Currently, state governments take upwards of $50 million a year intended to help the country's most vulnerable children and divert it to public sector unions. Money taken from Child Care and Development Fund and Temporary Assistance for Needy Families reduces resources for those in need and undermines the program's intent. As Congress considers how to address the current COVID-related child care crisis, it is important to protect any additional appropriated funds so they can help the providers and families that need them—not line the pockets of unions.

**Background:**
The federal government helps eligible, low-income families pay for child care through the Temporary Assistance for Needy Families program and Child Care and Development Fund. Federal funds are distributed to states in the form of block grants, and individual states administer and co-fund their programs and directly reimburse home-based family child care providers for the cost of serving eligible families. Many providers are related to the children for whom they provide care.

The National Labor Relations Act does not generally cover such independent, family child care providers. However, at the urging of unions like the Service Employees International Union and the American Federation of State, County, and Municipal Employees, several states have recognized family child care providers as government employees for the limited purpose of allowing them to be unionized under state public sector labor laws. Until the US Supreme Court's 2014 *Harris v. Quinn* decision ruled it unconstitutional, unions and states had the power to compel providers who declined union membership to nonetheless pay union agency fees as a condition of providing childcare under the program. The Supreme Court's 2018 *Janus v. AFSCME* decision expanded right-to-work to all union-represented government employees and required unions to obtain employees' affirmative consent before deducting any dues or fees from their wages.

Although membership is technically “voluntary” state governments and unions developed unfair and confusing rules that trap caregivers in the dues skim. For example, some caregivers can only opt-out of their union during a 15-day annual period that varies by member, making it impossible for providers to exercise their constitutional rights affirmed in *Harris v. Quinn*. In documented cases, unions like SEIU have reportedly resorted to forging signatures on membership forms.
As of June 2018, nine states (Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Washington) still operate this scheme that traps independent child care providers into financially support a union by automatically deducting union dues from the TANF and CCDF benefit payments they receive on behalf of their low income clients. Last month, California joined their ranks, which will greatly increase the number of child care providers across the nation impacted by dues skimming. Unions in these states offer purported proof of union membership of these employees to states’ lead agencies for child care grants and, in response, lead agencies “skim” those child care providers’ union dues from federal child care benefits and remit that money to unions. This practice prevents money from going where it is needed, is fraught with fraud and abuse, and is nothing more than a leftist political fundraising racket for union bosses. It would be more secure for child care providers to pay for their union memberships themselves, just as we all pay for other membership organizations and bills.

With the loss of agency fees and presumptive enrollment resulting from Supreme Court rulings, labor unions began an aggressive campaign to enroll more dues-paying members. In fact, the recent developments in California means up to 43,000 additional child care providers can join a union and the state will skim membership dues from their publicly funded payments.

**Solution:**
Child care providers should not be considered government employees; they are providing a service for their clients. Additionally, states have a duty to ensure that federal taxpayer money slated to help those in need actually gets to them, and is free from fraud, waste, and abuse, especially now. Any additional funds that Congress appropriates to address America's current child care crisis should go to those most in need – not the unions. If care providers want to join a union, they are still free to join, but union dues should not be skimmed off the top of these payments.

Senate Republicans should write or amend the “Back to Work and Back to School” Covid-19 child care relief bill to prevent states from “skimming” federal child care benefits to pay union dues. This abuse can be prevented by amending § 203(g)(1) of the bill to add subset (D) after the existing § 203(g)(1)(A)-(C) to read, as follows (proposed language is underlined):

(g) LEAD AGENCY USE OF FUNDS.—

(1) IN GENERAL.—A lead agency that receives a Back to Work Child Care grant under this section—

. . . .

(D) shall not pay or divert any grant funds, directly or indirectly, on behalf of grant recipients or providers, to any membership organization, labor union, or political
fund. Additionally, no fiscal agent or other intermediary that contracts with, or makes payments to, providers may deduct funds from providers’ payments for any membership organization, labor union, or political fund.

Lawmakers should consider adding this or similar language to any bill that proposes funding for or changes to child care programs and subsidies. Specifically, House Bills 7027 and 7327 - both increase funding for child care in response to the Covid-19 Pandemic. Big pieces of legislation which spend billions of dollars and are enacted expeditiously in response to national crises are particularly prone to abuse, and yet they provide opportunities to ensure the responsible use of taxpayer dollars. For H.R. 7027, Sec. 1 (e), this language could be add to the following subsection (3)(A):

(e) USES OF FUNDS. —

(3) PROHIBITED USE OF FUNDS BY LEAD AGENCY. —A lead agency that receives such a subgrant under this section shall not pay or divert any grant funds, directly or indirectly, on behalf of a qualified child care provider, to any membership organization, labor union, or political fund. Additionally, no fiscal agent or other intermediary that contracts with, or makes payments to, qualified child care providers may deduct funds from qualified child care providers’ payments for any membership organization, labor union, or political fund.

For H.R. 7327, Sec. 409 (b)(1) is amended by adding subsection (G):

(b) RULES GOVERNING USE OF ADDITIONAL FUNDS.—

(1) IN GENERAL.—Funds are used in accordance with this subsection if—

. . . .

(G) the funds are not used, directly or indirectly, on behalf of essential workers, to any membership organization, labor union, or political fund. Additionally, no fiscal agent or other intermediary that contracts with, or makes payments to, essential workers may deduct funds from essential workers’ payments for any membership organization, labor union, or political fund.

Administrative Remedies

In addition to the legislative remedy above, the agency can issue clarifying language that paying any portion of Back to Work Child Care grant funds, subgrants under H.R. 7027, or funds released through 7327, to unions is impermissible and wholly unrelated to the purposes of the funding.

Although unlikely, another option is that ACF may issue grant guidance in the form of a memorandum that requires consent, supported by clear and compelling evidence, to union dues deductions for family child care providers receiving any COVID-19 related grants or additional funding. In the paper published March of 2019, language is included that the
agency may use for proper compliance.¹ The waivers must contain the payee’s full legal name, full Social Security or tax ID number, date of birth, signature, and date signed to be valid.

State Policy Network and the Network of state-based, free-market think tanks are helping state and federal leaders navigate this crisis to ensure Americans have access to healthcare, students are educated, and families and businesses can financially recover. Please let us know how we can be helpful as your office continues to work on this issue. We can quickly assemble a small group of experts to brief you and provide solutions to address the unintended consequences of additional child care funding.

Additional information and citations on the facts listed in this memo can be found here: https://www.mackinac.org/archives/2019/s2019-03.pdf

For more information on the dues skim visit: https://www.protectproviders.com

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