

## Period Law / Alabama Tampon Tax / Talking Points November 2022

### **The Tampon Tax Unfairly Burdens Poor Women.**

- A sales tax on menstrual products (aka the tampon tax) unfairly burdens the state's lowest income group,<sup>i</sup> women and children. 16.90% of women in Alabama live in poverty while the national figure is 11.70%.<sup>ii</sup> Low-income citizens may be forced to choose between purchasing menstrual products and other necessities.<sup>iii</sup>
- The American Medical Association deems menstrual products “essential for women’s health” and has called the tampon tax a “regressive” penalty.<sup>iv</sup> After a comprehensive study, the American College of Obstetrics and Gynecology concluded that “research supports the repeal of this tax in consideration of its financial, social, and political implications.”<sup>v</sup> The average usage is more than 16,000 tampons or pads in a lifetime.<sup>vi</sup>
- Alabama exempts many other items from sales tax, including Viagra, pollution control equipment, and raw materials.<sup>vii</sup>
- A study conducted in New Jersey<sup>viii</sup> showed that removing the tampon tax provides a disproportionate economic benefit to poor women who, unlike wealthier women, cannot afford to buy period products more cheaply in bulk.

### **Menstrual Products are Medical Necessities.**

- The U.S. Food and Drug Administration (FDA) classifies menstrual tampons as Class II medical devices and pads as Class I medical devices.<sup>ix</sup> The 2020 CARES Act designated menstrual products as medical necessities for the purpose of HSA and FSA accounts.<sup>x</sup>

### **The Cost of Removing the Tax Is Negligible.**

- Alabama collects approximately \$5.8 million from the sales tax on menstrual products.<sup>ix</sup> Record-high revenues over the last year have yielded a budget surplus of \$2 billion.<sup>x</sup> The tampon tax amounts to less than .01% of Alabama’s total revenue.<sup>xi</sup>

### **Removing The Tax Is a Bipartisan Issue.**

- Eliminating the tampon tax has garnered bipartisan support across the country, with members of both political parties introducing legislation and signing bills into law to eliminate it.<sup>xii</sup>
- Earlier this year, Governor Greg Abbott called for a tampon tax exemption in Texas, recognizing that “[t]hese are essential products for women’s health and quality of life.”<sup>xiii</sup>
- When exempting menstrual products in California in 2019, Governor Gavin Newsom said “We can afford to do that and it’s the right thing to do.”<sup>xiv</sup>

### **The Tampon Tax Is Unconstitutional.**

- The sales tax on menstrual products treats individuals differently based solely on their sex.
- Constitutional law scholars from across the country, including Erwin Chemerinsky, Dean of UC Berkeley Law School, have argued that the tampon tax amounts to sex-based discrimination in violation of equal protection at both the state and federal level.<sup>xv</sup>

Period Law has successfully sued on this issue. We coordinated a class action lawsuit in New York in 2016 on behalf of women who paid the tax, prompting the state to end its tax within

months.<sup>xvi</sup> Four states – Connecticut, Florida, Illinois, and Nevada—followed suit. In 2020, we sued the state of Michigan with the same result. Forty states taxed menstrual products when we began an

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<sup>i</sup> <https://talkpoverty.org/state-year-report/alabama-2020-report/>

<sup>ii</sup> <https://nwlc.org/in-the-states/state-by-state/>

<sup>iii</sup> Anne Sebert Kuhlmann, Ph.D., MPH; Eleanor Peters Bergquist, MA, MSPH; Djenie Danjoint, MPH; Lewis L. Wall, MD, DPhil, “Unmet Menstrual Hygiene Needs Among Low-Income Women,” *Obstetrics & Gynecology*, v. 133, Issue 2, (February 2019), pp. 238-244.

<sup>iv</sup> <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-final-day-annual-meeting>

<sup>v</sup> Singh, Bhuchitra MD, MS, MPH; Zhang, Jiahui BA; Segars, James MD, *Period Poverty and the Menstrual Product Tax in the United States*, *Obstetrics & Gynecology*: May 2020, Volume 135, Issue p68S.

<sup>vi</sup> Findings for Robin Danielson Menstrual Product and Intimate Care Product Safety Act of 2022, H.R.8724, 117th Congress (2021-2022)

<sup>vii</sup> <https://www.salestaxhandbook.com/alabama/sales-tax-exemptions>

<sup>viii</sup> Christopher A. Cotropia & Kyle Rozema, *Who Benefits from Repealing Tampon Taxes? Empirical Evidence from New Jersey*, 15 *J. Empirical Legal Stud.* 620 (2018).

<sup>ix</sup> Period Law estimates available at [www.periodlaw.org/resources](http://www.periodlaw.org/resources)

<sup>x</sup> <https://alabamapolicy.org/2022/10/10/another-record-surplus-in-2022-proves-that-alabama-can-afford-historic-tax-relief/#:~:text=Last%20Friday%20marked%20the%20end,a%20%24%20billion%20revenue%20surplus.>

<sup>xi</sup> [www.periodlaw.org/resources](http://www.periodlaw.org/resources)

<sup>xii</sup> Ohio Governor Mike DeWine (R) signed into law a bipartisan bill that passed the state legislature nearly unanimously. See also Jennifer Weiss-Wolf and Steve Andersson, “Republican or Democrat — We Can All Agree on Axing the Tampon Tax,” *Newsweek* (April 15, 2019) <https://www.newsweek.com/tampon-tax-republican-democrat-opinion-1391763>

<sup>xiii</sup> Texas Gov. Greg Abbott Joins Other Key Republicans in Supporting Repealing the “Tampon Tax”, *TEXAS TRIBUNE* (August 18, 2022).

<sup>xiv</sup> No More Sales Taxes on Diapers and Tampons Under Gov. Gavin Newsom’s Proposed Budget, *LA TIMES* (May 7, 2019).

<sup>xv</sup> Erwin Chemerinsky and Jennifer Weiss-Wolf, “Taxing Tampons Isn’t Just Unfair, it’s Unconstitutional,” *Los Angeles Times* (July 11, 2019); <https://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-weiss-wolf-tampons-tax-20190711-story.html>

<sup>xvi</sup> See Complaint, *Seibert v. New York State Department of Taxation and Finance* (N.Y. Sup. Ct. 2016), <http://www.ecbalaw.com/wp-content/uploads/2016/03/Tampon-Tax.-Revised-Class-Action-Summons-and-Complaint-3-3-16-00243311x9CCC2.pdf>