

University of the District of Columbia School of Law

Digital Commons @ UDC Law

Congressional Testimony

Faculty Scholarship

11-23-2020

Testimony in Support of B23-0887, the "Expanding Student Access to Period Products Act of 2020" Before the Committee of the Whole and the Committee on Education

Marcy L. Karin

University of the District of Columbia David A Clarke School of Law, marcy.karin@udc.edu

Galina M. Abdel Aziz

University of the District of Columbia David A Clarke School of Law

Follow this and additional works at: https://digitalcommons.law.udc.edu/fac_congressional_testimony



Part of the [Education Law Commons](#), [Law and Gender Commons](#), [Legislation Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Testimony in Support of B23-0887. "Expanding Student Access to Period Products Act of 2020." November 23, 2020

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ UDC Law. It has been accepted for inclusion in Congressional Testimony by an authorized administrator of Digital Commons @ UDC Law. For more information, please contact lawlibraryhelp@udc.edu.

Testimony in Support of B23-0887
the “Expanding Student Access to Period Products Act of 2020”

Before the Committee of the Whole and the Committee on Education

By Marcy L. Karin and Galina M. Abdel Aziz¹

November 23, 2020

Dear Chair Mendelson, Chair Grosso, and other Councilmembers:

Thank you for holding this important hearing and exploring ways to increase menstrual equity and justice for our community.² We submit this testimony to enthusiastically support the Expanding Student Access to Period Products Act of 2020.

Put simply, menstruation should not be an obstacle to engage in society or obtain a civil right such as access to a quality education. Accordingly, we applaud the Council for leading the charge to remove systemic barriers that prevent menstruators from fully participating in our community.³ In 2016, the District took an important step toward becoming a menstrual-friendly jurisdiction by authorizing the elimination of the so-called “tampon-tax,” which removed the progressive, discriminatory sales tax on menstrual products.⁴ At the time, we stood proudly with our former client, Councilmembers, and others to support this new menstrual equity law in the District; however, we also advocated for the Council to go further and provide access in public and public charter

¹ For informational purposes, Marcy Karin is a Ward 2 resident who works in Ward 3 as the Jack & Lovell Olender Professor of Law and Director of the Legislation/Civil Rights Clinic at the University of the District of Columbia (“UDC”) David A. Clarke School of Law. Professor Karin teaches Gender and Sexual Orientation Under the Law and her scholarship explores ways that law and policy stigmatize menstruation and create obstacles for menstruators. From 2016-2018, the Legislation/Civil Rights Clinic represented [Bringing Resources to Aid Women’s Shelters](#) (“BRAWS”) in efforts to support the Council’s earlier efforts to advance menstrual equity in the District. See, e.g., Bridget J. Crawford, Margaret E. Johnson, Marcy L. Karin, Laura Strausfeld, & Emily Gold Waldman, *The Ground on Which We All Stand: A Conversation About Menstrual Equity Law and Activism*, 37 MICH. J. GENDER & L. 341, 347-350 (2020).

Galina M. Abdel Aziz is a Ward 1 resident and third year law student at the UDC David A. Clarke School of Law. As Professor Karin’s research assistant, Galina has researched laws and bills related to menstrual equity in schools, shelters, carceral spaces, and public buildings across the country.

² Coined by Jennifer Weiss-Wolf, “menstrual equity” refers to the ability of menstruators to have access to safe, available, and affordable menstrual products to ensure “a fully equitable and participatory society.” JENNIFER WEISS-WOLF, PERIODS GONE PUBLIC xvi (2017); see also BRAWS & UDC LEGISLATION CLINIC, PERIODS, POVERTY, AND THE NEED FOR POLICY: A REPORT ON MENSTRUAL INEQUITY IN THE UNITED STATES 3 (2018), <http://bit.ly/BRAWSMenstrualEquity> (“This term refers to the belief that all menstruating individuals, regardless of their circumstances, should have adequate and appropriate access to menstrual products so that they can navigate life in the same way a non-menstruating individual would.”). Professor Margaret E. Johnson defined the term “menstrual justice” to include the need to provide dignity to menstruators and eliminate associated stigma and discrimination. Margaret E. Johnson, *Menstrual Justice*, 53 U.C. DAVIS L. REV. 1 (2019).

³ We use the term “menstruator” intentionally. It recognizes that not all girls and women menstruate and that trans boys/men, non-binary/genderqueer, and other individuals may menstruate.

⁴ The Feminine Hygiene and Diapers Sales Tax Exemption Amendment Act of 2016, D.C. Law 21-201 (codified at D.C. CODE § 47-2005 (38)(A)).

schools, District-operated shelters, and drop-in centers.⁵ We remain grateful that those efforts to get the tampon tax repeal law enacted (and ultimately funded) were successful; period products cost less in the District and, therefore, are available to more as a result. But that law only chips away at a small part of a larger problem. Thank you for returning to the needs of menstruators in the District and for considering how best to remove other unfair obstacles.

Among other things, advancing this bill accomplishes two important tasks: (1) it helps keep menstruating students in school and focused on learning; and (2) it tackles the stigmatization of menstruation and provides some dignity to menstruators.

I. Offering Equal Opportunity to Learn and Keeping Menstruators in School

“Menstruation should not be the reason any [person] misses out on educational opportunities, endangers their health, or suffers humiliation.”⁶ Unfortunately, studies demonstrate that, without access to affordable, safe products, menstruators are more likely to miss school entirely, arrive late, leave early, or be distracted when they are present.⁷ This is disproportionately true for the large numbers of menstruators living in poverty, where the cost of menstrual products remains out of reach (even if they are cheaper with the removal of the tax on these products).

Maryland, Virginia, and six other states have already enacted laws to provide period products to students in certain circumstances,⁸ and other jurisdictions are contemplating doing the same.⁹ Now is the time for the District to act—instead of falling

⁵ See, e.g., *Hearing Before the D.C. Council Comm. on Fin. & Revenue on D.C. B21-0696, The Feminine Hygiene and Diapers Sales Tax Exemption Amendment Act of 2016* (Sept. 28, 2016) (written testimony of BRAWS), http://www.braws.org/uploads/2/5/6/1/25613867/braws_testimony_final_scan.pdf; (oral testimony of BRAWS), www.braws.org/uploads/2/5/6/1/25613867/braws_oral_testimony_9.28.16_hearing.pdf; see B21-0692, Improved Access to Diapers and Feminine Hygiene Products Amendment Act (D.C. 2016), <http://lims.dccouncil.us/Legislation/B21-0692>.

⁶ BRAWS, *supra* note 2, at 10.

⁷ See, e.g., Christopher A. Cotropia, *Menstruation Management in United States Schools and Implications for Attendance, Academic Performance, and Health*, 9 WOMEN'S REPRODUCTIVE HEALTH (March 25, 2019), available at SSRN: <https://ssrn.com/abstract=3313413>; Barbara Goldberg, U.S. Women Push Back Against Stigma, Cost of Menstruation, Reuters (Mar. 8, 2016, 9:07 AM), <https://www.reuters.com/article/us-usa-menstruation/u-s-women-push-back-against-stigma-cost-ofmenstruation-idUSKCN0WA1RG>; UNESCO, *Puberty Education & Menstrual Hygiene Management* (2014), <https://unesdoc.unesco.org/ark:/48223/pf0000226792.locale=en>; Sarah House, Thérèse Mahon & Sue Cavill, *Menstrual Hygiene Matters: A Resource for Improving Menstrual Hygiene Around the World* 31 (2012), available at http://www.susana.org/_resources/documents/default/3-2210-21-1426498269.pdf; BRAWS, *supra* note 2, at 8-9.

⁸ See Cal. Educ. Code § 35292.6 (West); 105 Ill. Comp. Stat. Ann. 5/10-20.63; MD HOUS & CMTY DEV § 4-2401 (West); N.H. Rev. Stat. Ann. § 189:16-a; N.Y. Pub. Health Law § 267 (McKinney); Tenn. Code Ann. § 49-6-417 (West); Va. Code Ann. § 22.1-6.1 (West); Georgia STOMP, *DOE Money Finally Distributed!* (Nov. 11, 2019) <https://georgiastomp.com/2019/11/11/doe-money-finally-distributed/> (sharing the distribution formula that the state's Department of Education used to distribute the \$1 million that was appropriated for Fiscal Year 2020 to provide period products in schools). See also BRAWS, *supra* note 2, at 11; NY.C. Admin. Code, title 21-A, ch.8, § 21-968 (2016).

⁹ See, e.g., S.B. 00157, Feb. Sess. (Ct. 2020), <https://www.cga.ct.gov/2020/TOB/s/pdf/2020SB-00157-R00-SB.PDF>; H.B. 285, 150th Gen. Assemb. (2019-2020) (Del. 2020), <https://legis.delaware.gov/json/>

behind on this issue. This bill offers that opportunity, supports students, and removes some of the limitations that exist in other jurisdictions by providing dispensers in: (1) elementary, middle, and high schools, and (2) girls and all-gender bathrooms. Undoubtedly, this will help menstruating students be present in school. It also will provide needed products to some faculty, staff, and visitors when they have access to those stocked bathrooms.

To ensure potential access to all school-aged menstruators, however, we recommend amending subsection 3(a)(1)(B) to replace the word “or” with the word “and.” Without this change, the bill might not achieve its goal and could unintentionally harm an elementary school menstruator who does not identify as a “woman.” Otherwise, there is no requirement that these schools provide period products in an all-gender or other bathroom to which these students have regular access.

Further, given menstruators’ unique bodies and needs, we also encourage the Council to explore ways to incentivize schools to provide a range of products to students. Practically, this may mean providing access to period products outside of dispensers too. This would address students whose body and/or cycle may require different sized or non-allergenic products. There also may be students with physical and/or intellectual disabilities who are not able to operate a dispenser and/or for whom menstruation may need to be a topic for consideration in individualized education plans.¹⁰

II. Tackling the Stigma Surrounding Menstruation

This bill also helps remove the stigma surrounding menstruation. Unfortunately, menstruation is still a taboo topic in our community. There is a culture of shame associated with this biological process, including some thinking that menstruation is dirty or unnatural. Further, there is a lack of education and sometimes silence surrounding menstruation. Collectively, in addition to missed opportunities to be present or engaged in class, these lived experiences lead some students to internalize bias and develop feelings of embarrassment or guilt related to menstruation.¹¹ It also has led to student-on-student harassment based on menstruation, including when leakage occurs if access to appropriate products or menstrual-friendly bathrooms are denied.

[BillDetail/GenerateHtmlDocument?legislationId=47946&legislationTypeId=1&docTypeId=2&legislationName=HB285](#), S.B. 349, Reg. Sess. (2019-2020), <http://www.legis.ga.gov/Legislation/en-US/display/20192020/SB/349>, H.B. 0922, 101st Gen. Assemb. (Ill. 2020), <https://www.ilga.gov/legislation/101/HB/10100HB0922eng.htm>; H.B. 208, Reg. Sess. (Md. 2020), http://mgaleg.maryland.gov/2020RS/bills/hb/hb_0208t.pdf; H.B. 1708, 2019-2020 Reg. Sess. (Pa. 2019), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=1708&pn=2301>.

¹⁰ Elisabeth H. Quint & Rebecca F. O’Brien, *Menstrual Management for Adolescents with Disabilities*, 138 PEDIATRICS 1 (July 2016); BRAWS, *supra* note 2, a 10 (describing the experiences of a local teacher’s support related to the menstruation of students with intellectual disabilities in school).

¹¹ BRAWS, *supra* note 2, at 7.

Given that reality, we applaud this bill for helping to normalize menstruation. We also appreciate that it rejects the problematic “feminine hygiene” language used in the tampon tax repeal.¹² Instead, this new “period products” language acknowledges that menstruation is not “dirty” nor should menstruation automatically be tied to femininity. The provisions also signal a recognition that trans and non-binary/genderqueer students may menstruate and need products. Further, by providing access to products—in a public way—it helps bring menstrual management out of the shadows and products out of students’ sleeves and other locations hidden from sight.

While we fully support this legislation, by itself, it is not enough to eliminate menstrual inequity in schools. Improved menstrual education is needed too. This includes ensuring that all students—not just (potential) menstruators—are educated about periods, how to use various period products, and related connections to health, reproduction, and identity.¹³ It also requires staff knowledge about these topics as well as the use of appropriate language when discussing menstruation. For example, school personnel should not use code words like “time of month” or “Aunt Flo” to discuss menstruation.¹⁴ Nor should students be taught that it is inappropriate to talk about periods, that any such talk should be limited so as not to make others uncomfortable, and that they need to hide any need for period products by asking for “penguins,” “turtles,” or “marshmallows.”¹⁵

Further, the District should conduct a closer examination of policies related to menstrual accommodations such as access to bathrooms or modifications to the khaki and other light colors used in some local school districts’ uniforms, especially given the unpredictability of menstruators’ early cycles.

III. Additional Menstrual Equity Provisions are Needed

This bill is a critically important next step for the District. To become fully menstrual-friendly—or at least to remove other discriminatory obstacles, menstrual inequity also must be addressed in other systems in the District. Specifically, legislation is needed to authorize, fund, and/or encourage access to period products and menstrual

¹² Limiting products to tampons and pads is understandable. Nonetheless, using different definitions of related terms in various sections of the Code may later confuse some residents. Compare D.C. CODE § 47-2005(38)(A) (“the term ‘feminine hygiene product’ means a sanitary napkin, sanitary towel, tampon, menstrual cup, or sanitary pad”) with B23-0887 § 2(b) (defining “period products” as “tampons and sanitary napkins”).

¹³ See Margaret E. Johnson, Emily Gold Waldman, & Bridget J. Crawford, *Title IX and Menstruation*, 43 HARV. J. OF LAW AND GENDER, 225, 235-236 (2020).

¹⁴ Coshandra Dillard, *Equity, Period.*, TEACHING TOLERANCE (2019), <https://www.tolerance.org/magazine/spring-2019/equity-period>.

¹⁵ *Id.*; Johnson, Waldman, & Crawford, *supra* note 13, at 235-236; BRAWS, *supra* note 2, at 7.

accommodations in shelters,¹⁶ foster care,¹⁷ carceral spaces,¹⁸ public buildings,¹⁹ and workplaces. Period products also should be made available as part of the District's food distribution program during the remainder of the Covid-19 pandemic.²⁰ We strongly encourage the Council to consider addressing these needs in future legislation. Doing so would improve the dignity afforded to local menstruators and increase menstruators' access to products, health, and participation in other important community components.

* * *

Thank you again for holding a hearing on this important menstrual equity topic. We are available to answer questions and provide technical assistance after the hearing if useful. In the meantime, we hope the District continues to demonstrate its commitment to equity and fairness, including by boldly leading and advancing legislation to combat menstrual inequity in schools and other District systems.

¹⁶ Maryland provides period products in shelters. MD HOUS & CMTY DEV § 4-2401 (West); see also N.Y.C. Admin. Code, title 2, chp. 12, § 12-207 (2016); BRAWS, *supra* note 2, at 13-16.

¹⁷ See, e.g., Del. Code Ann. tit. 29, § 9003(a)(19) (West).

¹⁸ At least 14 states have enacted laws that provide period products in carceral spaces. See, e.g., Ala. Code § 14-3-44; Ala. Code § 14-6-19; Cal. Penal Code § 3409 (West); Colo. Rev. Stat. Ann. § 17-1-113.6 (West); Conn. Gen. Stat. Ann. § 18-69e (West); Del. Stat. Tit. 29 § 8903(14) (2018); Fla. Stat. Ann. § 944.242 (West); Ky. Rev. Stat. Ann. § 441.055 (West); LA Rev Stat § 15:892.1 (2018); Me. Rev. Stat. tit. 34-A, § 3031; Md. Code Ann., Corr. Servs. § 4-214 (West); N.Y. Correct. Law § 625 (McKinney); Tenn. Code Ann. § 41-21-206 (West); Tex. Gov't Code Ann. § 501.0675 (West); Tex. Gov't Code Ann. § 511.009 (West); and 2018 Va. Laws Ch. 815 (H.B. 83).

¹⁹ See, e.g., Jenna Fisher, *Brookline First Town In US To Require Tampons In Public Bathrooms*, PATCH (May 24, 2019, 11:47 am), <https://patch.com/massachusetts/brookline/first-town-provide-free-menstrual-products-public-bathrooms>; REPORT: WARRANT ARTICLE 20, HUMAN SERVICES SUBCOMMITTEE OF THE ADVISORY COMMITTEE (Apr. 10, 2019), <https://www.brooklinema.gov/DocumentCenter/View/20323/2019-04-10-Human-Services-Subcommittee-Report-WA-20?bidId=>; *City Council approves free hygiene products*, SALT LAKE CITY.GOV (June 18, 2019), <https://www.slcc.gov/blog/2019/06/18/council-city-council-approves-free-hygiene-products/>; SALT LAKE CITY, UTAH, CAPITAL AND OPERATING BUDGET BOOK FY 2019-2020, A-8, B-26, E-209, <http://www.slcdocs.com/budget/bookFY20.pdf>.

²⁰ See, e.g., *Food Resources*, CORONAVIRUS.DC.GOV, <https://coronavirus.dc.gov/food> (last accessed Nov. 23, 2020) (describes meal packs as “containing a breakfast and a lunch”). While not food, period products are “essential items,” and providing support for them during the pandemic is important.