NEW YORKERS PAY WHEN BIG MONEY PLAYS

THE CASE FOR PUBLIC FINANCING OF ELECTIONS

A Report By CITIZEN ACTION OF NEW YORK

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I. Introduction

This report adds to the mounting evidence that the influence of campaign contributions by big corporate money triumphs over the merits again and again in the halls of the State Legislature.[1] As we have pointed out in two previous campaign finance reports, campaign contributions are now the currency of our democracy, "determining who is able to run a viable campaign for office, who usually wins, and who has the ear of elected officials."[2]

The focus of this report is the consequences to millions of New Yorkers of continuing New York's "pay-to-play" system. We selected 5 bills in which the Legislature did not reflect the public will on an issue with a significant impact on the wealth or the health and welfare of average New Yorkers. In 4 of the cases, the bills did not pass in the Legislature's 2007-08 session, despite enormous support from grassroots organizations with large memberships and popular support. In the final case (ticket scalping), legislation contrary to consumer interests passed over consumer objections.

All 5 bills are case studies of a major impact of our system of private funding of elections: the voices of average New Yorkers are drowned out by campaign contributions from industries that stand to lose if the legislation passed. For each bill we analyzed, consumer groups were outspent at least 9 to 1 (and in most cases far more than that) by the regulated industries that were generally on the other side of the issue.

This report also demonstrates that due to our system of privately-financed elections, the prices we pay for health insurance, prescription drugs, apartments and even entertainment is far higher than they would otherwise be. And, as shown by the wetlands protection bill discussed below, our health and welfare is also often negatively impacted by our current system of financing of elections.

However, we have reason to be hopeful in 2009. Four of the 5 bills we discuss in this report have either passed the Assembly this year or in a previous legislative session. (The final bill is intended to undo the 2007 ticket scalping law.) Each bill is getting serious consideration in the final weeks of the 2009 session. We are optimistic that the new Democratic leadership of the State Senate will be more responsive than the former Senate leadership to the concerns of average New Yorkers. One prominent example of a more pro-consumer approach by the new Senate majority is the passage of the "Bigger Better Bottle Bill" this year after years of being stalled in the Senate.

However, fundamental reform is still critical to ensuring that that the needs of New Yorkers have a fair hearing when they are opposed by corporate interests. This report concludes that full public funding of election campaigns is ultimately necessary to reduce the corrupting influence of corporate contributors on the legislative process.

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[1] The reports by Citizen Action and its research affiliate are: Public Policy and Education Fund of New York, The Color of Money in New York, Federal Campaign Contributions and Race (January 2004), and Citizen Action of New York, The High Cost of "Pay-to-Play": Health Insurance Contributions Drive Up Insurance Rates (September 2008), http://www.citizenactionny.org/latestnews/Report%20on%20Health%20Ins%20Premiums%20and%20Lobbyists%20FINAL.pdf (hereinafter, "Citizen Action Pay-to-Play Report").

[2] Citizen Action Pay-to-Play Report, at 3.

II. Executive Summary and Findings

This report contains 5 "case studies" on the influence of Big Corporate Money on the legislative process in New York. For 4 of the bills we discuss in this report, average New Yorkers were harmed because of the Legislature's failure to pass good legislation due in part to campaign contributions by corporate interests facing additional limits on their business practices. The 5th bill (ticket scalping), was an anti-consumer proposal that passed due in part to campaign contributions. Each of these 5 issues is pending in the 2009 legislative session, giving legislators another opportunity to consider the merits over the need to raise cash for their campaigns. The 5 bill fights and our campaign contribution findings are below:

- Discounts on Prescription Drugs -- Consumer groups and senior groups are seeking once again this year to pass legislation to create a "prescription drug discount program" that would pool the buying power of millions of New Yorkers to get lower prices from drug manufacturers, known as "bulk purchasing."
    - Virtually all of the $1,093,348 from entities that were impacted by the bulk purchasing bill -- 99.99% -- came from the drug companies, drug stores and their trade associations. And over nine-tenths of the money contributed came from drug companies and the main drug company trade group, the Pharmaceutical Research and Manufacturers of America, popularly known as "Big Pharma."
- Health Insurance Rate Regulation -- Health care advocates are working hard to pass legislation defeated last year that would subject health insurance rates to regulation by the State Insurance Department, and allow hearings on rate increases, to address ever-increasing health insurance rates in New York.
    - 94% of the $105,784 in contributions from entities that lobbied on the bill came from health insurers. Citizen Action of New York, the only consumer group that contributed, gave the remaining 6% of in contributions.
- Concert and Sports Ticket Prices -- Consumer groups are seeking this year to overturn a 2007 law that removed caps on the price resellers of tickets (sometimes called "ticket brokers") can charge fans above the amount listed on the ticket (the price applicable to direct sales from the arena or other venue).
    - All of the contributions ($451,213) from entities that lobbied on the ticket scalping bill came from two sectors: ticket brokers and entertainment companies, primarily owners of entertainment venues. The only consumer group indicating that it had lobbied on the bill was NYPIRG, which does not make campaign contributions.
- Wetlands Protections -- One of the highest priorities of environmentalists in New York State this year is passing legislation that would allow the state to regulate and protect smaller parcels of fresh water wetlands. Wetlands are critical to protecting the environment and public health in general, and are particularly important for the safety of the public drinking

water supply used by millions of New Yorkers.

  - Real estate interests and builders contributed a total of $310,441 in the two-year period: 92% of the total contributions of those who indicated they had lobbied on the bill. The amount contributed by environmental groups -- $10,029, or 3% -- was relatively insignificant compared to the campaign contributions of realty and builder interests.

- <u>Apartment Rents</u> -- Passage of legislation sought by tenant advocates that would remove a provision in the law allowing rent controlled apartments that rent for $2000 or more to be decontrolled when they become vacant ("vacancy decontrol") was defeated last session, and is pending again this session. Repeal of vacancy decontrol would stop thousands of additional apartments from becoming unaffordable every year, and reduce practices like landlord harassment. Landlord and realty interests are once again adamantly opposed to this proposal in 2009.

  - We found that virtually all of the $594,365 in campaign contributions in the 2007-08 period from entities that lobbied on the vacancy decontrol bill -- 99.8% -- came from three entities associated with the real estate industry: the Rent Stabilization Association, the Builders Association of New York State, and the Building and Realty Institute.

III. Methodology

This report details campaign contributions for the 2007-08 period reported to New York State, as posted on the State Attorney General's "Project Sunlight" database, from companies, as well as consumers and environmentalists impacted by 5 critical bills that were considered in the 2007-08 legislative session. The contributions made were to candidates for the State Legislature, statewide offices like the Governor, state parties, legislative committees like the Democratic Assembly Campaign Committee, and local offices.

Using the Attorney General's Project Sunlight database, we identified the entities -- companies, non-profits, and trade groups -- that reported lobbying on each of the 5 bills.[3] However, we excluded contributions from industry sectors that were not regulated or otherwise directly impacted by the regulations proposed in the bill. For each of the 5 bills, we compared the campaign contributions from the companies (or related trade organizations) with the contributions (if any) made by consumer or environmental groups that also lobbied on that bill. In each case, the consumer and environmental groups generally took the opposite position as the impacted companies. For example, for the health insurance rate regulation bill, we compared the contributions of health insurers that would face rate regulation with the contributions of consumer groups that lobbied on the other side of the bill. (We determined the entities impacted by the legislation and the positions of the parties on each bill through discussions with advocates involved with the bill, reading of bill memos or other written documents like legislative testimony, or other independent research.) Contributions from entities to their own PACs were excluded to avoid double-counting. We've combined the contributions from companies (or trade organizations) with their affiliated PACs, if we were able to easily determine their affiliation, due to, for example, a common name and business address.

<u>It's important to note the limited universe of contributions captured in this report. Far more was actually contributed with the ultimate goal of passing or defeating legislation than we were able to document in this report</u>. First, our campaign contributions data was limited to companies that specifically reported to the New York State Commission on Public Integrity (formerly the New York Temporary State Commission on Lobbying) that they lobbied on the bill. Therefore, we did not include contributions from the many entities that influenced legislation through means other than lobbying, like publicity, public education or campaign contributions alone, as well as from entities that (mistakenly or intentionally) didn't indicate on their lobbying reports that that they had an interest in the bill. We simply did not have the resources to track campaign contributions from every one of the enormous number of interest groups and individuals with an interest in each one of the 5 bills. Secondly, we didn't include contributions from parties closely related to those who indicated in filings with the Public Integrity Commission that they had lobbied on each of the 5 bills, such as PACs substantially controlled by a major trade organization (unless, as previously indicated, the affiliation was obvious due to a common name and business address). Thirdly, we didn't

[3] The bill search function of the Project Sunlight database may be found at: http://www.sunlightny.com/snl1/faces/app/billsearch.jspx.

document contributions by individuals such as the principals of the companies impacted by each of the bills. Finally, lobbying firms, a significant source of campaign contributions, were not included in this analysis.

While we did not capture the entire universe of influence peddling in Albany, we believe that the limited scope of our analysis if anything *underestimates* the relative power of corporate interests. Including a larger universe of entities would almost certainly have resulted greater disparities between corporate and consumer/environmental contributions than calculated in this report. To cite only one example, for the vacancy decontrol bill discussed below, we did not include either the New York State Real Estate Board or Tenants PAC, two influential players on both sides of the vacancy decontrol debate in the Legislature, since neither party indicated they had lobbied on the bill. Had we done so, it would have added $196,064 to the total contributions by real estate interests documented in our report, while adding only $20,125 to the total contributions by tenant interests. (And even the $196,064 figure doesn't include the thousands of dollars in additional donations made by "Taxpayers for An Affordable New York," which is closely associated with the Real Estate Board.) The basic and critical conclusion of this report, that consumer and environmental interests are vastly outspent by corporate interests seeking to protect their interests in the Legislature, is indisputable.

IV. 5 Bills Influenced By Big Money Interests

Bulk Purchasing of Prescription Drugs

Overview of Bill

(A.3848 - Gottfried/S.8393 - Sampson; 2009 Bill: A.2007B - Gottfried/S.121-A Sampson) ***(Citizen Action Supports)***

In 2006 and 2008, legislation passed the State Assembly aimed at reigning in the exorbitant and ever-increasing costs of prescription drugs, which critically affects the budgets of average consumers and government alike. Between 1980 and 2003, spending on prescription drugs rose from $12 billion to $197 billion nationwide. The high cost of prescription drugs becomes even more critical to Americans as they age. People from 55 to 64 fill an average of 20 prescriptions annually, and those older than 75 fill an average 30 prescriptions annually. Increasing drug costs, of course, also puts enormous pressure on the budgets of state and local government, as government on all levels pays for drugs through Medicaid and other public health insurance programs.

The Gottfried/Sampson bill was drafted in response to these concerns. The bill would create a “prescription drug discount program” administered by the State Health Department for the purpose of lowering prescription drug prices for state residents who join the program. The prescription program would make agreements with drug manufacturers to obtain drugs at discounted rates, harnessing the buying power of millions of New Yorkers. The Health Department would also be authorized to team up in negotiations with governmental and non-governmental entities like union health plans in New York and elsewhere, ensuring additional savings for individual participants, members of public health plans, and members of non-governmental programs.

Passing this bill would also result in huge savings to government. The Fiscal Policy Institute has estimated that buying prescription drugs in bulk for Medicaid, state employees, and other state programs would save at least $100 million annually, and other estimates for cost-savings are even higher. A similar program in West Virginia saved that state 10% of its total pharmaceutical costs. Since West Virginia’s residents would have far less bargaining clout than a New York program due to the far fewer participants, the savings in our state can be expected to be greater. And the experience of the New York counties with local prescription drug programs has been promising. For example, Nassau County reports $9 million in savings from its program.

The Political Fight and the Role of Campaign Donations

A coalition of prominent consumer and senior groups has fought for passage of bulk purchasing legislation on the state level for a several years. The campaign has been supported by consumer and senior groups like the AARP, the Center for Medical Consumers, Consumers Union, the New York Public Interest Research Group (NYPIRG), and Statewide Senior Action Council.

Richard Gottfried, the long-time chair of the Assembly Health Committee and the bill’s chief sponsor in the Assembly, says that he worked hard in 2006 with the then Senate sponsor, Republican Martin Golden of Brooklyn, to resolve their differences over the bill. The bill passed the State Assembly near the end of the 2006 legislative session. However, the State Senate refused to act, despite extremely active lobbying and mobilizing efforts by the loose coalition of bill supporters.

Gottfried, a senior member of the Legislature and well-versed in the ways of Albany, did not mince words as to what had stalled his proposal. He said in a press statement that: “The Senate had the opportunity to step forward and provide assistance to every New Yorker: the uninsured; seniors in the Part D ‘donut hole’; and taxpayers, who are forced to pay exorbitant prices for medications provided under Medicaid, EPIC, and through the state employees health insurance program. Instead, they listened to pharmaceutical lobbyists, who spent the last week roaming the halls and cornering every member they could find. The Senate chose to walk away, continuing to allow the pharmaceutical companies to profit at our expense.”

The consumer coalition in support of the bill continued its efforts in the 2007-08 session. Bill supporters were encouraged when Governor Spitzer placed a discount program without age restrictions for participants in his 2008-09 Executive Budget. The Health Commissioner would be authorized under the Governor’s proposal to pursue bulk buying with other states to save tax dollars and increase access to prescription drugs. However, heavy opposition by “Big Pharma” (the Pharmaceuticals Research and Manufacturers of America, the main national trade group for the drug companies) and its member companies made it clear that the Gottfried/Sampson bill would not move in the Senate. And the language proposed by the Governor in his Executive Budget allowing the Health Commissioner to pursue bulk purchasing arrangements with other states did not make it into the final budget.

Consumer interests did get a third of a loaf: the final state 2008-09 budget established a drug discount program for those aged 50 to 64 with income restrictions modeled on those in the state EPIC program. But the results of the fight during the 2008 legislation session were clear: despite the support of a popular new Governor and numerous consumer groups, including AARP, one of the largest membership organizations in the nation, the Legislature listened to drug company interests and established a program that left out a majority of state residents. (This program has recently gone into effect.)

And it wasn’t the arguments of the drug companies that held up this critical legislation, but the campaign cash they dispensed to legislators of both parties. Consumer interests were simply drowned out by the over $1,000,000 in drug company and drug store money showered on the Legislature and state leaders. As shown by the chart below:

- **Virtually all of the $1,093,348 from entities that lobbied on the bulk purchasing bill -- 99.99% -- came from the drug companies, drug stores and their trade associations. And over nine-tenths of the contributions contributed came from drug companies and Big Pharma.**
  - The Pharmaceutical Research and Manufacturers of America contributed $222,500 -- the largest donor for this bill. The next 8 highest contributors were all drug companies.

- The pharmacy interests that contributed were: chain stores Duane Reade ($26,028 contributed) CVS/Caremark ($23,000), and the Chain Pharmacy Association of New York State ($25,000).

- **Consumer groups provided a minuscule amount in campaign contributions: $100 from the Jewish Association for Services for the Aged. The other consumer groups -- AARP, Consumers Union, and NYPIRG -- made no contributions.**

Contributions 2007-09 - Bulk Purchasing Bill (from entities registered as lobbying on the bill)		
A.3848/S.8393 (2007-08 Session)		
A.2007B/S.121A (2009 Session)		
Sector and Campaign Contributors	**Amount Contributed**	**Percentage of Total Contributions Coming from this Sector**
Drug Companies and Pharmacies		
Pharmaceutical Research and Manuf. of America	$222,500	
Pfizer	$186,500	
Glaxosmithkline	$149,800	
Eli Lilly	$145,070	
Merck	$91,750	
Astrazeneca Pharmaceuticals	$56,550	
Wyeth	$37,500	
Amlyn Pharmaceuticals	$27,500	
Schering	$27,500	
Duane Reade	$26,028	
Chain Pharmacy Association of NYS	$25,000	
Abbott Laboratories	$23,500	
CVS/Caremark	$23,000	
Amgen	$19,000	
Bristol-Myers Squibb	$10,200	
HLR Service Corporation (Roche)	$9,150	
Bayer Healthcare	$6,000	
Genentech	$3,250	
Allergan	$2,450	
Medimmune	$1,000	
Total this sector	$1,093,248	**99.99%**
Consumer Groups and Non-Profits		
Jewish Association for Services for the Aged (JASA)	$100	**0.01%**
Total this sector	$100	
Total Contributions For This Bill	**$1,093,348**	
Note: Other than JASA, all other consumer groups (AARP, Consumers Union, and NYPIRG) listed as giving $0.		

Regulation of Health Insurance Rate Increases and Profits[4]

Overview of Bill

(A.7485 – Bradley/S.2740 – DeFrancisco; 2009 Bill: A.3122 -Bradley (no Senate version to date) ***(Citizen Action Supports)*** (The Governor has a similar proposal in 2009: A.8280 - Morelle/S.5470 - Breslin)[5]

For over a decade, health insurance rates have been going up every year at an extraordinary rate, making health insurance unaffordable for many consumers and businesses. And it's not that health insurers need the money: profits have skyrocketed too.

As we said in our "Pay-to-Play" report in September, "a major factor in health insurance premium increases in New York State is there's no longer anyone looking out for consumers. The 1990s saw the relaxation or elimination of several provisions that had been in place for years intended to protect consumers from unreasonable health insurance rates and high profits." Under a 1995 law, the New York State Insurance Department no longer had the authority to reject health insurance rate increases before they became effective, so long as the law's "minimum loss ratios" (MLRs) -- the weak requirements mandating the percentages of health insurance premiums that had to be devoted to payment of claims -- were met. In addition, previous requirements for public hearings on rate increases were effectively eliminated, closing an important avenue consumers had to question rate increases, and to publicly complain about other health insurer practices. Finally, as of January 1, 2000, the Department no longer had oversight over rate increases of 10% or less.

As a result of the deregulation of the 1990s, the predictable occurred. Two-thirds of New York City's 9 HMOs increased their rates by at least 19% from 2007 to 2008, and from 2001 to 2005, HMO profits totaled $5.3 billion. Statewide, health insurance premiums increased by 81% from 2000 to 2007, while median wages in the state only increased by 11%.

The increases in health insurance rates and profits promoted consumer opposition and a response by the Legislature. Legislation sponsored in the 2007-08 session by Assemblyman Adam Bradley and Senator John DeFrancisco (A.7485/S.2740) provided that no annual increase of greater than 5% would be permitted unless the affected public is first given the opportunity to comment at a

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[4] This section of the report heavily relies the Citizen Action Pay-to-Play report (see footnote 1 for the full cite). In that study, we concluded that health insurance interests alone contributed $900 thousand to the State Legislature from 2003 to 2007, which contributed to the defeat of the very same bill discussed here. However, that study used a different methodology than in this study, and the data covers a different time period.

[5] This month, legislation was introduced in both houses of the Legislature (A.8280 - Morelle/S.5470 - Breslin), drafted by the Governor's staff (known as a "Program Bill"; Program Bill No. 15) that also would provide for prior approval of insurance rates by the State Insurance Department (SID). Health Care for All New York, the broadest coalition of state health care advocates (Citizen Action is a leading member), supports this bill "with reservations," in part because it does not include a hearing on rate increases. HCFANY prefers the Bradley prior approval bill (A.3122). Health Care for All New York, Memorandum in Support & Opposition to Governor's Health Insurance Agenda (May 2009).

public hearing. The Bradley/DeFrancisco bill would also raise the required MLRs in current law to at least 90% for insurance obtained by individuals (known as “direct pay”), and 85% for small group insurance, allowing insurers to make reasonable profits but protecting consumers from price gouging. This legislation has passed the State Assembly every year from 1998 to 2006, but has never passed the Senate.

<u>The Political Fight and the Role of Campaign Donations</u>

As our “Pay-to-Play” report documented, health insurance consumer advocates, due to their increasing concerns that the double-digit annual rate increases were pricing many individual consumers and small businesses out of the health insurance marketplace,“ identified the Bradley/DeFrancisco bill as one of the highest priorities of health care consumers in communications with legislators.” Among the organizations agreeing to a joint statement indicating the preeminence of the issue were Center for Independence of the Disabled in New York, Citizen Action of New York, the Community Service Society, Consumers Union, the Hunger Action Network of New York State, Metro New York Health Care for All Campaign, New Yorkers for Accessible Health Coverage, and Rekindling Reform. Several of these groups also met with key legislative staff, including the staffs of the Senate and Assembly insurance committees where the Bradley/DeFrancisco bill was pending, once again making clear that the bill was a high priority for health care consumers.

However, as demonstrated by our data in the chart at the end of this section, once again, consumer interests were no match for the campaign contributions and lobbying muscle of insurance company interests, who saw the bill as a threat to their profitability and the flexibility provided by an unregulated market. Among the large industry players that lobbied on the bill were the New York Health Plan Association, Capital District Physicians’ Health Plan, Cigna, Group Health Incorporated (GHI), Wellpoint, and the Health Insurance Plan of Greater New York (HIP). As a result, not only did the bill not receive serious consideration in the Senate in 2007 or 2008, but even the Assembly, which had passed the bill 9 times since 1998, didn’t pass it either in this period.

Our research for this report found as follows:

- **94% of the $105,784 in contributions came from health insurers.**
    - The leading sources of campaign contributors for this bill were: Wellpoint ($50,500), Health Insurance Plan of Greater New York (HIP) ($19,100), and Group Health Incorporated (GHI) ($12,505).
- **Only 6% of the contributions came from consumer groups.**
    - Citizen Action of New York contributed $6340 to candidates. The two other non-profit groups listed as lobbying on the bill, the Coalition for the Homeless and Hunger Action Network of New York State, made no contributions.

In the 2009 session of the Legislature, there is increased hope for passage of prior approval legislation given the switch to Senate control by the Democrats, who have traditionally been more sympathetic to consumer interests. (In addition, as noted in footnote 5, an alternative bill submitted by the Governor's staff that provides for prior approval, but unfortunately not a hearing process, has been introduced in both houses of the Legislature.)

Encouraged by the prospects of reform in 2009, Health Care for All New York (HCFANY), the broadest health care reform coalition in the state, has made prior approval a major priority in the 2009 session. HCFANY brought dozens of health care advocates from around the state to lobby in favor of the bill and other priority health care legislation on May 19th. Nevertheless, both this study and Citizen Action's previous "Pay-to-Play" study (using a different methodology) found that health insurers have made significant campaign contributions in the past, and there's no doubt they're determined to defeat the legislation. For example, Mark Wagar, President of Empire Blue Cross Blue Shield, calling prior approval "bad public policy," recently made clear his contempt for public participation in health care rate proceedings, saying to the business press: "This [i.e., health care rate regulation] is not the place to have a populist view."[6] It remains to be seen whether the high cost to consumers and businesses of health insurance rate increases will override the opposition (and cash) of health insurance executives this year.

Contributions 2007-09 - Health Insurance Rate Regulation (from entities registered as lobbying on the bill)		
A.7485/S.2740 (2007-08 Session)		
A.3122 (2009 Session); Also A.8280/S.5470 (Governor's Program Bill)		
Sector and Campaign Contributors	**Amount Contributed**	**Percentage of Total Contributions Coming from this Sector**
Health Insurers		
Wellpoint	$50,500	
Health Insurance Plan of Greater New York (HIP)	$19,100	
Group Health Incorporated (GHI)	$12,505	
Cigna Companies	$8,500	
Emblem Health Services	$5,339	
Capital District Physicians' Health Plan	$3,500	
Total this sector	$99,444	**94.01%**
Consumer and Non-Profit Groups		
Citizen Action of New York	$6,340	
Total this sector	$6,340	**5.99%**
Total Contributions For This Bill	**$105,784**	**100%**
Note: Both consumer and non-profit groups other than Citizen Action of New York (Coalition for the Homeless and Hunger Action of New York State) listed as giving $0.		

[6] Crain's New York Business, "Insurers Will Fight Prior Approval Plan," May 15, 2009.

Ticket Scalping

Overview of Bill

(A.7526A - Morelle/S.3857A - Skelos (Chapter 61, Laws of 2007; 2009 Bill: A.8283 - Brodsky/S.5525 - Squadron ***(Citizen Action Supports 2009 Bill Overturning 2007 Law)***

In 2007, the Legislature passed anti-consumer legislation (sponsored by Assemblyman Morelle and Senator Skelos) revising the laws in New York State regulating ticket sales (Chapter 61, Laws of 2007). The most significant provision in the new 2007 law repealed the cap on the resale price of tickets to concerts, plays, and other entertainment events. Before the 2007 law, tickets to entertainment venues with greater than 6000 seats could not be resold for more than 45% above the price listed on the ticket that is charged to consumers who purchase directly from the venue or its agents. The resale premium for smaller venues had been capped at 20% under the law that was repealed in 2007. The 2007 law also protected smaller venues -- those with 6000 or fewer seats -- by putting a "buffer zone" around which scalping could not occur (bigger arenas had been already protected before the law), and clarified that operators of places of entertainment could legally use "auction sites" to sell their tickets.

Ticket "scalping" -- reselling tickets for unreasonably high prices -- today isn't primarily a business conducted by individuals standing outside arenas before hot concerts or sporting events, although that still happens. Many fans pay high ticket prices from ticket brokers that advertise on the web. As a result of the 2007 law, concert and sports fans have been forced to pay exorbitant prices for popular events.

Consumer outrage over price gouging by the ticket reselling industry has been fueled by new revelations this year of inflated prices for high-profile events like concerts by Hannah Montana and Bruce Springsteen. In May, a reporter found tickets on sale for an upcoming Springsteen concert in Albany selling for $149 to $849 on a ticket broker website that cost roughly $100 when purchased from the venue.[7] And, due to the complex nature of media and entertainment conglomerates today, which often are engaged in many lines of business and have interlocking relationships with other companies, the beneficiaries of ticket scalping are not just ticket resellers, but other companies that have relationships with them or the venues. For example, Ticketmaster, a major distributor of tickets (a direct seller, not a reseller) whose prices were not regulated by the former caps on ticket resales, was heavily criticized this year for redirecting customers visiting its website to the site of its affiliate, TicketsNow, prompting investigations by consumer officials in the United States and Canada. Others, like American Express, have arrangements the enable them to get preferential access to tickets for their customers. These practices led a well-known consumer advocate, Russ Haven, an attorney with the New York Public Research Group, to conclude that "The Legislature must end its failed experiment with unlimited ticket scalping. The only ones

[7] Valerie Bauman, Associated Press, "NY Assembly considers cap on scalped ticket prices," May 12, 2009 (posted on Newsday.com.)

benefitting from the current system are scalpers and Wall Street firms that write off the costs of scalped tickets as business expenses."[8]

The Political Fight and the Role of Campaign Donations

In the 2007 legislative session, the upcoming "sunset" (expiration) of the ticket reseller statute on June 1st made it urgent for the Legislature to deal with the issue of ticket selling during the session. But most of all, the approach of June 1st presented a political opportunity for ticket brokers to rush through legislation that they had wanted for years to remove caps on the resale price of tickets. On April 18th, then Assembly Tourism Chair Joseph Morelle of Rochester introduced legislation to deregulate ticket resales. A "who's who" of entertainment industry interests supported the law that was eventually passed, including the New York State Ticket Brokers Association (represented by the powerful lobbying firm Davidoff, Malito & Hutcher), Cablevision (whose affiliates include Madison Square Garden, the New York Knicks and the New York Rangers), and eBay, which acquired StubHub, a major ticket reseller, in 2007. The vast network of entertainment beneficiaries of this legislation is illustrated by a letter sent by eBay to Governor Spitzer urging him to sign the bill. EBay carefully reminded the Governor of the economic interests at stake: "[c]ompany partners include dozens of sports teams in the NFL, NBA, NHL, leading NCAA athletic programs and companies including Orbitz and CBS SportsLine."[9]

While numerous individual consumers have for years expressed their outrage at high ticket prices, the bill had virtually no organized consumer opposition in Albany, and consumers had no known campaign cash on their side. As shown by the chart below:

- **All of the contributions (100%) from companies with an interest we could identify in the ticket broker bill came from two sectors: ticket brokers, and entertainment companies, generally those who owned entertainment venues.**
    - Ticket brokers and companies with an interest in ticket sales gave $21,250, or 4.7% of the total contributions. StubHub, whose parent is eBay, and Ticket Brokers NY are ticket resellers that were directly impacted by the legislation regulating resales and therefore strongly wanted the cap removed in 2007. American Express has promotional arrangements to obtain tickets for its cardholders.
    - Other entertainment companies affected by the bill gave $429,963, or 95.3%. The largest contributor by far was Cablevision, which owns Madison Square Garden.
    - The only consumer group that lobbied on the bill was NYPIRG, which does not make campaign contributions.

[8] Id.

[9] Letter from eBay, Inc. to Governor Elliot Spitzer, June 1, 2007, Bill Jacket, Chapter 61, Laws of 2007.

Contributions 2007-09 - Ticket Broker Bill (from entities registered as lobbying on the bill)		
A.7526A/S.3857A (2007-08 Session)		
A.8283/S.5525 (2009 Session) (new bill)		
Sector and Campaign Contributors	**Amount Contributed**	**Percentage of Total Contributions Coming from this Sector**
Ticket Brokers or Related to Brokers		
American Express	$10,000	
eBay (StubHub)	$7,000	
Ticket Brokers NY	$4,250	
Total this sector	$21,250	**4.71%**
Other Entertainment Interests		
Cablevision	$412,263	
Yankees Partnership	$15,250	
National Association of Theatre Owners (NATO)	$2,000	
Feld Entertainment	$450	
Total this sector	$429,963	**95.29%**
Total Contributions For This Bill	**$451,213**	
Note: Only consumer group, NYPIRG, listed as giving $0.		

Regulation of Freshwater Wetlands

Overview of Bill

(A.7133 - Sweeney/S.3835 - Marcellino; 2009 Bill: A.6363 - Sweeney/S.848 - Marcellino and S.4956 - Thompson) ***(Citizen Action Supports)***

In 2008 and again in 2009, legislation passed the Assembly that would expand the state's right to regulate freshwater wetlands on smaller parcels of land: from parcels above 12.4 acres (the current law) to those of 1 acre or more. Due to a 2001 court decision, the federal government no longer has the right to protect many smaller parcels of land, leaving smaller parcels totally unregulated and unprotected in New York State.

New York's inability to regulate smaller areas of land placed a major hole in the state's ability to protect both fragile land areas and its waterways. According to environmental scientists, wetlands are enormously important both for the environment and for public health. They act as a "buffer" between open waters and higher land, and perform functions like filtering pollution, purifying drinking water, and protecting rivers, lakes and streams from pollution and coastal areas and homes from floods. Wetlands are particularly important for the 9 million people who depend on the New York City drinking water watershed, which is diminishing at an alarming rate, as are wetlands in the rest of the state and nationwide.

The Political Fight and the Role of Campaign Donations

Since 2004, closing the loophole to allow the state to regulate smaller wetland parcels has been a major priority of the environmental movement. In 2005, as documented in a report by the Brennan Center at NYU, after overwhelmingly passing the Assembly, and even passing the Senate Environmental Conservation Committee by an 11 to 1 vote, Senator Bruno did not allow a vote on the bill in his house, even though that the bill was supported by 49 of the 62 Senators.[10] By the 2007-08 session of the Legislature, virtually every statewide and major regional environmental group had weighed in support of the bill, including Environmental Advocates, Natural Resources Defense Council, NYPIRG, Riverkeeper (a major clean water advocacy group), the Sierra Club, the Adirondack Council, and Scenic Hudson. (Additional environmental organizations that lobbied on the bill are listed in the chart below.) As one indication of the priority the environmental movement places on the bill, both in 2007-08 and 2009, Environmental Advocates, the largest environmental lobby in the capital, gave the proposal it's highest priority designation (a "superbill"), reserved for a tiny number of bills that they believe have the greatest environmental benefits.[11]

Unfortunately, in the 2007-2008 session, this bill engendered significant opposition, particularly from the realty industry and builders, but also from mayors and municipal officials. Not surprisingly, the Builders Association of New York State, which gave over $100,000 to candidates in 2007-08, argued that the bill would directly impact owners of real property and harm economic development, and the Farm Bureau weighed in with the claim that the bill would impede farmers' ability to sell their land to raise capital. In total, we found that over 9 of every 10 dollars contributed those who lobbied on the bill came from the real estate industry and builders. The roughly $10,000 in contributions by environmental groups with an interest in the bill were no match for the builder, realty and farm bureau contributions. Specifically, as the chart below indicates:

- **Real estate interests and builders contributed a total of $310,441 in the two-year period: 92% of the total contributions of those who lobbied on the bill.**
    - The largest contributions by far were by the two leading industry trade associations, who gave roughly equal amounts: the Association of Realtors contributed $102,164, and the Builders Association gave $101,965. Other regional groups of builders and those in the construction trades also chipped in fairly significant amounts.
- **The amount contributed by environmental groups -- $10,029, or 3% -- was relatively insignificant compared to the campaign contributions of realty and builder interests.**

It is certainly likely that these contributions played a significant role in Senator Bruno's decision once again not to move the bill last session, after it had passed the Assembly. However, the bill

[10] Brennan Center for Justice, Lost in the Shadows: The Fight for a Senate Vote on Wetlands Protection Legislation (2005).

[11] Environmental Advocate's bill ratings and an explanation of its system can be found at: http://www.eany.org/capitolwatch/billratings.html#Bill%20Ratings.

passed the Assembly again on May 5th. With the Senate now in control of the Democrats, environmentalists are hopeful that this highly significant environmental bill will pass this year.

Contributions 2007-09 - Wetlands Bill (from entities registered as lobbying on the bill)		
A.7133/S.3835 (2007-08 Session)		
A.6363/S.848, S.4956 (2009 Session)		
Sector and Campaign Contributors	**Amount Contributed**	**Percentage of Total Contributions Coming from this Sector**
Real Estate and Builders		
Association of Realtors	$102,164	
Builders Association of NYS	$101,965	
Building & Realty Institute of Westchester and the Mid-Hudson Region	$33,100	
Building & Construction Trades Council of Greater NY	$32,100	
Long Island Builders Institute	$26,834	
Greater Rochester Association of Realtors	$10,138	
Builders' Exchange, Inc. - Rochester	$4,140	
Total this sector	$310,441	**91.57%**
Energy Interests		
Independent Oil and Gas Association of NY	$9,550	
Total this sector	$9,550	**2.82%**
Alternative Energy Companies		
First Wind/UPC Wind Management	$500	
Total this sector	$500	**0.15%**
Farm Interests		
Farm Bureau	$8,497	
Total this sector	$8,497	**2.51%**
Environmental Groups		
Scenic Hudson	$5,000	
Nature Conservancy	$4,029	
Sierra Club	$1,000	
Total this sector	$10,029	**2.96%**
Total Contributions For This Bill	**$339,017**	**100%**
Note: These environmental groups listed as giving $0: Adirondack Council, Adirondack Mountain Club, Citizens Campaign for the Environment, Environmental Advocates, National Audubon Society, Natural Resources Defense Council, NYPIRG, Parks & Trails New York		

Repeal of Vacancy Decontrol

Overview of Bill

(A.7416A - Rosenthal/S.4149-B - Stewart-Cousins; 2009 Bill: A.2005 – Rosenthal/S.2237A. Stewart-Cousins) ***(Citizen Action Supports)***

In 2008 and 2009, legislation passed the Assembly that was critical to the large affordable housing movement in New York City and its surrounding suburbs: repeal of "vacancy decontrol." More than 1 million households now live under rent regulation. (Rent regulation does not only exist in New York City: Nassau County has roughly 13,000 rent-regulated apartments, Westchester, 43,000, and Rockland, 3,000.) Due to housing shortages downstate and the high profits of the real estate industry, even lower and middle class tenants face monthly rents of $2,000, $3,000 and even $4000. Many tenants have to "double-up" and even "triple-up" to afford these exorbitant rents.

Rent regulation is a critical means of protecting lower and middle class tenants from rents they can't afford. Rent regulation also helps downstate communities by preserving the diminishing supply of affordable housing. Tenant leaders have called it the largest affordable housing program in the state by far, measured by the number of people it serves. The average tenant in rent regulation makes $32,000 a year, much less than the income of the average New Yorker ($43,000). Even under rent regulation, landlords are permitted to raise rents a reasonable amount each year.

Vacancy decontrol is a provision of New York State's rent regulation laws that allows landlords to remove vacant apartments from regulation if the permitted monthly rent is at least $2000. Since a vacant apartment is the trigger for unregulated rents and unlimited real estate industry profits, the law provides big developers with every incentive to force tenants out of their apartments. As a result, vacancy decontrol has led to countless documented instances of tenant harassment, failure to make repairs, and illegal rent increases -- all designed to get tenants to leave their apartments so that the landlord can charge whatever the market will bear. And, when an apartment is "decontrolled," the new tenants don't have as many rights as tenants under rent regulation, including to have their lease renewed, and to pass their lease onto family members.

Although exact estimates are unavailable, housing advocates and experts alike agree that the stock of rent regulated apartments has diminished by hundreds of thousands due to vacancy decontrol. Further, the number of decontrolled apartments is accelerating. Hundreds of thousands have faced higher and often unaffordable rents under this law. Fewer and fewer downstate communities are affordable for average New Yorkers, contributing to such problems as poverty and homelessness.

The Political Fight and the Role of Campaign Donations

Passing the vacancy decontrol repeal bill has been the highest priority of the tenant and affordable housing movement in the state in recent years, and it remains so in 2009. The bill supporters are led by New York is Our Home, a broad coalition of housing justice, labor unions, and community organizations.

In 2007 to 2008, the period of the campaign contributions documented in this report, a major grassroots campaign involving thousands of New Yorkers was waged to pressure the Legislature, and particularly the then Republican-controlled State Senate to pass repeal of vacancy decontrol. The campaign involved every housing advocacy group in New York, religious congregations, community groups like ACORN and the New York City Central Labor Council. In the Spring of 2008, large rallies were held in several New York City boroughs, and more than 150 organizations ultimately signed onto the campaign's call for repeal.

The campaign was successful in the traditionally pro-tenant Assembly, which passed vacancy decontrol repeal as part of a package of nine affordable housing bills in May of 2008. However, in the Senate, massive contributions by the real estate industry -- as well as Senate Republican ideological opposition to rent control -- made passing the bill impossible. The numbers compiled for this report add to the already existing data documenting the massive support of the real estate industry to politicians in New York, particularly state leaders.

As shown by the chart at the end of this section:

- **Virtually all of the $594,365 in campaign contributions from entities that lobbied on the vacancy decontrol bill -- 99.98% -- came from three entities associated with the real estate industry**.
  - The Rent Stabilization Association, a leading landlord organization, donated $459,200.
  - The Builders Association of New York State made $101,965 in contributions.
  - The Building Realty Institute of Westchester and the Mid-Hudson Region, one of several regional builders associations affiliated with the Builders Association of New York State, donated $33,100.

As with the other 4 bills featured in this report, there is no "smoking gun" that proves a connection between heavy campaign donations and the passage of legislation. However, it is clear that the parties on both sides of the vacancy decontrol fight agreed on one thing -- campaign donations matter. For example, a New York Public Interest Research Group review of campaign donations for the 2008 election cycle -- roughly the period covered by this report -- found that real estate developers, lobbyists and limited liability companies gave 15 times the donations to Senate Democrats than they had given in the 2005-2006 period in anticipation of Democrats taking control of the State Senate. The President of the Real Estate Board made absolutely clear that the industry was hedging its bets in case the Democrats moved on vacancy decontrol repeal: "'[c]learly there's worry about [a Democratic takeover] … because a number of the Democratic state senators have articulately discussed what they would like to do.'"[12] And our data shows this: the Sunlight NY database indicates that the Real Estate Board made $196,064 in campaign contributions

[12] Nicholas Confessore, New York Times, "Landlords Court Albany Democrats on Rent Laws," August 7, 2008.

during the 2007-08 period.[13] As this report "goes to press," it remains to be seen whether real estate industry campaign contributions will prove decisive in this battle.

Contributions 2007-09 - Vacancy Decontrol Bill (from entities registered as lobbying on the bill)		
A.7416/S.5149 (2007-08 Session)		
A.2005/S.2237A (2009 Session)		
Sector and Campaign Contributors	**Amount Contributed**	**Percentage of Total Contributions Coming from this Sector**
Landlords and Realty Interests		
Rent Stabilization Association	$459,200	
Builders Association of New York State	$101,965	
Building and Realty Institute	$33,100	
Total this sector	$594,265	**99.98%**
Tenant and Housing Advocates		
Jewish Association for Services for the Aged (JASA)	$100	
Total this sector	$100	**0.02%**
Total Contributions For This Bill	**$594,365**	

[13] As noted in the methodology section, campaign contributions by the New York State Real Estate Board are not part of the total real estate donations calculated for this report ($594,365) because the Real Estate Board was not listed as lobbying on the bill.

V. The Solution: Public Financing of Elections and Other Campaign Finance Reforms

The findings in this report -- that industries subject to state regulation use campaign contributions to stop legislation that would enormously help consumers and taxpayers, and to pass bad bills -- cry out for a solution. That solution is voluntary public financing of elections.

The impetus for publicly financed elections dates back to the early 20th Century, when Progressive Era reformers sought to curb the undue political influence wielded by multimillionaires created during the 19^{th} Century's industrial revolution. New York City's government was one of the first to implement public financing in 1980 and has been using it successfully for city council and city-wide races ever since. New York City's system now gives $6 for everyone $1 collected in small donations from city residents to candidates running for office. It was not until the late 1990s that a truly successful movement emerged for full public financing of elections and since then, the movement has continued to grow vigorously. Some form of full public financing legislation has passed in eight states and two municipalities: Arizona, Connecticut, Maine, Massachusetts, New Jersey, New Mexico, North Carolina, Vermont, as well as Albuquerque and Portland.

Public financing of campaigns is a voluntary option to the current privately funded system. There are a variety of approaches to public financing systems. The Clean Elections or full public financing approach is one where candidates must first qualify by collecting a set amount of small contributions from voters in their district. Once qualified, candidates agree not to raise or spend any private money and to accept strict spending limits. In return, they are given a fixed and equal amount of public funds to run their primary and general election campaigns. If a publicly funded candidate is being heavily outspent by a well-funded opponent, there are additional funds available to publicly funded candidates to make sure they stay competitive. This was the model introduced by Senator Malcolm Smith in 2008. The bill, S.7175 had 19 bill sponsors. On May 20, 2009, Senator Smith initiated a public input process to obtain feedback on three different public financing bills via the new State Senate website.[14] The three drafts include a similar bill to the 2008's S.7175, and also the Assembly version of public financing explained below.

The New York State Assembly has introduced and passed a public financing of elections and campaign finance reform legislation almost annually for 30 years. Most recently the bill has been sponsored by Assembly Speaker Sheldon Silver. In 2008, the New York State Assembly passed A.11507 that would implement a voluntary public financing system similar to the system now used in New York City. The system would allow candidates to opt into the program and receive a match of four public dollars for every one private dollar for contributions under $250 from individuals in

[14] The web site is at: http://campaignfinanceideas.nysenate.gov/.

New York State. If a participant has hit his or her spending limit and is outspent by a non-participating opponent, the participant can obtain additional public funds automatically to stay competitive. These additional funds are equal to the amount of public funds originally obtained during the matching funds portion of the system.

Voluntary public financing of elections provides the opportunity for candidates to compete for office without having to raise money from wealthy individuals and interests or have great personal wealth. The result is that candidates can run because of their ability to raise issues and build popular support rather than their fundraising prowess. Rather than being forced to rely on large donors to pay for their campaigns, candidates are accountable under public financing to the public, ending their reliance on large, corporate and lobbyist campaign cash. Being freed from the money chase means candidates have more time to spend with constituents, talking about issues that matter to them. When they enter office, they can consider legislation on the merits, without worrying about whether they are pleasing well-heeled donors.

Cost of Public Financing

Different versions of public financing would have different cost estimates, but a fiscal analysis of public financing systems in New York, based on usage rates in the New York City, Maine and Arizona systems come out to between $25 million and $30 million annually averaged out over a four year election cycle, with the highest cost being every four years during statewide races. This means the cost would be less than one tenth of one percent of the overall state budget, a miniscule portion of the over $100 billion budget.   Both the Assembly public financing bill from 2008 and the Senate drafts now receiving public comment would phase in the public financing system to take into account the current economic climate. The Comptroller's race would be the first race phased in 2010, followed by the legislature in 2012 and finally, all statewide offices in 2014. Current Comptroller Tom DiNapoli has been a long time supporter of public financing of elections. Now more than ever, as we continue to experience the unfolding "pay to play" scandals of the former Comptroller's office, it is critical candidates running for Comptroller have public funds to use in 2010.

The Public Agrees: We Cannot Afford Not to Pass Public Financing of Elections

The voters of New York overwhelmingly support having a voluntary public financing system for candidates to use. An April 2008 Zogby poll used these arguments against public financing: "Taxpayer financing of elections is a waste of our tax money and won't change anything in Albany," and "Having taxpayers pay for political campaigns will only lead to higher taxes and force cutbacks in important programs like education and health care," but the voters didn't buy it. Instead voters agreed overwhelmingly, by 79% that: "Under the current system the special interests that make campaign contributions get tax breaks and favors that costs consumers and ordinary taxpayers billions of dollars," and "Right now the only way to run for office is to become beholden to wealthy special interests or be rich so you can pay for your own campaign. This proposal will level the playing field so that average people to run for office and represent us, not the special interests."

58% of voters think legislators listen to campaign contributors more than their voters and constituents when making decisions in Albany, according to the poll. 79% support New York State passing a voluntary system of public financing for candidates, with 80% of independent voters supporting, 72% of Republicans and 73% of Democrats. Upstate voters were the most supportive, with 79% in support, suburban voters next with 76% in favor.[15]

[15] To see the full poll results, visit: www.votersnotdonors.org

VI. Conclusion

This report provides five compelling examples of why we need to change the current system of private funding of elections in New York. **The legislative fights over each of these bills are case studies of how the voices of average New Yorkers are now drowned out by campaign contributions from industries with an interest in legislation.** In these 5 cases, and in many other instances, legislation that average citizens need and want gets buried in committee. Other times, as in the 2007 ticket broker fight we featured in this report, bad legislation contrary to the public interest is passed, often without serious public input. In our September 2008 report on the health insurance rate regulation bill discussed in this report as well, we concluded with this statement:

> New Yorkers understand that state government must change its ways. And the reform needed is not just a patching of the current broken system, but a new system of clean elections, full public financing of campaigns. As New Yorkers and the state government hit hard economic times, it is even more critical for citizens to have trust in government and confidence that decisions are made on behalf of the public interest, rather than corporate campaign donors.[16]

The case for public funding of elections is of course just as compelling today. And, given the moves in both houses of the Legislature to advance campaign finance reform, we have every reason to be optimistic that our state leaders have gotten the message.

[16] Citizen Action Pay-to-Play Report, at 15.