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Testimony on the Limitations of Employer-Supported Tax Credits in Supporting Women and Families

May 2, 2023

Senator Grohoski, Representative Perry, and members of the Taxation Committee, thank you for the opportunity to testify. My name is Kathryn Menefee, and I am Counsel for the Income Security team at the National Women's Law Center (NWLC), a nonpartisan, not-for-profit policy and advocacy organization located in Washington, D.C.

NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially women of color, LGBTQ people, and women and families with low incomes.

My testimony today will address the limitations of employer-supported tax credits, which are the subject of LD 1222, "An Act to Expand Child Care Services Through an Employer-supported Tax Credit."

Affordable, high-quality child care is critical to the success of children, families, employers, communities, and the economy writ large—but even before the pandemic, child care was out of reach for far too many families. The pandemic laid bare and exacerbated the deep inequities of a child care system that relies on families paying unaffordable sums, early educators being paid poverty-level wages, and too many communities across the country lacking sufficient workforce or facilities to meet child care demands.

In 2018, over half of Americans lived in a child care desert, or a neighborhood with an insufficient supply of licensed child care. The pandemic has worsened child care shortages. A Child Care Aware of America report found that nearly 16,000 providers across the U.S. permanently closed between December 2019 and March 2021 in 37 states with data.[1] But when looking at all 50 states, it's estimated that 20,000 childcare programs, or up to 10% of the pre-pandemic industry, have ceased operations according to analysis from the Century Foundation.[2] Over 56,000 child care jobs have not returned, as of March 2023.[3]

As Treasury Secretary Janet Yellen put it: "Child care is a textbook example of a broken market." And it has been broken for decades. We will only be able to fix the child care system with sustained and robust public investments to ensure both that all families can access and afford high-quality child care and that child care workers, who are overwhelmingly women and disproportionately women of color and immigrant women, are paid enough to support themselves and their families.

The federal government and 21 states currently offer tax credits that incentivize businesses to invest in child care for their employees.[4] However, research demonstrates that, at both the federal and state level, such tax credits are underutilized and have limited effectiveness as an incentive to encourage employers to provide child care services to their employees. Importantly, research also indicates that to the extent that employers offer child care to their employees, those employers tend to be larger businesses and those employees tend to be white-collar and higher-income. This suggests that employer tax credits are poorly targeted to support the businesses and workers most in need of it.

At the federal level, the Employer Provided Child Care Tax Credit (EPCCC) allows employers to claim a tax credit of up to 25 percent of qualified child care expenditures, including the cost of building and operating on-site child care centers. In 2016, the most recent year for which data are available, the IRS estimated that there were only 169 to 278 corporate income tax returns, claiming $15.7 to $18.8 million in EPCCCs. A February 2022 GAO report found that several factors limited the credit's utility, including the substantial costs and administrative burdens associated with providing on-site child care, lack of awareness about the credit, and the relatively small size of the credit.[5] Moreover, the GAO report found that smaller employers do not usually have the infrastructure or oversight capabilities to build on-site child care programs, limiting their ability to claim the EPCCC. While smaller employers *could* pay a contracted third-party to provide child care and claim the EPCCC, this does not create new child care facilities or capacity. Finally, even when employers do provide child care, the care will not necessarily be available or affordable for all employees. The GAO report found that some employers only offer on-site child care at their corporate headquarters, leaving out non-corporate employees, such as those who work in warehouses or retail outlets. Additionally, the report suggested that employer-provided child care often has limited capacity and waitlists.

Many of the state employer tax credits have been similarly underutilized. A 2002 NWLC report found that in 16 states with employer tax credits and utilization data, five or fewer employers claimed the credit in the most recent tax year for which data were available.[6] Additionally, between 2002 and 2017, nine states repealed or discontinued their tax credits for employers and businesses that provide child care benefits.[7]

In sum, employer tax credits are unlikely to produce the intended effects of LD 1222, including to "expand child care services." Instead, direct child care investments are needed to make child care affordable and accessible for all families, and ensure child care is available to meet families' varied needs, including the need for care during evenings, nights, and weekends for parents

working non-traditional hours. Direct investments would also ensure that child workers receive the increased wages, benefits, and improved labor protections they need and deserve. Such investments would have positive and widespread economic effects, reducing lost wages due to lack of child care, increasing women's participation in the labor market, and creating new jobs.

If states are determined to address the child care crisis with tax policies, they can help families offset their child care costs by enacting or expanding refundable child and dependent care tax provisions.[8] These tax provisions lower the income taxes that families pay and, when refundable, give cash refunds to families who do not owe taxes.

Maine currently offers the Maine Child Care Credit. The credit provides up to $1,050 to help families offset the cost of child care expenses, $500 of which is refundable.[9] However, the fact that the credit is not fully refundable means that families with little to no tax liability cannot receive the full value of the credit. Families with low incomes, including many women-headed households and families of color, are therefore largely shut out of the full credit, despite the fact that the costs of child care fall hardest on them. Making the Maine Child Care Credit (and the related Maine Adult Dependent Care Credit) fully refundable could help families meet the costs of child care more equitably.

In addition, tax benefits that provide income support to child care workers—such as have been enacted in Colorado and Louisiana[10]—can play a complementary role.

In conclusion, significant public investments in child care are needed to support families, providers, and child care workers—as well as employers, local communities and economies—and foster inclusive economic growth. While targeted tax strategies other than employer tax credits can help support women, families, and child care workers, employer-supported tax credits like the one proposed in LD 1222 have been proven to be underutilized and largely ineffective on both the national and state level.

Thank you for the opportunity to submit testimony on LD 1222. I am happy to answer any questions you may have about my testimony, and I can be contacted at kmenefee@nwlc.org.

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[1] Child Care Aware of America, "16,000 childcare providers shut down in the pandemic. It's a really big deal" (February 9, 2022), https://info.childcareaware.org/media/16000-childcare-providers-shut-down-in-the-pandemic.-its-a-really-big-deal#:~:text=Nearly%2016%2C000%20childcare%20centers%20and,Child%20Care%20Aware%20of%20America.

[2] Julie Kashen and Rasheed Malick, Century Foundation, "More Than Three Million Child Care Spots Saved by American Rescue Plan Funding" (March 9, 2022), https://tcf.org/content/commentary/three-million-child-care-spots-saved-american-rescue-plan-funding/.

[3] Center for the Study of Child Care Employment , "Child Care Sector Jobs: BLS Analysis" (April 10, 2023), https://cscce.berkeley.edu/publications/brief/child-care-sector-jobs-bls-analysis/.

[4] Committee for Economic Development, "State Tax Credits for Child Care," https://www.ced.org/child-care-state-tax-credits.

[5] Government Accountability Office, "Employer-Provided Child Care Credit: Estimated Claims and Factors Limiting Wider Use" (February 2022), https://www.gao.gov/products/gao-22-105264.

[6] Christina Smith Fitz Patrick and Nancy Duff Campbell, National Women's Law Center, "The Poor Performance of Employer Tax Credits for Child Care" (November 2002), https://nwlc.org/resource/little-engine-hasnt-poor-performance-employer-tax-credits-child-care/.

[7] National Women's Law Center, "Employer Child Care Tax Credits are Ineffective at All Levels" (March 2018), https://nwlc.org/wp-content/uploads/2018/03/Employer-Child-Care-Tax-Credit.pdf.

[8] National Women's Law Center, "States Can Make Care Less Taxing: Tax Credits Related to Child Care, Tax Year 2022" (March 2023), https://nwlc.org/resource/states-can-make-care-less-taxing-tax-credits-related-to-child-care-tax-year-2022/#.

[9] Me. Stat. tit. 36 § 5218.

[10] Colo. Rev. Stat. § 39-22-547; La. Rev. Stat. § 47:6106.