [perma.cc/2VK8-ZUXB]. This Act allowed for an unborn child to count as a dependent for income tax exemption purposes starting in 2022. *Id.*

⁹³ Think of menstrual equity as the end result of a puzzle comprised of many different puzzle pieces. Each individual piece is necessary to solve the puzzle—menstrual equity. Some of those pieces include making the products free to people who menstruate, eliminating the stigma surrounding menstruation, providing education about menstruation, and eliminating unjust tax codes and laws which discriminate against people who menstruate. Tax reform is a necessary piece in the composition of menstrual equity. Without it, true menstrual equity cannot come into fruition.

⁹⁴ See *supra* notes 79–85 and accompanying text.

⁹⁵ For a discussion on the interpretation of the different tax treatments, see Spivack, *supra* note 84, at 192. For a discussion on how the negative tax signal correlates with other negative sign systems in our social framework, see *id.* at 192–196.

repeal the tax on MDCDs to signal that Georgia is departing from these stigmatized narratives. Were the legislature to exempt MDCDs from sales taxation, Georgia would establish a new narrative that unequivocally denounces menstrual stigma, underscores the primacy of women's health, and solidifies the imperative nature of issues pertaining to women and girls within Georgia's legislation.

A. A BRIEF OVERVIEW OF WOMEN'S REPRESENTATION AND WOMEN'S RIGHTS IN GEORGIA

The history of women's rights and women's representation in Georgia is important to address before diving into the stigma around menstruation more substantively. In 1919, Georgia was the first state to reject the Nineteenth Amendment.⁹⁶ Even after enough states ratified the Nineteenth Amendment to incorporate it into the United States Constitution, "[Georgia] lawmakers refused to waive a requirement that all voters be registered six months in advance," prohibiting Georgia women from voting in the November 1920 election.⁹⁷ By contrast, "[m]ost other states waived this [voting requirement]."⁹⁸ The only other state that did not waive this voting requirement was Mississippi.⁹⁹

It was not until 1922 that some white women in Georgia were allowed to vote.¹⁰⁰ However, the right to vote was not fully granted

⁹⁶ *State-by-State Race to Ratification of the 19th Amendment*, NATIONAL PARK SERVICE <https://www.nps.gov/subjects/womenshistory/womens-suffrage-timeline.htm> [perma.cc/Z62S-RZWS] (last visited Aug. 25, 2024).

⁹⁷ NATIONAL PARK SERVICE, *State-by-State Race to Ratification of the 19th Amendment*, <https://www.nps.gov/subjects/womenshistory/womens-suffrage-timeline.htm> [perma.cc/RK2U-38P8] (last visited Jan. 19, 2023).

⁹⁸ *Georgia and the 19th Amendment*, NAT'L PARK SERV. <https://www.nps.gov/articles/georgia-and-the-19th-amendment.htm> [perma.cc/3GF3-RB3L] (last visited Aug. 25, 2024).

⁹⁹ Suyin Haynes, *Mississippi Didn't Ratify the 19th Amendment Until 1984: Here's Why Some States Waited Decades*, TIME (Aug. 17, 2020, 12:00 PM), <https://time.com/5876762/19th-amendment-ratified/> [perma.cc/NX9Z-76CS].

¹⁰⁰ GA. HIST. SOC'Y, *The Women's Suffrage Movement in Georgia*, at 4 <https://georgiahistory.com/wp-content/uploads/2020/03/NIE-2020-womens-suffrage.pdf> [perma.cc/2RZH-WHR4] (last visited Aug. 25, 2024); Haynes, *supra* note 99 ("The ratification did not mean that all American women gained the constitutional right to vote immediately in 1920; numerous barriers to voting remained for several communities, including Black

to all women of Georgia until 1965 after the passage of the Voting Rights Act in 1965.¹⁰¹ In fact, the Nineteenth Amendment was not formally adopted by Georgia until the 1970s, making Georgia one of only four states that waited over fifty years to formally ratify the Nineteenth Amendment.¹⁰² While the delay did not prevent Georgia women’s constitutional right to vote, “it did send a message about just how controversial such an idea was.”¹⁰³

Women were not guaranteed the right to open bank accounts, apply for credit, or commit to a mortgage in their own name until 1974.¹⁰⁴ Women in Georgia were not granted legal control over their earnings from employment until 1943—up to this point, a woman’s wages belonged to her husband.¹⁰⁵

To date, there has never been a majority of women representatives in either the Georgia House or Senate.¹⁰⁶ Unlike 32 other states, including Louisiana, Texas, South Carolina, North Carolina, and Alabama, Georgia has never had a woman serve as

women, Native American and Indigenous women, Asian American women and Latinx women. African American women and men’s voting rights would not be incorporated into the country’s law until Voting Rights Act of 1965.”)

¹⁰¹ For example, “[w]hile the verbiage of the Nineteenth Amendment made it legal for Black women to vote, other barriers—including poll taxes, literacy tests, grandfather clauses, and racial terrorism—prevented many from casting their ballots.” Lois Carlisle, *Black Women’s Fight for Suffrage*, ATLANTA HIST. CENTER (Aug. 21, 2020), <https://www.atlantahistorycenter.com/blog/black-womens-fight-for-suffrage/> [perma.cc/L92P-2CNM].

¹⁰² See Haynes, *supra* note 99.

¹⁰³ *Id.*

¹⁰⁴ See Jamela Adam, *When Could Women Open a Bank Account?*, FORBES ADVISOR (Mar. 20, 2023, 11:39 PM), <https://www.forbes.com/advisor/banking/when-could-women-open-a-bank-account/> [perma.cc/7Y3B-EHYM].

¹⁰⁵ Suzanne D. Lebsock, *Radical Reconstruction and the Property Rights of Southern Women*, 43 J.S. HIST. 195, 209 (1977).

¹⁰⁶ The highest number women reached in Georgia Senate representation was in 2021–2022 where 17 out of the 56 members were women. *Georgia*, CTR. FOR AMERICAN WOMEN AND POL., <https://cawp.rutgers.edu/facts/state-state-information/georgia> [perma.cc/WSP7-EPSH] (last visited Aug. 25, 2024). It was not until 1999 that Georgia’s Senate had enough women senators to account for double digits—10 out of 56. *Id.* The highest number of women reached in Georgia House representation is in the current term, where 66 out of the 180 members are women. *Id.* The current percentage of women in the Georgia Legislature—34.3%—is the highest in Georgia’s history. *Id.*

governor.¹⁰⁷ Further, when the Georgia legislature enacted the sales tax exemption for prescriptions in 1984, women only accounted for 8.1% of the legislature, while women’s representation only rose to 18.6% for the second major exemption on most grocery products.¹⁰⁸

Even today women lack representation in rooms that decide laws that directly impact Georgia women. According to Georgia State Representative Debbie Buckner, “There were no women in the room, and no offense to men, I just don’t think they thought about it . . . Now is the time to fix that. We give tax exemptions to planes, to boats, why not to women?”¹⁰⁹ Further, Claire Cox, co-founder of Georgia Stop Tax on Menstrual Products (STOMP) and chair of the Georgia STOMP board called the Georgia Legislature “male dominated.”¹¹⁰

B. EVE’S CURSE: THE STIGMATIZATION OF WOMEN AND MENSTRUATION

1. *Menstruation and the Southern Lady.* The social stigma surrounding menstruation “ha[s] prevented, decision-makers, . . . healthcare providers, educators, and individuals from ensuring that menstrual health is a priority,”¹¹¹ and it perpetuates the belief that both women and their health are inferior in social hierarchies. Menstruation has historically been categorized as something unclean.¹¹² Further, “girls and boys grow up believing that

¹⁰⁷ *State-by-State Information*, CTR. FOR AMERICAN WOMEN AND POL., <https://cawp.rutgers.edu/facts/state-state-information> [perma.cc/JAQ3-JJNT] (last visited Aug. 25, 2024).

¹⁰⁸ See *Georgia*, CTR. FOR AMERICAN WOMEN AND POL., *supra* note 106.

¹⁰⁹ Jill Nolin, *Opponents of Sales Tax on Period Products Push Georgia lawmakers to End Levy*, NOW HABERSHAM (Jan. 19, 2024), <https://nowhabersham.com/opponents-of-sales-tax-on-period-products-push-georgia-lawmakers-to-end-levy/> [perma.cc/88WC-XVJE].

¹¹⁰ Tong, *supra* note 20.

¹¹¹ CRAWFORD & WALDMAN, *supra* note 74, at 1594.

¹¹² *Id.* at 1589; see also Renske Mirjam van Lonkhuijzen, Franshelis Katerinee Garcia & Annemarie Wagemakers, *The Stigma Surrounding Menstruation: Attitudes and Practices Regarding Menstruation and Sexual Activity During Menstruation*, 10 WOMEN’S REPROD. HEALTH 364, 364 (2023) (“Menstruation, rooted in complex value systems, is accompanied by various myths, taboos, and stigmatizing, negative and shameful sentiments. Often euphemisms such as ‘aunt flow,’ ‘time of the month,’ and ‘on the rag’ are used by both men and women to refer to menstruation, reflecting the taboo and stigma surrounding it. Across different cultures, menstruation is stigmatized and conceptualized as something that is ‘dirty’

menstruation is dirty, embarrassing, and something that needs to be camouflaged or kept hidden for women to function in their everyday life.”¹¹³ One study conducted in 2021 found that “[w]omen and girls internali[z]ed menstrual restrictions and stigma and sought to regulate their behavior accordingly” out of fear that failing to hide menstruation would be “viewed as a personal failure to maintain feminine standards or menstrual etiquette.”¹¹⁴

The social stigma surrounding periods is “communicated to us every day from a young age, through a variety of sociocultural routes.”¹¹⁵ The desire to maintain feminine standards and proper menstrual etiquette (and thus a perpetuation of the social stigma) is heightened in the South, where both men and women are raised with a spoken-yet-unspoken set of manners and etiquette rules by which they must abide.¹¹⁶ Women in the South are further raised and instilled with the concepts of southern femininity, which reflects “paternalistic standards all women are encouraged to uphold[, while] . . . priz[ing] beauty, a sacrificial temperament, and humility.”¹¹⁷ These rules foster a sense of obligation on the girl and woman to perform and perfect southern femininity or face

or ‘impure’ and that should be kept private. Society as a whole also believes that menstruating women are physically (during the menstrual phase) or mentally (during the premenstrual phase) disordered, perceiving them as out-of-control, ill, crazy, and unfeminine.”. Additionally, a research study found that a menstruating woman or girl is considered to have a body “that is polluting and potentially dangerous for women themselves, for others, and for anything sacred.” Dani Jennifer Barrington, Hannah Jayne Robinson, Emily Wilson & Julie Hennegan, *Experiences of Menstruation in High Income Countries: A Systematic Review, Qualitative Evidence Synthesis and Comparison to Low- and Middle-Income Counties*, PLOS ONE (July 21, 2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0255001#sec011> [perma.cc/NF8F-5ZLY].

¹¹³ Van Lonkhuijzen et al., *supra* note 112, at 365.

¹¹⁴ Barrington et al., *supra* note 112.

¹¹⁵ Van Lonkhuijzen et al., *supra* note 112, at 365; *see also* Barrington et al., *supra* note 112 at 376 (citing schools and education as a facet for learning and experiencing the stigmatization of periods as unclean and something that should be kept secret).

¹¹⁶ *See, e.g.*, Melissa Locker, *Invisible Etiquette Rules That Southerners Practice Every Day*, SOUTHERN LIVING (Aug. 16, 2022), <https://www.southernliving.com/culture/every-day-etiquette> [perma.cc/UFU8-M74R].

¹¹⁷ KAITLYN VOGT, BEING NICE IS LETHAL: DISCIPLINING AND SUBVERTING FEMININITY IN CONTEMPORARY SOUTHERN POPULAR CULTURE 9 (2015).

ostracization.¹¹⁸ Southern women must demonstrate discipline in executing the perfect performance of femininity by being polished and clean both in physical appearance and manners.¹¹⁹ Southern culture and modern society are deeply disturbed by the fact that “an adult should have bodily emissions which she cannot control,” including those emissions, like menstruation, deemed unclean.¹²⁰

Even media advertisements perpetuate the stereotype that menstruation is dirty through “menstrual product advertisements which emphasize secrecy, avoidance of embarrassment, and freshness, and the use of images (e.g., flowers) and colors (i.e., blue rather than red) to euphemistically describe menstruation and promote secrecy and delicacy.”¹²¹

Menstrual stigmatization does not merely reflect that people find menstruation unclean. Instead, menstrual stigma also assesses a woman’s worth. The fact that periods are uncontrollable perpetuates the belief that women’s status is inferior.¹²² Between the 1500s to the late 1800s, western culture developed a “hierarchy of bodily restraint,” which changed cultural constructions of the human body.¹²³

In effect, an interest in regulating bodily restraint through proper table manners and controlling one’s natural bodily functions “such as urination, defecation, sneezing, coughing” sought to differentiate social inferiority by requiring a “‘higher’ standard of bodily control” as a prerequisite.¹²⁴

¹¹⁸ See *id.* (“[Southern femininity] is a codex of rules and mannerisms that are rigidly maintained although they are meant to appear effortless and ingrained. These rules are passed down generationally, drummed into young women by their mothers, grandmothers, and older community members. Failing to display the artifice of a southern woman is a reflection not only on the woman herself but all the other women in her family. This creates a sense of urgency and obligation that contributes to the overall disciplinary aspect of the performance.”).

¹¹⁹ We in the South call this having “taste” to distinguish from what is “tacky.” In a more gendered sense, we can refer to tacky behavior as being “unladylike” for girls, or not behaving “like a gentleman” for boys.

¹²⁰ Crawford & Spivack, *supra* note 17, at 508–509.

¹²¹ Van Lonkhuijzen et al., *supra* note 112, at 365.

¹²² Crawford & Spivack, *supra* note 17, at 509.

¹²³ *Id.* at 509–510.

¹²⁴ See *id.* at 509 (citing Gail Kern Paster, *Leaky Vessels: The Incontinent Women of Jacobean City Comedy*, 18 *RENAISSANCE DRAMA* 43, 44–45 (1987)).

Overall, common traits associated with an elevated individual correlated with cleanliness and freshness.¹²⁵ During this time, books began to emphasize proper, polished manners and presentation. The etiquette books have different expectations based on gender.¹²⁶ Chapters in the books often addressed the proper etiquette behavior for women in the restroom, which includes, among others, being clean.¹²⁷ The social standards “began to employ different standards of restraint for men and women, and to institute . . . gender-related norms of what bodily functions sexes could perform in each other’s presence.”¹²⁸

Because women lacked sufficient bodily restraint, women had an inferior status compared to men.¹²⁹ During this period, which scholars have named the early modern period, “women’s bodies became understood as lacking control of their boundaries, ‘leaky vessels’”:

[Women’s bodies were seen as] moister than men’s, controlled by the moon and liable to producing all sorts or liquids: breast milk, menstrual blood, tears, urine, and even vaginal discharge, none of which are subject to easy (or any) control. Even emissions which were thought to be under control when emanating from men’s bodies, such as urine, became shamefully out of control in women’s.¹³⁰

Soon this emphasis on control expanded to differentiate the way men and women bleed.¹³¹ For example, Shakespeare’s *Julius Caesar* highlights the different connotations associated with the way men and women bleed being that of control:

¹²⁵ See, e.g., JANE ASTER, THE LADIES’ AND GENTLEMEN’S ETIQUETTE BOOK OF THE BEST SOCIETY (1878).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See Crawford & Spivak, *supra* note 17, at 509.

¹²⁹ See *id.*

¹³⁰ *Id.*

¹³¹ See *id.* at 510.

Men bleed because they “want to” (they choose to go to war, to commit suicide), or in a way that is controlled (being bled as a voluntary medical remedy, for example). Women bleed—i.e., menstrual bleeding, the kind of bleeding emblematic of women—without having a choice in the matter and without control, thus making their effluvia not only involuntary but also punitive and indicative of weakness. The male body epitomizes the self-containment and self-control which began to define the emerging bodily ideal in this period, while women represent the naturally self-transgressing body, the one which cannot seal off its orifices from the outside world and maintain its boundaries. Recall that Caesar’s body becomes effeminized by his assassination: his stabbing to death and subsequent display of his body reveal, in Paster’s words, “a womanly inability to stop bleeding.”¹³²

While the concept of bodily restraint may seem antiquated, these sentiments are still present today, particularly in Southern culture. The cotillion and debutante ball are two coming-of-age traditions highly associated with Southern culture and bodily restraint. Cotillions are a “rite of passage” for Southern children who are taught bodily restraint guised as etiquette through a series of classes. Showing proper etiquette directly correlates with control over one’s body: “It’s about looking someone in the eye when you speak to them, holding the door for the person walking in behind you, and asking someone who’s standing alone at a party to dance.”¹³³

Further, undertones of older etiquette preferences for cleanliness and a polished presentation are present through, among other things, dress code: “The first rule of cotillion etiquette is to abide by the dress code.”¹³⁴ Though dress codes vary, they usually require girls to wear tea-length dresses, white gloves, and a certain color of

¹³² *Id.* at 510–11 (citing Gail Kern Paster, “*In the Spirit of Men There is No Blood*”: Blood as Trope of Gender in *Julius Caesar*, 40 SHAKESPEARE Q. 284, 284, 285, 287 (1989)).

¹³³ Betsy Cribb Watson, *What You Really Learn at Cotillion Class*, SOUTHERN LIVING (July 16, 2024), <https://www.southernliving.com/culture/cotillion-class> [perma.cc/HAB7-XMUG].

¹³⁴ *Id.*

tights, while boys are usually required to wear pants, a collared shirt, a tie, and a sportscoat.¹³⁵ Students must have their “hair combed, shoes polished, and fingernails clipped.”¹³⁶

Additionally, debutantes must generally wear white gloves and white dresses, not ivory dresses, and the dresses must generally have straps.¹³⁷ Historically, wearing white is associated with status, cleanliness, and purity.¹³⁸ This remains true today in debutante culture: “White gloves are an important part of the debutante ball tradition for several reasons. First, they symbolize the young woman’s innocence and purity. Second, they help to protect her hands from the sun and from getting dirty. Third, they add a touch of elegance and sophistication to her appearance.”¹³⁹

These traditions reflect the performative nature of Southern femininity, structured by maintaining restraint.¹⁴⁰ “Southern femininity is about discipline,” which may be executed through the

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See, e.g., Madeline Brown, *Analysis: The White Dress*, AUTOETHNOGRAPHY: MODERN DAY DEBUTANTE, <https://moderndaydeb.weebly.com/artifact-analysis-the-white-dress.html> [perma.cc/54H3-8SKV]; David Colman, *Dresses for Debs: Yes, Something’s Sacred*, N.Y. TIMES: THE DETAILS (Dec. 21, 1997), <https://www.nytimes.com/1997/12/21/style/the-details-dresses-for-debs-yes-something-s-sacred.html>. I personally participated in both a cotillion and debutante ball at my local chapter. When I did my debutante ball, we were required to wear white, not ivory, with white gloves, and our dresses were required to have straps. While the strap requirement has disappeared at my local chapter, the requirement to wear white in gown and glove remains the same.

¹³⁸ *The Story Behind the White Wedding Dress*, CLEARWALL CASTLE, <https://www.clearwell-castle.co.uk/blog/story-behind-white-wedding-dress/> [perma.cc/W47Q-GGJ3] (last visited Aug. 25, 2024) (“A white wedding dress was seen as a sign of wealth and status; the father of the bride would buy her a beautiful white wedding dress that was only to be worn on her wedding day. This supposedly symbolized the family’s wealth, as it suggested that they could afford the lavish expense of buying their daughter a luxurious wedding dress, that would only be worn once.”).

¹³⁹ *Debutante Gloves: A Symbol of Innocence and Elegance*, SOLO CLASSE, <https://www.soloclasse.com/pages/debutante-gloves-a-symbol-of-innocence-and-elegance> [perma.cc/85LH-4JJY] (last visited Aug. 25, 2024).

¹⁴⁰ VOGT, *supra* note 117, at 9 (“The performance of southern femininity while highlighting the differences in gender and gendered expectation in the South often serves to obscure other sites of difference such as race and class and render them invisible in the public figuring of southern identity. It was constructed under specific cultural circumstances, namely Reconstruction and the Jim Crow period, and although it is a performance that many white women of a certain means may find personally empowering, that empowerment comes at the expense of other southern women.”).

body's movement, gestures, acts, and presentation.¹⁴¹ “It is not simple birthright that makes one a southern lady. It involves comportment and behavior and discipline more than anything.”¹⁴² The fact that a Southern woman is defined by her ability to remain true to these codes of conduct and show discipline in their execution creates shame and guilt when they fail to achieve this ideal.¹⁴³

The expectations of Southern society coupled with the shame associated with menstruation create heightened anxiety and ignorance around women's bodies. The studies discussed below document the shame and stigma associated with menstruation.

In 2002, researchers conducted a study at the University of Colorado to assess menstrual stigma and its effect on women.¹⁴⁴ The study contained an experiment where a woman “‘accidentally’ dropped either a tampon or a hair clip.”¹⁴⁵ The researchers found and concluded the following:

[T]he woman was viewed as “less competent, less likeable, and [as someone] to be both psychologically and physically avoided” when she dropped the tampon instead of the hair clip. . . . [The] efforts of menstrual concealment “may indeed be well-founded, for reminders of menstruation do appear to lead to negative judgements of women.” This wide-scale concealment has created its own reinforcing cycle, wherein “the sanitized, deodorized, and idealized images of women's bodies become the only ones we encounter and accept.”¹⁴⁶

¹⁴¹ *Id.* at 10.

¹⁴² *Id.* at 14.

¹⁴³ The expectations of southern society cuts both ways: Girls and women are not supposed to talk about periods in public, but then they are “penalized” when periods become “visible” in public. Eliminating the tax on MDCDs fights to eliminate penalizing periods. Arguably, other menstrual equity efforts coupled with eliminating this tax would allow girls and women to conform to these expectations.

¹⁴⁴ CRAWFORD & WALDMAN, *supra* note 74, at 1591 (citing Tomi-Ann Roberts, Jamie L. Goldenberg, Cathleen Power & Tom Pryszyński, “Feminine Protection”: *The Effects of Menstruation on Attitudes Towards Women*, 26 PSYCHOL. WOMEN Q. 131 (2002)).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 1591–92.

While women internalize the shame and stigma they associate with their menstruating bodies, boys and men correlate negative beliefs and attitudes with menstruation more than their female peers.¹⁴⁷ These male attitudes are important when considering the “perpetuation and dissemination of stereotypes about menstruation and menstruators,” as these attitudes reinforce a patriarchal gender hierarchy.¹⁴⁸ Men and boys “us[e] menstruation as a means of asserting dominance” by mocking menstruation or menstruating women as “unclean or disgusting,” which endorses sexist ideologies involving “explicitly negative attitudes about women and beliefs about female inferiority.”¹⁴⁹ Further, “in a sample of young adults from the United States, men more strongly endorsed the idea that menstruation requires secrecy than did women [Men also] strongly endorsed the idea that there are things women should and should not [do] during menstruation.”¹⁵⁰

Women act upon the expectation that they must keep their menstruation a secret: another study performed in 2019 indicated that of 1,000 menstruating teenagers, “eighty percent . . . ‘feel there is a negative association with periods, that they are gross or unsanitary’ and fifty-seven percent . . . ‘have felt personally affected by the negative association surrounding periods.’”¹⁵¹ These

¹⁴⁷ Research in the United States showed “that college men were more likely to perceive menstruation as debilitating than was true of their female peers,” and “that negative attitudes were even held by young adolescent boys and that these were more negative than those of their female peers who had begun to menstruate.” Mindy J. Erchurll, “*You Will Find Out When the Time is Right: Boys, Men, and Menstruation*,” in *THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES* 395, 398 (Chris Bobel et al. eds., 2020). These negative attitudes derive from the fact that males “receive less education about menstruation and have less accurate knowledge.” *Id.* Studies also show that “while these negative attitudes may develop early, they may also soften as men age and gain more knowledge of and experience with menstruation.” *Id.*

¹⁴⁸ *Id.* at 399. These negative male attitudes about menstruation are also important considering women’s minority or nonexistent presence in positions of power today and throughout our history within our state. *See supra* notes 98–108 and accompanying text.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 398–99.

¹⁵¹ CRAWFORD & WALDMAN, *supra* note 74, at 1592 (first citing THINX & PERIOD, STATE OF THE PERIOD: THE WIDESPREAD IMPACT OF PERIOD POVERTY ON US STUDENTS 1, 2; and then citing Laura Blackburn, *The Hidden Effects of Period Poverty in the US*, THINX (Oct. 17, 2019), <https://www.shethinx.com/blogs/thinx-piece/hidden-effects-period-poverty-us> [perma.cc/DEQ9-55gF]).

sentiments remain today. A 2023 study of 2,000 women across the United States found that fifty-five percent of women are embarrassed for having a period and experience stigma associated with their menstruation.¹⁵²

2. *Religious Influences on Negative Perceptions of Menstruation.*¹⁵³ Another key component that perpetuates the

¹⁵² Taylor Orth, *American Women Describe their Experiences with Menstrual Periods*, YOUTV (May 11, 2023, 10:54 AM), <https://today.yougov.com/health/articles/45700-women-describe-experiences-menstrual-periods> [perma.cc/JE2A-3U57].

¹⁵³ At the outset, I will acknowledge that the religious influence of this section is limited to Christianity not only because of the overwhelming majority of Georgians identifying as Christian but also because of Christianity's prevalence in our government system. *See, e.g., Faith on the Hill: The Religious Composition of the 117th Congress*, PEW RSCH CTR. (Jan. 4, 2021), <https://www.pewresearch.org/religion/2021/01/04/faith-on-the-hill-2021/> (citing nearly nine-in-ten Congress members describing themselves as Christian). Recently, the Alabama Supreme Court made a ruling that frozen embryos constitute human life, and Chief Justice Tom Parker utilized the Bible as supporting evidence in his concurrence. *See, e.g., Dan Rosenzweig-Ziff, Alabama Justice Who Quoted Bible in IVF Case Often Invokes Religion*, WASH. POST (Feb. 24, 2024, 4:27 PM), <https://www.washingtonpost.com/nation/2024/02/24/alabama-chief-justice-tom-parker-ivf/>.

I also must point out that Christian perspectives are not all that different from other prominent religious cultures' views on menstruation. For example, in Judaism, the Torah reads, "When a woman has a discharge, her discharge being blood from her body, she shall remain in her impurity seven days; whoever touches her shall be unclean until evening . . . and anyone who touches any object on which she has sat shall wash his clothes, bathe in water, and remain unclean until evening." *Leviticus* 15:19–22. "In contemporary Orthodox Judaism, those who are menstruating are considered niddah, or 'separate,' and it is customary for wives to observe a ritual separation from their husbands, which can involve behaviors like sleeping in different beds." CRAWFORD & WALDMAN, *supra* note 74, at 1590. In India, Hindu scriptures view menstruation as "asaucha" or impure. Shefali Kamat & Koshy Tharakan, *The Sacred and the Profrane: Menstrual Flow and Religious Values*, 27 J. OF HUMAN VALUES 261 (2021). Therefore, individuals menstruating must "sleep in a separate part of the house and use the same dishes and wear the same clothes for the duration of menstruation, because menstrual bleeding is associated with uncleanliness and the possibility of contaminating the household's food." CRAWFORD & WALDMAN, *supra* note 74. "As the third Abrahamic religion, Islam's sacred book, the Qu'ran, retained a version of these views, with menstruation deemed a 'painful condition.' In most modern Muslim communities, fasting during Ramadan, entering a mosque, praying, having sex, and making the full pilgrimage to Mecca are all forbidden for menstruating women." Alma Gottlieb, *Menstrual Taboos: Moving Beyond the Curse*, in THE PALGRAVE HANDBOOK OF CRITICAL MENSTRUATION STUDIES 143, 146 (Chris Bobel et al. ed., 2020). Further, other religious cultures outside of the U.S. may require menstruating women to be exiled from their homes during menstruation, to refrain from bathing during menstruation, and to bury the clothes they wore during menstruation to dispel evil spirits. CRAWFORD & WALDMAN, *supra* note 74, at 1590. While these norms seem removed from Western culture and practices, the Holy Bible reflects

stigma surrounding periods is the religious rhetoric and teachings on menstruation. This religious influence is especially important to consider in Georgia, where 79% of Georgians identify as Christian,¹⁵⁴ and where Georgia is consistently rated within the top ten most religious states.¹⁵⁵

Christianity's influence on menstrual shame reinforces a punishment mentality toward menstruating women and justifies the discriminatory belief that women's status is inferior to men's. It further presents menstruation as taboo, which perpetuates its stigmatization. For example, in early Western cultures following Christian practices, "the menstruating woman was believed to be dangerous, and social restrictions were placed upon her. In fact, the *British Medical Journal*, in 1878, claimed that a menstruating woman would cause bacon to putrefy."¹⁵⁶

These taboos and practices regarding menstruation reflect that the Christian Holy Bible views menstruation as a curse.¹⁵⁷ "Eve's

many of these sentiments towards menstruating women. *See, e.g., Isaiah* 30:22 (telling women to throw away any menstrual clothes).

¹⁵⁴ *See, e.g., Religious Landscape Study: Adults in Georgia*, PEW RSCH. CTR. <https://www.pewresearch.org/religion/religious-landscape-study/state/georgia/> [perma.cc/L5SM-DEWT] (last visited Aug. 25, 2023).

¹⁵⁵ *See, e.g., Most Religious States 2024*, WORLD POPULATION REV. <https://worldpopulationreview.com/state-rankings/most-religious-states> [perma.cc/SM54-X4KR] (last visited Aug. 25, 2024); Gaby Galvin, *Most Religious States in America*, U.S. NEWS & WORLD REP. (Aug. 22, 2017), <https://www.usnews.com/news/best-states/slideshows/10-most-religious-states-in-america?onepage>; Michael Lipka & Benjamin Wormald, *How Religious Is Your State?*, PEW RSCH. CTR. (Feb. 29, 2016), <https://www.pewresearch.org/short-reads/2016/02/29/how-religious-is-your-state/?state=alabama> [perma.cc/D63B-EWNF].

¹⁵⁶ Mark A. Guterman, Payal Mehta & Margaret S. Gibbs, *Menstrual Taboos Among Major Religions*, 5 INTERNET J. OF WORLD HEALTH AND SOCIETAL POLS. (2007), <https://ispub.com/IJWH/5/2/8213#> [perma.cc/ZH8H-BKNV].

¹⁵⁷ I note here that framing menstruation as a curse is also just another way we reconceptualize the modern stigma that periods are unclean. *See* Gottlieb, *supra* note 154, at 147–48 (discussing how Abrahamic religious tradition that menstruation is a curse has evolved into modernized stigmas that menstruation is pollution); *see also id.* at 146 (“[I]n Westernized nations, the widespread concept of menstruation-as-curse likely derives from one specific religious tradition: the Jewish and Christian traditions’ sacred text, the Bible.”).

Curse,”¹⁵⁸ as it's commonly called, derives from two biblical texts: *Genesis* and *Leviticus*.¹⁵⁹

In *Genesis*,¹⁶⁰ Eve, made from man,¹⁶¹ disobeyed God's order not to eat an apple from a forbidden tree.¹⁶² Eve was tempted into original sin (eating the apple) by Satan—guised as a serpent in the Garden of Eden. God begins a series of curses because of the original sin and, to Eve specifically, God stated: “I will make your pains in childbearing very severe; with painful labor you will give birth to children. Your desire will be for your husband, and he will rule over you.”¹⁶³

While *Genesis* names the pain of childbirth as the curse for Eve's defiance, *Leviticus* names “the pain of menstruation[,] and lists required and forbidden activities for menstruating women”¹⁶⁴:

¹⁵⁸ See, e.g., Guterman et. al, *supra* note 156 (“[M]y mother called menstruation ‘the curse,’ as did most of my friends and their mothers.”); Stacia, Guzzo, *The “Curse of Eve”—Is Pain Our Punishment? Part I*, FEMINISM AND RELIGION, <https://feminismandreligion.com/2012/02/07/the-curse-of-eve-is-pain-our-punishment-part-i/> [perma.cc/T3Q4-E53Q] (last visited Aug. 25, 2024).

¹⁵⁹ Gottlieb, *supra* note 153, at 146.

¹⁶⁰ Please note there are several different translations for the book of *Genesis*. For purposes of this article, I will be using the online version available at <https://www.biblegateway.com/passage/?search=Genesis%201&version=NIV> [perma.cc/G2HE-TY4C].

¹⁶¹ “Then the Lord God made a woman from [Adam's] ribs. . . . The man[, Adam] said, ‘This is now bone of my bones and flesh of my flesh; she shall be called ‘woman,’ for she was taken out of man.’” *Genesis* 2:22-23; see also AEMILIA LANYER, EVE'S APOLOGY IN DEFENSE OF WOMEN, in SALVE DEUS REX JUDÆORUM (1611) (“If any evil did in her remain, [b]eing made of [Adam], he was the ground of all. If one of many worlds could lay a stain [u]pon our sex, and work so great a fall [t]o wretched man by Satan's subtle train, [w]hat will so foul a fault amongst you all?”).

¹⁶² According to the text of *Genesis*, God never told Eve to avoid eating off the tree, nor the repercussions of such a decision. God only informs Adam that he “must not eat from the tree of the knowledge of good and evil, for when you eat from it you will certainly die.” *Genesis* 2:16-17; see also LANYER, *supra* note 161 (“Eve . . . [w]as simply good, and had no power to see.”).

¹⁶³ *Genesis* 3:16. Though the focus is on how the Bible's view of menstruation attempts to justify women's inferiority, I would also point out how this passage itself promotes sexist ideology: women are unable to make intellectual, thoughtful decisions for themselves and, therefore, men must make such decisions for them. The passage creates a social hierarchy where women fall behind men. Further, it signals that women are originally sinful and, thus, to blame for the downfall of humanity in the eyes of God.

¹⁶⁴ Gottlieb, *supra* note 153, at 146.

When a woman has her regular flow of blood, the impurity of her monthly period will last seven days, and anyone who touches her will be unclean till evening. Anything she lies on during her period will be unclean, and anything she sits on will be unclean. Anyone who touches her bed will be unclean; they must wash their clothes and bathe with water, and they will be unclean till evening. Anyone who touches anything she sits on will be unclean; they must wash their clothes and bathe with water, and they will be unclean till evening. Whether it is the bed or anything she was sitting on, when anyone touches it, they will be unclean till evening When a woman has a discharge of blood for many days at a time other than her monthly period or has a discharge that continues beyond her period, she will be unclean as long as she has the discharge, just as in the days of her period.¹⁶⁵

Starting as early as the sixth century with Pope Gregory,¹⁶⁶ generations of Christians have construed the two stories to incorporate menstruation into God's punishment in *Genesis*, making menstruation a curse like childbirth.¹⁶⁷ Put differently, Christianity views "the Levitical menstrual prohibitions as divine punishment for the sinful nature of woman, which, through the actions of Eve, affected the fall of humankind. Menstruation becomes the divine 'curse' of women."¹⁶⁸

¹⁶⁵ *Leviticus* 15:19-23; *id.* at 15:25.

¹⁶⁶ Gottlieb, *supra* note 153, at 146.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*; see also Guterman et. al, *supra* note 156 (The history of menstruation as a curse in Christian culture has kept women from authority positions therein and seek to enforce a social hierarchy where women are the lesser sex: "[S]ome Christian denominations . . . will not allow women to receive communion during their menstrual period Menstruation taboos are also responsible for the belief of many Catholics that a woman should not have intercourse during her monthly period Catholic canon law refuses to allow women or girls to be in any semi-sacerdotal roles, such as altar server . . .").

V. CONCLUSION

Then let us [women] have our liberty again, [a]nd challenge to yourselves[, men,] no sovereignty. You came not in the world without our pain, [m]ake that a bar against your cruelty; [y]our fault being greater, why should you disdain [o]ur being your equals, free from tyranny?¹⁶⁹

Georgia's tax on MDCDs is a contemporary manifestation of a discriminatory tax regime. Despite almost a decade of efforts from residents and organizations, Georgia legislative leaders have neglected to address the inherent unfairness of subjecting medically necessary MDCDs to a luxury sales tax rate, a burden not imposed on comparable products. Taxation, as a tool of governance, reflects and perpetuates societal norms that shape public perceptions on topics like gender, race, socioeconomic status, and necessity. Just as historical movements have used tax codes to advance human rights, the exemptions of MDCDs from Georgia's sales tax regime would be a critical step towards affirming the dignity and equality of women and girls. By embracing this change, Georgia can alter its current narrative and signal its commitment to women's issues through dismantling menstrual stigma and prioritizing women's health.

¹⁶⁹ Sarah Lindsay, *Aemilia Lanyer: Defending Eve in the Seventeenth Century*, CBE Int'l (Mar. 14, 2016), <https://www.cbeinternational.org/resource/aemilia-lanyer-defending-eve-seventeenth-century/> [perma.cc/LY3P-L5DT] (quoting AEMILIA LANYER, EVE'S APOLOGY IN DEFENSE OF WOMEN *in* SALVE DEUS REX JUDÆORUM (1611)).