

## Party Conventions Are Now Privately Funded Millionaire and Billionaire Soirees

By Craig Holman and Rhoda Feng

It was 1971. The giant International Telephone and Telegraph Corporation (ITT) was facing prosecution by the U.S. Department of Justice under the Nixon administration for anti-trust violations. Nixon wanted his next nominating convention moved to the Republican-friendly locale of San Diego, to avoid the kind of demonstrations that marred the Democratic convention. But San Diego was reluctant to foot the bill, so the White House secretly secured a pledge of \$400,000 from ITT (equivalent to \$2 million today) to help fund the event in San Diego. The city agreed.

Eight days later, the Nixon administration dropped its anti-trust lawsuit against ITT.

The public learned of the quid pro quo a few months later when columnist Jack An-



Balloons drop at a 2008 convention.

Photo courtesy of IIP Photo Archive/Flickr

derson got hold of an internal company memo written by ITT lobbyist Dita Beard explaining that the convention pledge was tied to the anti-trust settlement. The memo ended with unexecuted instructions to the recipient: “destroy this.”

In the wake of this scandal, Congress approved a system of

public financing for presidential elections in 1974, which included full public financing of the conventions, removing the potentially corrupting corporate money from the convention process.

Today, though, corporate money is once again pouring

see *Conventions*, page 8

## Day in Court: Public Citizen v. FEC

By Karilyn Gower

In a case whose outcome could change the national campaign finance landscape, Public Citizen appeared in court on Aug. 2 to challenge the Federal Election Commission (FEC)’s handling of an infamous dark money organization.

Public Citizen sued the agency over its decision to turn a blind eye to Crossroads GPS – a group founded by GOP operative Karl Rove that is one of many shadowy operations that have flooded elections with tens of millions of dollars in secret money.

“This case is extremely important, because if the FEC continues to allow Crossroads GPS to dump tens of millions of dollars into our elections without disclosing where the money comes from, it will undermine the accountability of our democracy and erode our

see *FEC*, page 11

## National Survey Shows County Jails Unequipped, Overwhelmed With Seriously Mentally Ill Inmates

By Angela Bradbery and Delaney Goodwin

Every day, new prisoners flood into jails throughout the country. Many have serious mental illness. Yet most police and jail staff are not trained to either recognize or handle such individuals, and most jails are not equipped to even appropriately house them, much less help them get healthy.

For jail staff on the front lines, the experience is frustrat-

ing. And it’s happening with greater frequency.

Those are just some of the findings of a comprehensive national survey of staff in county jails released July 14 by Public Citizen and the Treatment Advocacy Center. The study – the first such national survey in more than 20 years – shows that county jails are unequipped to deal with mentally ill inmates and are being overwhelmed by these inmates.

“Can you think of a more thoughtless way to treat someone with an illness than to toss them into jail?” asked Tom Dart, sheriff of Cook County, Ill., who participated in a telephone press conference held to unveil the study. “The way we are treating the mentally ill is not reflective of a caring society.”

Dart, who oversees one of the largest jails in the country, has implemented changes

that have made his jail a role model for humanely managing seriously mentally ill inmates. For example, his staff receives training on how to better deal with mentally ill inmates. His jail also provides treatment for these inmates during their incarceration – with the goal of transitioning them to treatment programs in the community – as well as a 24-hour care line for mentally ill ex-inmates

see *County Jails*, page 4



1600 20th St. NW, Washington, DC 20009

ADDRESS SERVICE REQUESTED

Nonprofit Org.  
US POSTAGE

PAID

Williamsport, PA  
Permit No. 4

### INSIDE

Public Citizen Debunks Myths About ‘Midnight Regulations’, page 6

Report: Only Six States Provide Consumers With the Cost of Medical Procedures, page 10

September/October 2016

**IN THIS ISSUE** Vol. 36, No. 5

**Democracy**

Party conventions are now privately funded millionaire and billionaire soirees..... 1

**Litigation**

Day in court: *Public Citizen v. FEC*..... 1

Public Citizen sues HHS to close medical malpractice reporting loophole..... 7

Court upholds public interest in immigration judges case ..... 16

**Health and safety**

National survey shows county jails unequipped, overwhelmed with seriously mentally ill inmates ..... 1

Report: Only six states provide consumers with the cost of medical procedures ..... 10

Delay in generic drug labeling rule leaves patients at risk ..... 11

Panel highlights effective activism techniques to end unethical infant formula marketing..... 12

**Energy**

Texas' oversight of oil and gas industry falls behind that of other states..... 12

**Government and financial reform**

Public Citizen fights rip-off clauses in consumer and student contracts ..... 5

Public Citizen debunks myths about 'midnight regulations' ..... 6

**Other**

Get to Know Public Citizen ..... 2

President's View ..... 3

Public Citizen @ 45 ..... 10

Public Citizen in Your State ..... 13

In the Spotlight ..... 14

Public Citizen Crossword ..... 15

Public Citizen Recommends ..... 15

# Get to Know Public Citizen

*An ongoing series profiling Public Citizen leaders and staffers*

Don Owens, the deputy director of communications for Public Citizen, joined the organization in January. He grew up on the Outer Banks of North Carolina, on Roanoke Island, and earned his bachelor's degree in political science at Elon University. He always envisioned becoming a lawyer, but after living abroad and interning for a barrister in London, he decided it would be better to work with people who made the law rather than those who practiced it. That led him to volunteer for a U.S. congressman and eventually landed him in Washington, D.C.

He has worked as a legislative assistant for U.S. Rep. David Price (D-N.C.), a press secretary for U.S. Rep. Bob Etheridge (D-N.C.) and a communications specialist with the International Brotherhood of Teamsters. He also has done communications work for several organizations that promote early education. He has served on the board of the South East Children's Fund, a low- and moderate-income early childhood education program in Washington, D.C.'s Anacostia neighborhood. In June, he was recognized by Elon's College of Arts and Sciences as one of three distinguished graduates.

**PC: What led you to Public Citizen?**

**Don:** I've long been familiar with Public Citizen's work, dating back to my time working in communications for the Teamsters Union in the late 1990s. It's not hard to keep your eye on Public Citizen's consumer advocacy because so many other groups partner with us or reference our work. When a chance to join Public Citizen's communications team presented itself, I leapt at the opportunity. I also have worked for a number of public officials and nonprofits that support or have collaborated on Public Citizen's efforts to protect consumers, ensure corporate accountability and expand democracy and voter protections.

**PC: Can you describe a typical day?**

**Don:** On any given day, I'm like an air traffic controller. I help coordinate our work to edit, finalize and distribute to media outlets press releases, statements, op-eds, letters to the editor, blog pieces and other content. Because of the great work of our program staff, we produce press materials on numerous

subjects just about every day of the week. We also reach out to reporters, and monitor and cull news items, assessing where Public Citizen is mentioned and where Public Citizen's brand of consumer advocacy can be injected into the news cycle. All the while, we're receiving inquiries from journalists nationwide who want comments from our experts. Needless to say, there is rarely a dull moment. The best parts of the work, though, are my co-workers – they're smart, knowledgeable and helpful.



Don Owens

**PC: What do you look forward to when you start work every day?**

**Don:** I enjoy two things immediately. First, I enjoy the David

vs. Goliath aspect of our work. When Public Citizen challenges a corporation, a government agency or the U.S. Chamber of Commerce, we're often fighting groups that outspend us 15-1 (sometimes higher than that). Our work is a daily reminder that dedicated supporters and committed workers can achieve so much. Second, the organization has the time and vision to expand its relevance in the next 10 to 20 years. Every institution I've been a part of – from Capitol Hill to labor unions to nonprofits – has enabled me to look back and say, "I'm glad I was a part of that. We made a difference." I think our work at Public Citizen will bear the same outcomes.

**PC: What do you do outside of work?**

**Don:** I'm a big fan of three things: my home state, my alma mater and Washington, D.C. Even though I haven't lived in North Carolina in more than 20 years, I keep up daily with news from my home state. I am an active participant and volunteer in local North Carolina politics, and I bring books and toys home for young children who attend the Head Start program that I graduated from in 1978. And with my involvement in the South East Children's Fund, I get to continue my support for increased access to high-quality early learning for all children. 🇺🇸

**President**  
Robert Weissman

**Executive Vice President**  
Margrete Strand Rangnes

**Public Citizen Inc. Board of Directors**  
Jason Adkins (chair), Joan Claybrook, Andrew S. Friedman, Danny Goldberg, Jim Hightower, Joy Howell, Shannon Liss-Riordan, John Richard, Anthony So, Robert Weissman (ex officio)

**Public Citizen Foundation Board of Directors**  
Mark Chavez (chair), Jim Bildner, Ann Brown, Robert C. Fellmeth, David Halperin, Annie Leonard, Cynthia Renfro, Steve Skrovan, Gerson H. Smoger, Robert Weissman (ex officio)

**Directors**  
David Arkush, Climate; Liz Borg, Development; Angela Bradbery, Communications; Michael Carome, M.D., Health Research; Lisa Gilbert, Congress Watch; Peter Maybarduk, Access to Medicines; Tyson Slocum, Energy; Tom Smith, Texas; Joe Stoshak, Chief Financial Officer; Lori Wallach, Global Trade Watch; Allison Zieve, Litigation

**Editor**  
Rhoda Feng



Public Citizen is a national non-profit membership organization based in Washington, D.C. Since its founding by Ralph Nader in 1971, Public Citizen has fought for corporate and government accountability to guarantee the individual's right to safe products, a healthy environment and workplace, fair trade, and clean and safe energy sources.

Public Citizen is active in Congress, the courts and government agencies. Public Citizen does not accept government or corporate grants. Our funding comes from our supporters throughout the country, who believe there should be full-time advocates of democratic principles working on their behalf; from foundations; and from the sale of our publications. Public Citizen is an equal opportunity employer. To become a member of Public Citizen and receive the award-winning Public Citizen News, please call (202) 588-1000 or send a check payable to Public Citizen for \$20 to Public Citizen Membership Services at the address below.

Public Citizen News (ISSN 0738-5927), entire contents copyrighted 2014. Public Citizen News is printed on 100 percent recycled paper, using some soy inks for color printing. Postmaster: Send address changes to Public Citizen News at the address below.

1600 20th St. NW, Washington, D.C. 20009 • (202) 588-1000 • member@citizen.org • www.citizen.org

Connect with Public Citizen online!

**About the Contributors**  
**Angela Bradbery**, communications director  
**Rick Claypool**, research director  
**Rhoda Feng**, editor  
**Delaney Goodwin**, communications intern  
**Karilyn Gower**, press officer  
**Craig Holman**, Congress Watch government affairs lobbyist  
**Haley Lemieux**, Commercial Alert intern  
**Don Owens**, deputy communications director  
**David Rosen**, press officer  
**Robert Weissman**, president

## EDITORIAL

# Mylan Must Lower EpiPen Price

From the moment the story broke, Public Citizen has led the ongoing grassroots outcry over price gouging by Mylan – the corporation that makes the EpiPen. We’re going to channel that energy to force Mylan to roll back its outrageous EpiPen prices, and then, eventually, to win far-reaching measures to cut drug prices.

The EpiPen is a pocket-sized medical device that can be a literal lifesaver for millions of children and adults in the U.S. who are at risk of fatal allergic reactions from common occurrences like getting stung by a bee or accidentally consuming peanuts. And even though an EpiPen contains only a few dollars’ worth of medicine, Mylan has

been increasing the price over the past decade – from about \$100 in 2007 to more than \$600 today.

Consumers are up in arms, and for good reason. Many people who could die without an EpiPen can’t afford one – but an EpiPen two-pack in France costs just \$85. Meanwhile, Mylan CEO Heather Bresch’s salary has gone up from \$2.4 million (in 2007) to almost \$19 million (in 2015).

With allies, we delivered more than 700,000 petitions to Mylan’s headquarters in Pittsburgh demanding that the company roll back the price.

Our criticism and analysis have been featured in *The New York Times*, *The Washington Post* and *The Wall Street Journal*, and on NBC Nightly News, Fox Business News and Democracy

Now! as well as many other media outlets.

Mylan is on its heels. Under enormous consumer pressure, Mylan sought to shift blame to insurance companies. Then it said it would offer discount coupons. Then it said it would offer a half-priced generic version of its own product.

Our response: Not good enough. We will not let up until Mylan lowers the price back to where it should be – around the \$100 it was when Mylan acquired the brand in 2007.

But we also know that the EpiPen case is not an outlier and that we need a lot more than a rollback of appalling EpiPen prices.



**PRESIDENT'S VIEW**  
ROBERT WEISSMAN

It is reflective of out-of-control prescription drug corporations trying to squeeze more and more out of consumers by increasing medicine prices. And the outrage over EpiPen prices is a harbinger of a rising public demand for far-reaching reform over drug prices, reform that restrains Big Pharma’s monopoly pricing power.

Big Pharma has already announced that it intends to spend \$300 million next year to fight congressional efforts to rein in drug pricing – even though, as of yet, no serious legislative package has been proposed! That’s because the industry knows how vulnerable it is.

If Public Citizen has anything to say about it – and we will – the industry is absolutely right to be fearful. We’re pushing a host of legislative solutions, and

we expect them to gain traction in the weeks and months ahead, and especially when Congress reconvenes in 2017.

We know that the Great EpiPen Rip-Off is illustrative of broader problems. Price spikes are now pervasive and a built-in part of Big Pharma’s and the ge-

– one measure adding just six months of exclusivity in certain cases would cost consumers and taxpayers \$10 billion.

Getting control of drug prices in the U.S. will require limiting exclusivities – including those demanded by Big Pharma in international trade deals – and



Pennsylvania activists rally at Mylan headquarters to deliver 700,000 petitions demanding Mylan lower the price of EpiPens.  
Credit: Judy Grystar / Western Pennsylvania Coalition for Single-Payer Healthcare

neric industry’s business models alike. Pharma firms and their executives raised the prices of hundreds of drugs more than 10 percent last year in the Medicare Part D program, according to an analysis by the news site Politico. There is no reason we should accept price spikes on lifesaving and important medicines. A stiff tax on the windfall profits from unjustified price spikes would eliminate them.

The underlying problem is Big Pharma’s ability to set whatever price it chooses, as a result of monopolies and exclusivities. Drug companies benefit from patent monopolies and an array of government-created exclusivities. Indeed, as a recent Public Citizen study showed, Big Pharma is lobbying right now for expanded exclusivities

speeding generic competition when drug companies insist on unreasonable prices. Expedited generic competition is especially warranted in the many cases when U.S. government funding played an important role in developing a drug.

We need a whole host of measures to address Big Pharma’s scandalous pricing system, but nothing is more important than taking on its monopoly power. That’s what we’re going to do. Big Pharma is readying itself with a \$300 million lobby campaign. We’re readying ourselves, too – not with millions of dollars for a lobby campaign, but with millions of Americans who will demand and work for fundamental reform. ✎

*Robert Weissman*

## Due Diligence

Thank you for your revelatory article, “New Evidence: Parents of Premature Babies Were Misled in NIH-funded Experiment.” Describing as common procedure, “depriving premature babies of sufficient oxygen,” made the hair on my head stand straight up. How did the NIH (almost) get away with funding this? It seems as if Public Citizen was the only one watching what was happening. Thank you for your article probing the unconscionable behavior of that institution. Don’t stop!

**Holly L. Heim**  
St. Charles, Ill.



## LETTERS

Let us know what you think!  
Email us at [editor@citizen.org](mailto:editor@citizen.org) or write to  
Editor, Public Citizen News  
1600 20th St. NW  
Washington, D.C. 20009  
Letters may be edited for sentence clarity, grammar and length.

# National Survey Shows County Jails Unequipped, Overwhelmed With Seriously Mentally Ill Inmates

*County Jails*, from page 1

and families of mentally ill inmates to minimize recidivism.

The survey obtained responses from 230 county sheriffs' departments in 39 states that operate jail facilities or detention centers. Researchers sought to understand the point of view of front line workers at these jails, including sheriffs, deputies and other staff who have to care for seriously mentally ill inmates during their incarceration.

The report described the numerous challenges faced by county jail staff, as well as the limited training they are given to address the needs of inmates with serious mental illnesses.

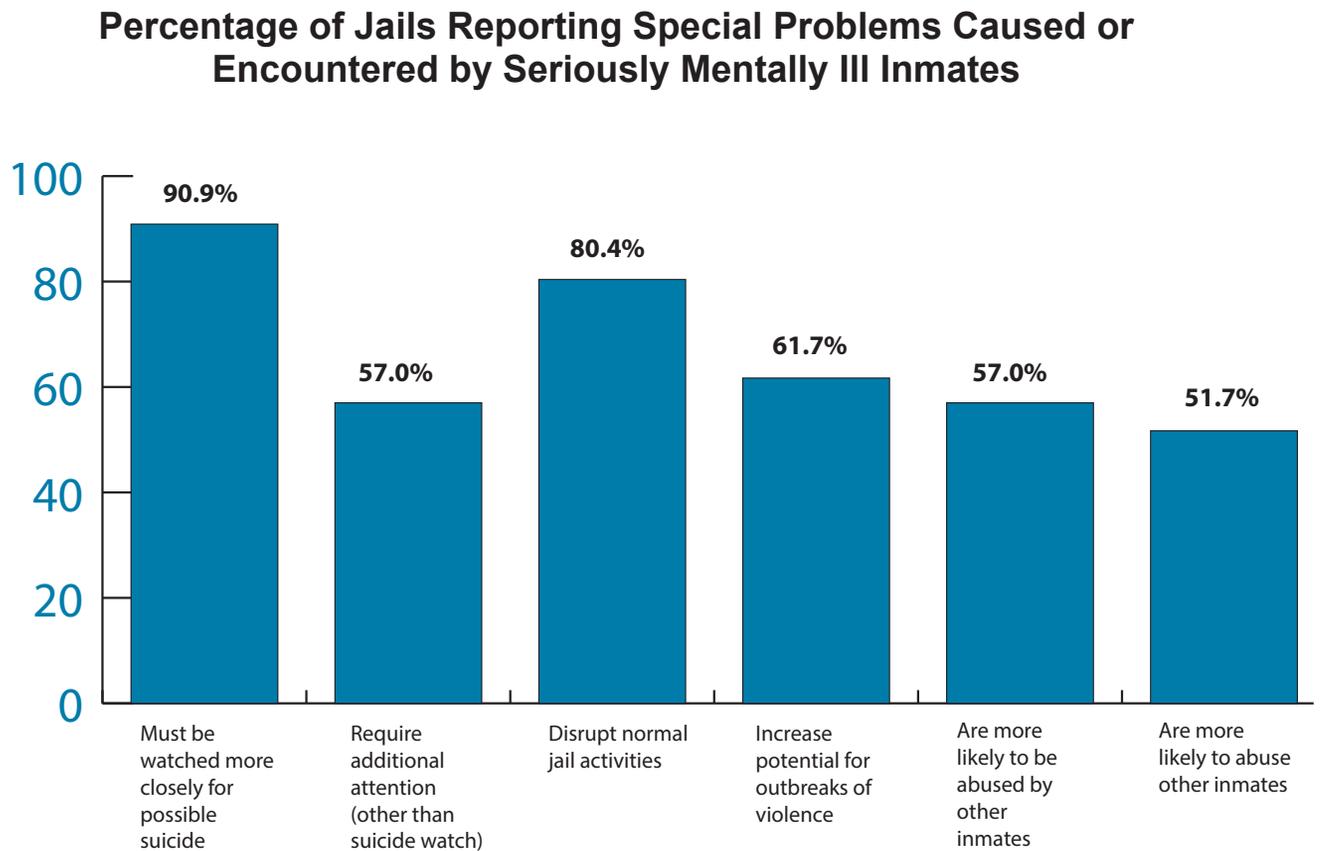
The report notes that the incarceration rate for Americans with serious mental illnesses has reached a critical stage because many of these individuals are predisposed by their illnesses to commit minor crimes (such as trespassing or shoplifting), landing in jails and racking up prolonged incarceration time awaiting a state psychiatric bed. Many of them receive no or inadequate mental health treatment during their incarceration, which worsens their conditions.

"The problem of increasing numbers of seriously mentally ill individuals in county jails is pervasive and unyielding, and spans the entire country," said Dr. Azza AbuDagga, health services researcher with Public Citizen's Health Research Group and the report's lead author. "This growing problem is not solely a criminal justice problem. At its heart is evidence of the unacceptable failure of our public mental health system."

Jennifer Hoff, an Orange County, Calif., resident whose mentally ill son has been incarcerated, can attest to that. Her son had been treated for bipolar (manic depressive) disorder, but when he turned 18 and could oversee his own treatment, he discontinued it. Then he got arrested and put in jail, where he got no treatment.

"It was like watching my own child drown slowly," Hoff said.

Seriously mentally ill people are often put away in jail for



years, given inadequate medical attention, and, in some cases, treated in ways that make them sicker. These inmates affect others in the system, including the police officers who respond to psychiatric emergencies, guards who are supposed to be responsible for them and the other prisoners who live with them.

This pervasive trend began after the Community Mental Health Centers Act of 1963 authorized the development of a nationwide network of community mental health centers to replace state institutions as the main source of treatment for serious mental illnesses.

Since then, state psychiatric hospitals across the U.S. have either emptied or closed. But not enough funding was provided for community mental health programs, which drove thousands of seriously mentally ill individuals to the streets, untreated. Many commit petty crimes to survive.

The survey also showed that:

- The vast majority (96 percent) of the jails reported having some inmates with serious mental illnesses. One in five jails (21 percent) reported that 16 percent or more of their inmates were seriously mentally ill. The problem is worse in large jails, with 31 percent of those jails reporting

that 16 percent or more of their inmates were seriously mentally ill;

- Three-quarters of the jails reported seeing more or far more numbers of seriously mentally ill inmates compared to five to 10 years ago;

- A third of the jails described the recidivism rate for these inmates as higher, or much higher, than that of the general inmate population;

- Most jails reported major problems with the seriously mentally ill inmates, including the necessity of watching them more closely for suicide, their need for additional attention, their disruption of normal jail activities and their being abusive of, or abused by, other inmates;

- Almost half of the jails reported that only 2 percent or less of the initial training provided to sheriff's deputies and staff was allotted to issues dealing with seriously mentally ill inmates, and 60 percent reported that staff were allotted on average two hours or less for training on such issues annually;

- Half of the jails had implemented housing or staffing changes to accommodate the seriously mentally ill inmates; and

- Although psychiatric medications are central to stabilizing people with serious mental ill-

nesses, only 42 percent of the jails reported offering such medications to these inmates. Even lower percentages of the jails reported offering psychotherapy services for these inmates.

## Solutions

What can be done? Public Citizen and the Treatment Advocacy Center recommend:

- Diversion programs to decrease the likelihood of the mentally ill entering the criminal justice system.

- Comprehensive training for police officers on how to recognize mentally ill incarcerated persons and refer them to treatment programs.

- Treatment programs for individuals with serious mental illnesses inside jails.

- Jail pre-release care planning to end the revolving door in and out of justice system for inmates with serious mental illnesses. Assisted outpatient treatment programs to help individuals with serious mental illnesses living in the community.

- The provision of a sufficient number of psychiatric beds to address the need for inpatient care for mentally ill individuals in incarceration.

You can find this report at <http://www.citizen.org/hrg2330>

# Public Citizen Fights Rip-Off Clauses in Consumer and Student Contracts

By David Rosen

They're known as "rip-off clauses," and they may as well be get-out-of-jail free cards for big corporations. Hidden in the fine print of many – if not most – consumer and student contracts is language that forces you to give up your right to go to court. Instead, you must resolve any future disputes in private arbitration.

The clauses are everywhere. They are in agreements you sign when you get a cell phone, open a bank account, apply for a credit card and even enroll in a university.

Public Citizen is fighting back. Two proposed rules – one from the U.S. Consumer Financial Protection Bureau (CFPB) and one from the U.S. Department of Education – would push back against rip-off clauses hidden in consumer and student contracts. Public Citizen spearheaded efforts to encourage both rules, which are expected to be finalized before the end of the year.

With forced arbitration clauses, instead of going before an impartial judge and jury, big banks, credit card companies and for-profit schools can hire private arbitration firms of their choosing to decide disputes, leaving consumers with little opportunity to present evidence or appeal bad decisions.

Nearly all forced arbitration clauses in financial contracts also prohibit participation in class actions. Class-action bans are used by corporations to prevent consumers who have suffered similar harms from joining together to take on a corporation as a group. In practice, these bans allow corporations to break the law without consequence.

To make matters worse, most arbitration proceedings prohibit consumers from talking about what happened to them, which means that the public and regulatory authorities may never learn about widespread corporate scams and fraud.

"Big corporations have converted the fine print in standard form and consumer contracts into a way to escape liability for wrongdoing," said Sonia Gill, counsel for civil justice and con-

sumer protection for Public Citizen's Congress Watch division. "Companies have discovered these rip-off clauses let them pad their profit margins by pick-pocketing consumers without accountability in a court of law."

Also in August, Public Citizen and 40 other groups asked the Education Department to strengthen its proposed rule. The draft rule – which a petition submitted by Public Citizen in February of this year helped

to them. And students wishing to challenge arbitration agreements as unenforceable under state law would have to contend with arguments by schools that such agreements are now expressly permitted under federal law and have been deemed voluntary by the Education Department.

"Predatory schools have shown time and again their willingness to lay new traps for the unwary and use questionable techniques to pressure students to sign arbitration agreements," said Julie Murray, attorney for Public Citizen and author of the original petition to the Education Department. "The department must anticipate these ploys and adopt a bright-line rule that is easily enforceable."

The momentum to stop forced arbitration is growing. Congress already has banned forced arbitration in some disputes between active-duty military service members and lenders.

Other legislation protects auto dealers from having to arbitrate disputes with manufacturers (though dealers still often insist that consumers arbitrate with them), and gives farmers the right not to arbitrate disputes with meat and poultry processing companies. And Congress prohibited government defense contractors from requiring employees to arbitrate Title VII and sexual assault tort claims – a prohibition President Barack Obama extended by executive order to all big government contractors.

In addition, the U.S. Department of Labor has restricted the use of mandatory arbitration by companies that offer investment advice to retirement savers, and the Centers for Medicare & Medicaid Services is considering limiting arbitration clauses in nursing home contracts.

"More than 100 members of Congress and hundreds of organizations have voiced their outrage over forced arbitration," said Lisa Gilbert, director of Public Citizen's Congress Watch division. "The American people are demanding action to curb corporate scams that threaten our most fundamental rights." ▼

"Predatory schools have shown time and again their willingness to lay new traps for the unwary and use questionable techniques to pressure students to sign arbitration agreements."

— Julie Murray, Public Citizen attorney

In April, 164 organizations that advocate on behalf of consumers, students, civil rights, labor, small businesses and more – led by Public Citizen and Americans for Financial Reform – sent a letter to the CFPB urging the agency to restrict forced arbitration.

Broad support for the CFPB's proposed rule has continued to build. In August, Public Citizen filed comments supporting the agency's proposal to prohibit class-action bans in arbitration agreements but calling on the agency to strengthen the rule by barring forced arbitration altogether in the consumer finance industry.

spur – would prohibit schools from requiring students to agree to arbitration in order to enroll, but allow schools to use arbitration agreements for individual and group claims as long as those agreements are not a formal condition for enrollment.

Public Citizen explained that the draft rule could leave many students worse off than they are now: As long as schools avoided expressly conditioning enrollment on students' agreement to arbitration, they could force many students' claims into arbitration, even if the students did not know about or understand the arbitration clauses that apply



Credit: David Carillet/Shutterstock.com

# Public Citizen Debunks Myths About ‘Midnight Regulations’

By David Rosen

A new report from Public Citizen dismantles the case against so-called “midnight regulations,” a pejorative term for regulations finalized during the transition period between one presidential administration and the next. That case is based on a demonstrably false premise: that

transition period took an average of 3.6 years to complete and received an average of 130 days of OIRA review, compared to 2.8 years to completion and 115 days of OIRA review on average for other rules.

“Listening to the critics, you’d think the president woke up the morning after Election Day and

received more review than rules completed at other times.

Lead paint standards, for example, took more than five years. Energy efficiency standards for clothes washing machines took more than six years. And workplace ergonomics standards, which some lawmakers called “rushed” at the time they were

journey.”

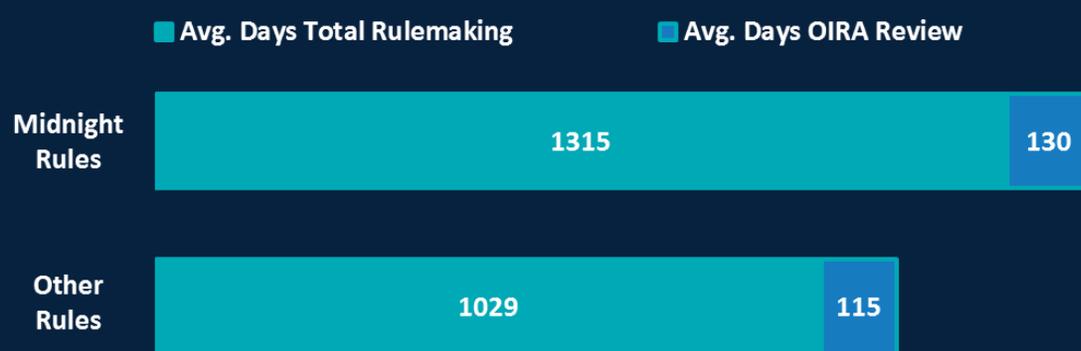
After the report was released in July, it drew a flurry of angry criticism from a center-right group known for attacking regulations, the American Action Forum (AAF). In a rebuttal, Public Citizen noted that, “While the criticism misses the mark, even if we followed AAF’s recommended methodologies [...] the conclusions of the study would be the same: that rulemakings finalized in presidential transition periods took longer, on average, than those completed at other times.” But AAF isn’t the only one attacking forthcoming rules. With just four months remaining in the current administration, Republicans in Congress are stepping up their attacks too.

The Midnight Rule Relief Act (H.R. 4612), which the U.S. House of Representatives passed in July, would place a moratorium on most rules finalized after Election Day. Its chances of passage in the U.S. Senate are low.

In addition, Republicans inserted an extraneous provision into the House Energy and Water appropriations bill that would eliminate funding for all economically significant rules finalized between Election Day 2016 and Inauguration Day 2017. Measures attacking public protections finalized in the transition period have been inserted into other appropriations bills.

“Blocking vital public protections in their final stretch is fundamentally the wrong approach,” said Narang. “Instead, we should celebrate new safeguards no matter when they cross the finish line.”

## “Midnight Rules” Take Longer



Read Public Citizen’s report at [citizen.org/documents/Midnight-Regs-Myth.pdf](http://citizen.org/documents/Midnight-Regs-Myth.pdf)

these rules are rushed, sloppily drafted and inadequately vetted.

The report, “Shining a Light on the Midnight Rule Boogeyman,” examines rulemakings for all economically significant regulations reviewed by the U.S. Office of Information and Regulatory Affairs (OIRA) between 1999 and 2015. OIRA acts as the White House’s interagency clearinghouse for federal regulations. It is empowered to review rulemakings and decide if they can move forward.

Rules finalized during the

decided to enact as many new rules as possible in a final frenzy before leaving office,” said Michael Tanglis, senior researcher for Public Citizen’s Congress Watch division and author of the report. “The reality is that most of the rules that critics are complaining about are in the home stretch of a marathon journey from creation to completion.”

The report shows that regulations completed in the transition periods of the past two administrations were under development longer than average and

issued, took more than eight years.

“This report destroys the myths about midnight regulations put forward by anti-regulatory forces,” said Amit Narang, regulatory policy advocate for Public Citizen’s Congress Watch division. “Most of the misleadingly named ‘midnight rules’ are actually marathon rules, and that’s because they’ve faced dozens of analytic and procedural hurdles along the road to completion that slowed them down and significantly extended their

**PUBLIC CITIZEN PRESENTS  
AN ALL-STAR COMEDY BENEFIT**

**SAVE THE DATE!**

**Sunday, October 16, 2016 ★ Los Angeles, CA**

Visit [www.citizen.org/stand-up-for-main-street-la](http://www.citizen.org/stand-up-for-main-street-la) for ticket information



## Public Citizen Sues HHS to Close Medical Malpractice Reporting Loophole

By Karilyn Gower

In 2014, Public Citizen petitioned the U.S. Department of Health and Human Services (HHS) to close a dangerous loophole that allows physicians and other health care providers to evade medical malpractice payment reporting requirements. Because HHS hasn't acted, Public Citizen has sued the agency.

The "corporate shield loophole" allows physicians and other health care providers to avoid having medical malpractice payments that are made on their behalf reported to the National Practitioner Data Bank (NPDB). The loophole deprives hospitals and state licensing boards of vital information needed to protect patient health and safety.

The NPDB was established under a 1986 law with the goal of protecting patients from doctors and other health care providers who provide substandard or negligent care. The law called for the creation of a database to track medical malpractice payments and disciplinary history.

The NPDB began operating in 1990. The data it contains is used by state medical boards and hospitals to check the backgrounds

of doctors or health care providers to determine whether they have been sanctioned by hospitals for misconduct, had their licenses to practice curtailed or had malpractice payments made on their behalf. The information is critical when practitioners are seeking state medical licenses or clinical privileges.

In a corporate shield loophole, a medical malpractice victim, in the course of settlement negotiations, agrees to dismiss a health care practitioner from a malpractice lawsuit in exchange for a settlement with the practitioner's hospital or other corporate employer.

The health care practitioner's hospital or other corporate employer remains as the defendant, and the settlement appears to be paid only on behalf of the hospital or employer, not the practitioner.

As a result, no report is made to the NPDB about the individual practitioner. With an unstained reputation, that individual need not worry about a less-than-stellar record when moving to another job or seeking a license in another state. Hospitals, health maintenance organizations and

state medical licensing boards that rely on the data bank for background checks are none the wiser.

In 1998, the U.S. Health Resources and Services Administration (HRSA), a component of HHS, acknowledged that the corporate shield loophole con-

to the mission of the agency, which is to enhance and protect the health and well-being of all Americans."

It has been more than two years since Public Citizen petitioned HHS to close the loophole, and the agency has neither granted nor denied the petition.



Credit: Shutterstock.com

flicted with the purposes of the law, but the agency did not fix the problem. After letting a proposed solution sit for 10 years, HRSA dropped the issue and left the loophole open.

"The database can be only as reliable as its data," said Dr. Michael Carome, director of Public Citizen's Health Research Group. "HHS acknowledged this loophole more than 15 years ago. Its failure to close it is a disgrace

Therefore, on July 26, Public Citizen filed a lawsuit in the U.S. District Court for the District of Columbia asking a court to compel HHS and HRSA to act on the petition.

"If HHS wants to fulfill its mission to protect patient safety, it will move quickly and issue a rule slamming the door shut on this loophole," said Carome. At press time, the lawsuit was pending. 🔥

## Public Citizen Salutes . . .

the extraordinary generosity and commitment of our donors, who make our mission and goals their own. This list includes recent leadership donations.

### TRUSTEES (\$25,000+)

David Briskin  
Elizabeth Cabraser  
Mark Chavez  
Polly and Randy Cherner  
Trammell Crow  
Abe and Ida Cooper  
Foundation  
Andrew Friedman  
Jonathan Gertler  
D. Howard Gold  
Sherry Gold  
Neil Holtzman M.D.  
Ray Kahler  
Taras Kick  
Shannon Liss-Riordan  
Brad Moore  
Michael Rooney  
Daniel Shih  
Stephen Silberstein  
Ian Simmons  
Steve Skrovan and Shelley Powsner  
Gerson Smoger  
Jeremy Stoppelman  
Jonathan Soros  
Roger Townsend

### TORCHBEARERS President's Circle (\$10,000-\$24,999)

Jason Adkins and Karen Kraut  
Franz and Marcia Allina  
Bob and Jacquelin Apsler  
Jeanne Cebulla  
Elliot Conn  
George Farah  
Caragh Fay  
Thomas Fortune Fay  
Solomon Fingold

Gary Gwilliam  
Margie Haley  
Keith Hebeisen  
Molly Hoffman  
Bob Jennings Jr. and Barbara Bott  
Annie Kaplan  
Adam Koranyi  
Alice La Prelle  
John McKee  
Cyrus Mehri  
Victoria Nugent  
Kit Pierson  
Maria Ragucci  
Jay Scheide  
William and Helen Silvka  
Steve Skalet  
Natalie Sticesen  
United Brotherhood of Carpenters and Joiners  
Jamie Wolf  
John Zavez

### TORCHBEARERS Director's Circle (\$5,000-\$9,999)

American Constitution Society  
Elizabeth Abbe and Lewia Schneider  
Marge Baker  
Richard Barsanti  
Medea Benjamin  
Steven Berger and Paula Hughmanick  
Garrett Boone  
Robert Bramson  
Jeff Burns  
Alison Carlson  
Daniel Castellaneta and Deborah Lacusta

Steven Cohen  
Alfred Contarino  
Paul Cornoni  
Jonathan Cuneo  
Florence Dembling  
Jim and Maggie Dunn  
Charles Eldridge  
Electronic Privacy Information Center  
Steve Fineman  
Steven Freidkin  
Pamela Gilbert  
Bernard Gross  
Howard Heffron  
Scott Hunter  
Gloria Jarecki  
Kristin Kemnitzer and Adam McNeile  
Bryan Kemnitzer and Nancy Barron  
Jerome Kohlberg  
John Koza  
Charles LaDuca  
Kurt and Gladys Lang  
May Lesar  
James Littlefield  
Victor Long  
Michael and Louise Malakoff  
Richard and Susan Master  
Monica Merritt  
Thomas Methvin  
Michael Murray  
Andrea Nace  
Barry Nace  
Matthew Nace  
Chris Nace  
Peter Nicholl  
Bruce Pfaff  
Project on Government Oversight

Gertrude Reagan  
Patrick Regan  
Phil and Monica Rosenthal  
Michael Royce and Alexis Rappaport  
Stanley Sandrowicz  
Michael Shoop  
Lois Sontag  
Robert Sopher  
UNITE HERE!  
John Vail  
Gibson Vance  
Bernard Wardell  
Elsa Wood  
Wyatt Wright  
Joyce Zaitlin  
Salvatore Zambri  
George Zeles

### TORCHBEARERS Leadership Circle (\$1,000-\$4,999)

Sue Ananda  
Susan Anstrand  
Timothy Bailey  
Lisa Banks  
Cecilia Junkermann Benner  
Diana Bingham  
Stephen Bruce  
Center for Digital Democracy  
Michael Charney  
Susan Clark  
Ted Cohn  
Prentiss Cole Jr.  
Communications Workers of America  
John Dear  
Frederick Dick  
Nancy and Henry Elghanayan  
Ruth Eisenberg

Equal Justice Works  
Sylvan Feldstein  
Harvey Fernbach M.D. M.P.H.  
Ivor and Barbara Freeman  
Jon Hagler  
David Halperin  
Jim Hightower  
Steve Hopkins  
Joy Howell  
International Association of Sheet Metal, Air, Rail and Transportation Workers  
Anne Hale Johnson  
Michael Kaplan  
Debra Katz  
Nobuko Kuhn  
Avi Kunim  
Albert Kramer  
Paul and Eileen Lefort  
Bill and Ruth Lubic  
Theodore Lynn  
Christopher Mathews  
David Marshall  
Alan and Anne Morrison  
Gilbert Omenn M.D. Ph. D. and Martha Darling  
Malcolm Peabody  
Eve Pell  
Charlotte Perret  
Rita Rausch  
Emily Gene Reed  
Jose Rigau Perez  
Jay Rosenberg  
Susan Schwartz  
Christian Searcy  
Sam and Susan Simon  
John Brandeis Stadler M.D.  
The Artist's Endowment  
William Trippet

Elsie Van Buren  
Barbara Walden  
J. Dix and Barbara Wayman  
C. Weale  
Alan Weiner  
Timothy Wheeler  
Carol Wills  
Neil Young

### FOUNDATIONS

11th Hour Project of the Schmidt Family Foundation  
Abe and Ida Cooper Foundation  
Allen and Linda Saeks Family Foundation  
Arca Foundation  
Bauman Foundation  
Billstein Family Foundation  
Bjornson Ohana Charitable Fund  
Bright Funds Foundation  
Cynthia and George Mitchell Foundation  
Edna Wardlaw Charitable Fund  
Energy Foundation  
Flora Family Foundation  
Frank & Roslyn Grobman Foundation  
Greater Kansas City Community Foundation  
Growald Family Fund  
J.M. Kaplan Foundation  
JMG Foundation  
Malakoff Family Fund  
Mark and Mary Ellen Stinski Foundation  
Media Democracy Fund  
Mertz Gilmore Foundation

Moriah Fund  
New Venture Fund  
North Pond Foundation  
Open Society Foundations  
Alan Weiner  
Timothy Wheeler  
Carol Wills  
Neil Young  
Piper Fund, a Proteus Fund Initiative  
Public Welfare Foundation  
Rockefeller Brothers Fund  
Samuel and Grace Gorlitz Foundation  
Selman/Ridgeley Family Trust  
Solidago Foundation  
Stephen and Joyce Davis Family Fund  
Taubert Memorial Foundation  
The C. S. Fund  
The Clements Fund  
The Democracy Fund  
The Fine and Greenwald Foundation  
The Grodzins Fund  
The Houston Endowment  
The Johnson Family Fund  
The Kresge Foundation  
The MMHBO Fund  
The Scream Family Fund  
The W. K. Kellogg Foundation  
Tides Foundation  
Wallace Global Fund  
Western Conservation Foundation  
White Cedar Fund of the Tides Foundation

To become a leadership supporter, please contact Amanda Fleming at (202) 588-7734 or [afleming@citizen.org](mailto:afleming@citizen.org).



**Conventions**, from page 1

into conventions. Public Citizen is front and center in highlighting the problem and calling for reform.

After the ITT scandal, nominating conventions were to be financed entirely from public funds so that access and influence could no longer be bought by corporations making large donations. The price tag was set at a reasonable limit: \$4 million for each convention.

Flash forward 44 years to 2016. The Democratic and Republican conventions are now lavish affairs, costing nearly \$70 million each – with almost all the money coming from corporate sources. ATT is among the largest corporate funders of both conventions. Public financing of the conventions has been eliminated, and with it, the limits on the price of the conventions and the constraints on special interest influence-peddling.

Today, less happens at the presidential nominating conventions because the presumptive nominees are chosen in advance. Yet more is raised and spent at the conventions than when the conventions were major political events where candidate decisions were made. Conventions are essentially soirees for lobbyists and corporations to hobnob with lawmakers.

How did this happen?

### The long and tangled history of money and national conventions

After the ITT scandal, both parties paid for their 1976 conventions almost exclusively with public funds (about \$2 million each). In 1980 and 1984, the parties still relied mostly on public money to pay for their conventions, at slightly more than \$4 million in 1980 and somewhat more than \$7 million in 1984.

Public financing of the conventions began to unravel after a series of controversial Federal Election Commission (FEC) advisory opinions and regulations issued in the 1980s. The FEC decided to allow corporate and union soft money to help pay for the conventions through “host committees.” Originally, the FEC limited the soft money loophole for host committees and municipal funds to corporations and unions with a “local

tie” to the community hosting the convention. In 2003, the FEC dismissed the requirement of a “local tie” for corporate contributions to host committees and municipal funds altogether.

The large-scale displacement of public money with corporate money finally took hold in 1996, when the use of privately financed “host committees” by the parties overwhelmed the public financing program. In that year, both conventions received private funds amounting to nearly double the public grant.

In 2000, each party was awarded about \$13.5 million in public money to pay for its nominating convention. But private sources chipped in an additional \$52 million for the Democratic convention and \$60 million for the Republican convention. In 2004, the Republicans spent \$101 million on their convention; the Democrats, \$72

million. The official public funding grant intended to pay for the conventions: \$15 million.

In 2014, Congress repealed public financing of the conventions, except for \$50 million in security funds provided to each convention’s state and local law enforcement authorities. Party officials then sought new private sources of convention funding.

The first loophole in the law came as a result of an advisory opinion from the FEC, in which the agency determined that the national parties may establish a new party committee, with a \$33,400 annual contribution limit from individuals, specifically to raise funds for the conventions.

The second loophole came as a rider to the 2015 appropriations bill, known as the “Cromnibus.” This rider established five new accounts for each national party, including a convention account, which could

accept three times the party limits on donations. This means a wealthy individual may now contribute \$133,600 a year directly to the parties to pay for the conventions.

However, most of the money to finance the conventions continues to be funneled through “host committees,” entities that presumably represent the host city. Since host committees are not formally classified as a political committee, they may accept unlimited donations from corporations, unions and other special interests. The money raised through the host committees constitutes the primary source of convention funding.

To no one’s surprise, this year’s conventions were among the most expensive on record. The Democratic National Convention in Philadelphia cost around \$65 million, and the Republican National Convention in Cleveland came with a price tag around \$71 million.

## Financing the National Party Nominating Conventions, 1976-2012

Year	Convention	Federal Funding (in \$ Millions)	Private Funding (in \$ Millions)	Total Funding (in \$ Millions)
1976	R Kansas City*	2.2	0	2.2
	D NYC	2.2	0	2.2
1980	R Detroit**	4.4	0.7	5.1
	D NYC	4.4	0.4	4.8
1984	R Dallas	8.1	4.3	12.4
	D San Francisco	8.1	2.4	10.5
1988	R New Orleans	9.2	1.8	11
	D Atlanta	9.2	1.7	10.9
1992	R Houston	11	2.2	13.2
	D NYC	11	6.2	17.2
1996	R San Diego	12.4	18	30.4
	D Chicago	12.4	20	32.4
2000	R Philadelphia	13.5	20.1	33.6
	D Los Angeles	13.5	36.1	49.6
2004	R NYC	14.9	85.7	100.6
	D Boston	14.9	56.9	71.8
2008***	R Denver	16.4	57	73.4
	D Minneapolis	16.4	61	77.4
2012****	R Tampa	18.2	55	73.2
	D Charlotte	18.2	42	60.2

\*Data for 1976 is from Herbert E. Alexander, *FINANCING THE 1976 ELECTION*, 339 (1st ed., 1979).

\*\*Data for 1980 through 2004 is from Campaign Finance Institute, *THE \$100 MILLION EXEMPTION*, 4 (2004).

\*\*\*Data for 2008 is from Campaign Finance Institute, *INSIDE FUNDRAISING FOR THE 2008 PARTY CONVENTIONS 1* (2008), available at <http://bit.ly/29oSgKW> and from Campaign Finance Institute, Press Release: *New Analysis of FEC October 15th Reports of the Host Committees for the 2008 Presidential Nominating Conventions* (December 10, 2008), <http://bit.ly/29fHrTT>.

\*\*\*\*Data for 2012 is from David B. Magleby, *FINANCING THE 2012 ELECTION*, 111 (1st ed., 2014).

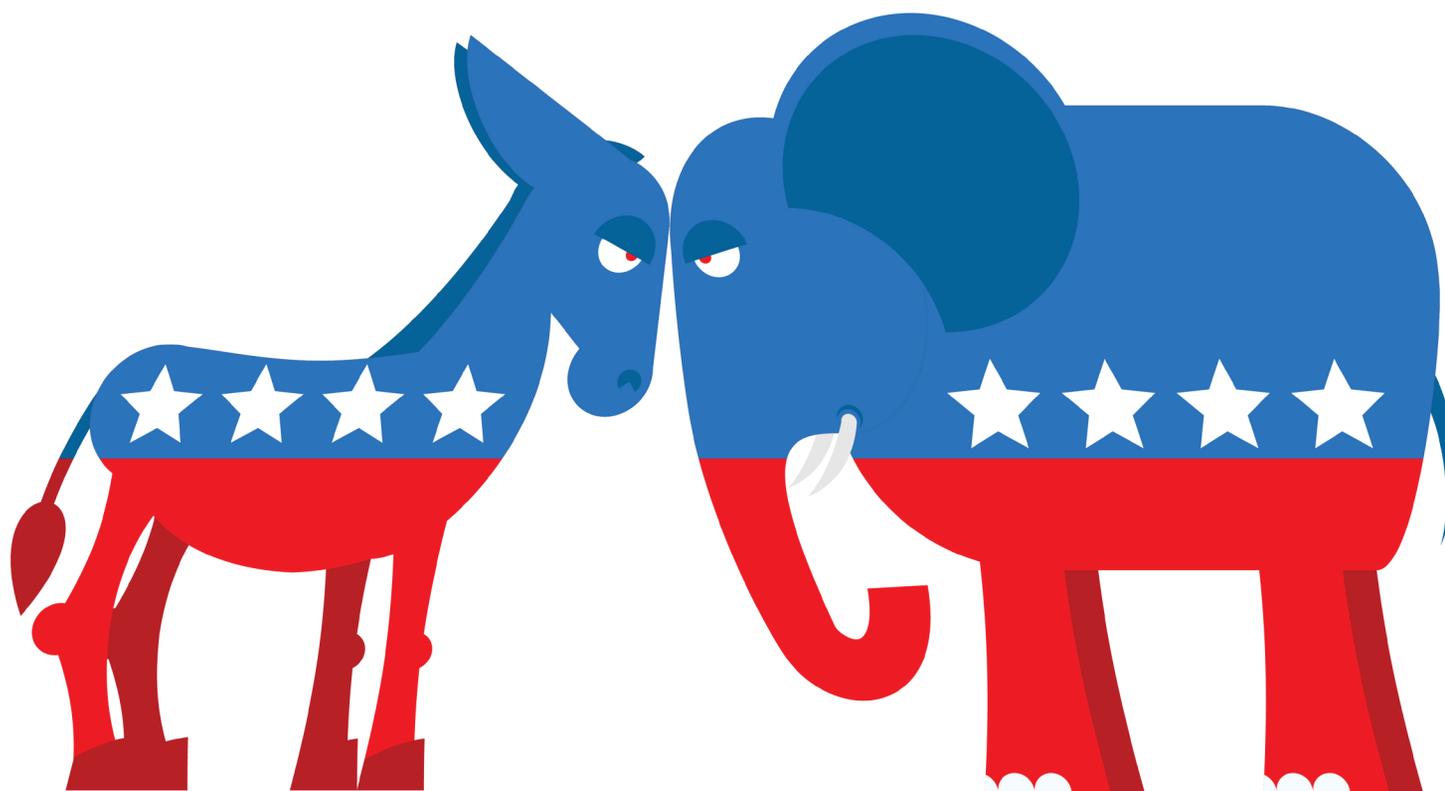


Image Credit: Shutterstock.com

In 2008, each party was awarded \$16.4 million in public grants to pay for their conventions, but total expenditures through the host committees amounted to more than \$55 million for the Democratic convention and \$57 million for the Republican convention. In 2012, each party was given a public grant of \$18.2 million. Contrast that with \$42 million from private sources for the Democratic convention and \$55 million for the Republican convention.

For the Republican convention, \$64 million came from private sources and another \$7 million from the Republican Party. The Democratic convention was made possible by \$60 million coming from the host committee and another \$5 million from the Democratic Party.

### Curbing the corporate influence

Public Citizen has worked to shed light on the problem of influence-peddling at conventions. Sweeping ethics restrictions on lobbyists and members of Congress – enacted in 2007 in response to the Jack Abramoff scandal – prohibit members of Congress from attending any convention party thrown by a lobbyist or lobbying organiza-

tion where a specific member or members are identified by name and title as the honoree.

Lawmaker participation also is prohibited if the lawmaker is to receive a special benefit or opportunity that would not be available to some or all of the other participants. If an event is sponsored by a lobbying entity, the event must be limited to a reception serving “toothpick” snacks (foods that don’t require a knife or fork to eat).

Alternatively, an event sponsored by a lobbying entity may serve a sit-down dinner, but only if it is widely attended by the public or an industry and the lawmaker is not given any special treatment.

Despite the rules, the near total funding of the conventions

by corporations with business pending before the federal government encourages lawmakers and lobbyists to largely disregard them.

So Public Citizen and the Sunlight Foundation have set up bird-dogging campaigns at each of the conventions since 2008 to crash the soirees and identify ethics rule violators. These efforts shut down one party early on and raise media awareness.

This year, the “Today Show” was one of many news outlets Public Citizen worked with to capture the influence-peddling spectacle.

Public Citizen recommends that the FEC reverse its previous rulings on corporate sponsorship of host committees and municipal funds.

Also, Congress should repeal the budget rider that allows wealthy individuals to contribute as much as \$1.67 million per election cycle to the national party committees. Most important, Congress should restore and strengthen public financing for the presidential campaigns and their nominating conventions.

The sheer volume of undisclosed special interest dollars at the conventions makes it fair to ask: Whose voices are we hearing – the candidates’ or those funding the events?

Will the 2016 federal election – which is expected to cost up to \$10 billion – buy us anything better? Not for the voters. But for corporations, \$10 billion should buy something awfully nice. 🗳️

## Report: Only Six States Provide Consumers With the Cost of Medical Procedures

By Rhoda Feng

Do you want to know how much your MRI will cost before you have it? It won't be easy. Despite a national call for consumers to be provided the costs of medical tests and procedures, just six states provide any information online, and the information offered is frequently outdated and incomplete, Public Citizen found in a report released in August.

"Shopping for health care prices in the United States is like trying to find a light switch in the dark," said Vijay Das, health care policy advocate for Public Citizen, who conducted the analysis. "If you know where you should be looking – and it's actually there for you to find – you might have a chance, but otherwise you'll blindly search in vain."

Using about \$87 million in federal grants, 19 states have created – or are in the process of creating – databases that capture and track payments on behalf of patients by insurers or health care providers. The 19 states are Arkansas, Colorado, Connecticut, Florida, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington and West Virginia. But many of these states do not go far enough in making informa-

tion from the databases readily available to the public.

Despite a national effort to arm consumers with information about the cost of medical procedures, only six of the above 19 states have relatively comprehensive websites that enable patients to shop for health care by comparing cost data. Those six states are California, Colorado, Maine, New Hampshire, Virginia and West Virginia.

Adopting the perspective of a hypothetical patient, Public Citizen decided to road test state consumer websites to determine just how easy – or difficult – it is for consumers to obtain basic information about health care costs.

Public Citizen sought cost information about five common medical tests and procedures that could provide a glimpse into how a patient could understand his or her out-of-pocket costs: a colonoscopy, a computerized tomography (CT) scan of the head, inguinal hernia repair, knee replacement and a magnetic resonance imaging (MRI) of the brain. Public Citizen concluded that accessing cost data for these common outpatient procedures remains difficult.

Major findings include:

- Prices vary considerably for insured and uninsured patients. The dollar difference, for in-

stance, between the least a privately insured patient would pay and the most an uninsured patient would pay in Colorado for knee replacement surgery is \$83,121. Many states do not even provide tailored information for uninsured patients on their comparison shopping sites.

- Much of the information in state databases is outdated and therefore an unreliable indicator of what consumers might actually have to pay for a procedure. (The data from CO Medical Price Compare in the above example is from 2012.)

- Only one of the six states – New Hampshire – provides price estimates for all five procedures examined. The website permits users to search the costs of about 75 medical procedures at about 45 facilities, but the data is more than a year old.

- California Healthcare Compare provides cost and quality data pertaining to five broad areas: childbirth care, hip and knee replacement, back pain, colon cancer screenings and diabetes treatment. Although it offers cost information for regions, it doesn't offer it for individual providers.

- CompareMaine includes costs submitted by 42 health insurance plans for more than 240 procedures from more than 150 facilities. It does not include

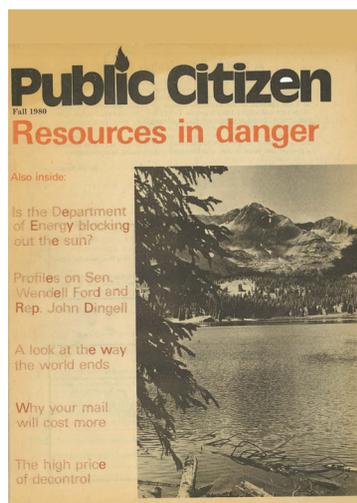
costs covered by public payers and does not include bills to the uninsured.

- Virginia residents can survey average costs for 31 procedures based on reports received from nine health insurance carriers. The website, which is sponsored by the Virginia Health Institute, is difficult to navigate and was last updated in 2013.

Out-of-pocket health care costs are soaring for millions of Americans. Since 2010, insurance deductibles for workers have risen three times as fast as premiums and about seven times as fast as wages and inflation. With more patients shopping for affordable medical tests and procedures, there is good reason for initiatives around health care transparency to continue.

On June 21, U.S. Reps. Gene Greene (D-Texas) and Michael Burgess (R-Texas) introduced the Health Care Price Transparency Act, which encourages states to advance transparency initiatives to benefit consumers. The bill's introduction is a positive step, but states have a long way to go to provide adequate information for consumers.

As Das noted, "States should allocate more resources and build user-friendly websites that contain complete information. This is basic information, and it shouldn't be so difficult to find." 🔥



### Public Citizen @ 45 ... A Look Back at the First Magazine

*In recognition of Public Citizen's 45th anniversary, Public Citizen News looks back at past accomplishments and work. Here, we revisit the inaugural issue of Public Citizen, published as a quarterly magazine in the fall of 1980. Stories ranged from a feature on Crested Butte, a tiny Colorado town fighting to preserve its natural beauty from mining interests, to a piece on the donation of a special edition poster by the popular Austrian artist Hundertwasser to Public Citizen's anti-nuclear campaign.*

*In an introductory letter in the magazine, Public Citizen founder Ralph Nader wrote, "Public Citizen is designed not just to inform but to involve more Americans in a greater and more skilled effort for civil improvement in our country." In one particularly prescient story, excerpted below, "Is the Department of Energy Blocking Out the Sun?" author David Corn looks at the new solar industry. Corn, who was an associate editor at the magazine, now runs the Washington, D.C. bureau of Mother Jones.*

The sun was shining brightly on June 20, 1979, as President Jimmy Carter stood on the White House roof and charted the future of solar energy in the United States.

Carter dedicated solar panels installed on top of the executive mansion and issued his now famous pledge, entrusting the nation to a solar future: "We should commit ourselves to a national goal of meeting one fifth—20 percent—of our energy needs with solar and renewable resources by the end of the century." The administration defined solar broadly to include passive and active solar systems, biomass, wind energy and ocean thermal power.

A little over one year later clouds have formed on the solar horizon. Though the industry has continued to grow, it has quickly become dominated by a few large corporations—particularly oil companies—in large part, critics charge, because the Department of Energy has channeled much of its solar research money toward big business. "Spending by the federal government," says Rep. Thomas Luken (D-Ohio), "favors big business and large centralized projects."

At the same time, internal DOE memoranda, and studies by Congress, the Office of Technology Assessment (OTA), and the General Accounting Office (GAO) all question whether the DOE is really committed to meeting the President's 20 percent goal [ . . . ] This bias toward large companies, according to the University of Texas researchers, is speeding the development of an oligopolistic solar industry, if not the development of solar energy itself [ . . . ] Without federal support, DOE critics charge, the independent companies—such as Solarex—are driven to the oil companies for the capital needed to grow and expand [ . . . ] An equally serious concern is allowing the petroleum industry—already heavily invested in coal and uranium—to assert control over [solar energy], which represents another potential competitor to their primary line of business.

## Day in Court: *Public Citizen v. FEC*

**FEC**, from page 1

ability to understand who is giving us messages about our candidates,” said Scott Nelson, the Public Citizen attorney arguing the case.

At the hearing, Nelson urged the U.S. District Court for the District of Columbia to find that the FEC gave legally erroneous reasons for deciding not to investigate Crossroads GPS for its failure to register as a political committee.

“Since its first foray into electoral politics in 2010, Crossroads GPS continued to pour massive amounts of money into the next two elections, ranking as a top-spending political nonprofit over the 2010, 2012 and 2014 election cycles,” said Robert Weissman, president of Public Citizen. “It is far past time for the FEC to shine a light on who is funding Crossroads GPS – especially since its founders acknowledged it was erected as a vehicle for major political donors who wanted to remain secret.”

The case stems from a complaint filed with the FEC in the

fall of 2010 by Public Citizen; Craig Holman, campaign finance expert for Public Citizen; the organization ProtectOurElections.org; and Kevin Zeese, an attorney for ProtectOurElections.org.

The complaint asked the FEC to investigate whether Crossroads GPS – the Rove-linked political spending group formed to allow big donors to make secret campaign donations – was a political committee under federal election laws.

Political committees are required to disclose their contributors to the FEC, but Crossroads GPS, which claims to be a social welfare organization rather than a political committee, keeps its contributors secret.

The complaint, based on Crossroads GPS’ operations in the 2010 election cycle, alleged that the group fits the legal definition of a political committee: any group that receives or spends more than \$1,000 during a calendar year to influence elections and whose major purpose is federal campaign activity. The FEC’s general counsel determined that between June

and December 2010, Crossroads GPS spent at least \$20.8 million on federal campaign activity – more than half of what the organization reported spending during the calendar year. The general counsel strongly recommended that the agency investigate Crossroads. But the commission deadlocked along party lines, leading to the dismissal of the complaint in December 2013.

The three Republican FEC commissioners who blocked further investigation claimed that federal election activity does not include ads that support or oppose candidates without expressly telling voters to vote for or against them.

They also argued that Crossroads GPS’ fiscal year, rather than the calendar year, should be used to determine whether the organization’s spending reflected a major purpose of influencing federal election, a standard that would benefit Crossroads GPS because the organization claimed to have spent significant amounts for non-electoral purposes after the end of the 2010 calendar year.

Because those arguments are contrary to the FEC’s already established policy for determining political committee status, Public Citizen and the other plaintiffs sued to have the FEC’s dismissal of their complaint declared unlawful. The case was then put on hold for more than a year while Crossroads GPS sought to intervene.

In February, after the Court of Appeals for the D.C. Circuit held that Crossroads GPS was entitled to intervene, Crossroads GPS filed a brief supporting the FEC’s refusal to take action against it. In addition to repeating the three GOP commissioners’ arguments, Crossroads GPS argued that the case is moot because the statute of limitations for its failure to register has run out.

Public Citizen fired back. In a March brief, it explained that Crossroads GPS cannot rely on its own procedural maneuvering to argue that it is now too late to take action against it for failing to register as a political committee in 2010.

A ruling in the case is expected next year. ▼

## Delay in Generic Drug Labeling Rule Leaves Patients at Risk

By David Rosen

In a major blow to patient safety that affects the millions of Americans who take prescription medications, the U.S. Food and Drug Administration (FDA) has announced that it is postponing a rule that would permit the manufacturers of generic prescription drugs to update product warning labels to reflect new safety information.

The FDA said the revision of its drug labeling rule is not likely to be finalized until April 2017. The rule was proposed in November 2013 in response to a 2011 Public Citizen petition. Public Citizen sharply criticized the FDA’s decision to delay the rule.

Under the current rules, generics manufacturers are not permitted to update warning labels unless they are mimicking a change already made by the brand-name manufacturer or are explicitly instructed to do so by the FDA. Brand-name manufacturers are permitted to make safety updates without prior FDA approval. This prohibition on generics manufacturers initiating labeling updates exists

even if the brand-name drug is no longer being sold.

A key problem: After generics enter the market, brand-name market share drops precipitously, and brand-name manufacturers are far less vigilant about updating warning labels. And information about serious risks often comes to light years after generic versions of a medication are on the market, as Public Citizen documented in a 2013 report. Plus, brand-name manufacturers frequently discontinue a product once generic versions come on the market. With no manufacturer monitoring adverse events to assess the need for updated warnings, patients may be left uninformed about newly identified dangers of the medications.

The FDA’s 2013 proposal, issued in response to Public Citizen’s petition, would improve patient safety by allowing generics manufacturers to promptly make labeling updates and by providing a process for other makers of a particular medication quickly to follow suit.

The FDA has limited resources to monitor the tens of thou-

sands of drugs currently on the market. Instead, the agency relies on drug makers to report adverse events, as the law requires, and it relies on brand-name manufacturers to initiate updated safety warnings. The proposed labeling rule would protect patients by ensuring they have updated safety information as soon as possible.

“By delaying the new rule, the FDA is bowing to industry pressure and, in the process, prioritizing industry profits over patient health and safety,” said Michael Carome, director of Public Citizen’s Health Research Group. Public Citizen experts, including Carome, have testified at public hearings in favor of the rule, urging the FDA to act as quickly as possible. But the pushback from industry has been fierce.

GPhA, the trade association for the generics industry, and PhARMA, the trade association for brand-name manufacturers, sent the FDA a joint proposal of their own in November 2014. Their proposal would block both generic and brand-name manufacturers from updating

safety warnings until after the FDA reviewed information provided by the manufacturers and ordered the update.

Nearly nine in 10 prescriptions in the U.S. are filled with generic medications. Carome noted that the labeling issue does not mean that generic drugs are any less safe than brand name drugs, as under FDA regulations both the brand name – if one is still marketed – and generic versions of a drug should have the same labeling. Therefore, patients should not discontinue their generic medications because of the FDA’s delay in finalizing the rule.

“The industry’s alternative would mean fewer new safety warnings, because companies would not be required – or have any incentive – to request them,” said Carome. “It also would mean slower safety updates, because the FDA would have to pre-approve every one. And it would mean no company could be held accountable to injured patients for failing to warn about newly discovered risks. For patients, the industry proposal is a lose-lose idea.” ▼

## Panel Highlights Effective Activism Techniques to End Unethical Infant Formula Marketing

By Haley Lemieux

When hospitals distribute company-sponsored infant formula samples to new parents, they send an implicit message that formula feeding is a healthy choice. Although the benefits of breastfeeding are proven and it is well regarded among health care professionals that infants should be breastfed for at least six months, some hospitals continue to distribute bags of formula samples to patients. Studies show that parents who receive samples are less likely to breastfeed and to breastfeed for shorter durations.

Since 2012, Public Citizen has been fighting to eliminate infant formula marketing from health care facilities. Through waging campaigns, communicating directly with hospital staff and working with coalitions, Public Citizen has made great strides.

Speaking at the recent Sixth National Breastfeeding Coalitions Conference, Kristen Strader, campaign coordinator for Public Citizen's Commercial Alert, told an audience that "health care facilities should be free of unethical infant formula marketing."

Strader's panel presentation highlighted successful strategies that groups have used to eliminate infant formula marketing from health care facilities. She also explained how successful strategies can be applied to new regions, and she identified new strategies to shield parents from the marketing tactics of formula companies. The panel included Marion Rice and Pauline Sakamoto from the Human Milk Banking Association of North America, as well as Hope Lima from the North Carolina Breastfeeding Coalition.

"Doctor-patient relationships should be free from commercial interests, especially because infant formula marketing drives down breastfeeding rates," said Strader. To explore successful strategies that can be applied in other regions, Strader highlighted case studies in Maryland, California and North Carolina.

In Maryland, state coalitions built upon the Department of Health and Hygiene's model of breastfeeding support recommendations, which include provisions to eliminate formula marketing in hospitals. In Oc-

tober 2015, all Maryland hospitals stopped distributing infant formula marketing materials as a result of a targeted campaign by the Maryland Breastfeeding Coalition. In California, the California WIC Association (CWA) successfully pushed legislation in 2013 that removed infant formula marketing from hospitals.

Rather than focus on the negatives of infant formula marketing, the CWA framed the legislation as a way to support breastfeeding. The bill succeeded because it was backed by a wide variety of groups that were not explicitly focused on breastfeeding advocacy, including anti-poverty, anti-hunger and anti-obesity groups.

In North Carolina, advocates focused on rewarding hospitals that ended infant formula marketing by instituting the Golden Bow Award as an incentive for hospitals to improve their policies and practices. Additionally, North Carolina created helpful educational materials, including a map of the state showing formula marketing-free hospitals and a "Ban the Bags" toolkit.

Strader also emphasized

some of Public Citizen's advocacy efforts, including the World Health Organization (WHO) Code Day of Action on May 21, when activists across the country posted photos and comments to WHO Code violators' social media pages, demanding that companies follow the WHO Code and protect parents and babies from unethical marketing. "This initiative shifts the focus from health care facilities to the infant formula companies to hold them accountable," said Strader.

The hard work of activists is paying off. In 2007, 72.6 percent of hospitals in the United States distributed bags of company-sponsored infant formula sample to patients. As of 2013, 31.4 percent of hospitals still engaged in the practice. Public Citizen is developing new tools to push the remaining hospitals distributing formula samples to provide commercial-free health care to patients. ▼

Resources for doctors, activists and parents who want to end unethical infant formula marketing in their communities are available at [commercialalert.org](http://commercialalert.org).

## Texas' Oversight of Oil and Gas Industry Falls Behind That of Other States

By Karilyn Gower

When it comes to regulating the oil and gas industry, other oil and gas producing states outshine Texas, a new Public Citizen study shows. Public Citizen looked at the best practices of eight states that produce oil and gas and are facing similar issues to Texas in terms of seismic activity and water contamination: Colorado, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, West Virginia and Wyoming. The organization examined regulatory practices ranging from ethics and transparency to fines and funding to inspections and environmental protections. The result: Texas lags behind.

Public Citizen is calling for the Texas agency that oversees the industry to undergo significant changes in structure, transparency, funding, inspections and environmental protection. Such changes could include limiting campaign contributions that RRC commissioners can receive from industry members, finding ways to address conflicts of interest when commissioners

have industry ties and changing the name of the agency because it has not overseen Texas railroads for years.

Public Citizen presented its findings at a public hearing on Aug. 22. More than 60 Texans testified at the hearing; many shared stories about how the Texas Railroad Commission (RRC), which is in charge of regulating Texas' oil and gas industry, has let them down.

"It is clear that the regulatory practices and agency structure of the RRC need a serious overhaul," said Tom "Smitty" Smith, director of Public Citizen's Texas office. "The RRC mission statement promises to serve Texas through protecting the public, the environment and natural resources. This study shows it has a long way to go to fulfill that mission."

Public Citizen released the study on Aug. 18, right before the state launched its review of the RRC. The Sunset Advisory Commission, which reviews the policies and programs of more than 150 government agencies to identify and eliminate waste,

duplication and inefficiency, will analyze the RRC.

"Many other states that also produce oil and gas have stronger mandates to protect public health and the environment," said Carol Birch, legislative counsel for Public Citizen's Texas office and report author. "States that do better in regulating the industry require more frequent inspections and have fines large enough to deter violations."

### How Texas compares to the other states studied:

- Many of the other states have specific qualifications for agency leaders regarding such things as education and experience—the idea is to ensure balance and diversity. Texas has no qualifications.

- Of the states reviewed, only Oklahoma has full-time elected commissioners, as does Texas. However, Oklahoma strictly limits campaign contributions from the oil and gas industry to prevent conflicts of interest. Compare that to Texas, whose

commissioners take industry contributions all year long.

- Colorado has easily searchable databases available online where one can find inspection/incident inquiries; spill data, updated monthly; spill analysis by year; water well data, updated monthly; field inspection reports; and quarterly and annual enforcement reports. Texas has no such database.

- Pennsylvania maintains a public database with information about permits, wells, facilities, inspections, oil and gas production, drilling dates, violations and enforcement actions.

- Ohio inspects injection wells every 12 weeks, at a minimum. The Texas RRC lacks sufficient inspectors to inspect each well even once a year.

- Colorado, North Dakota, Ohio, Pennsylvania, West Virginia and Wyoming all have either mandatory baseline water testing of nearby water sources prior to drilling or a presumption of liability for pollution later found in those water sources, or both. Texas has neither. ▼

# Public Citizen in Your State

## In Court, Public Citizen Sues to Block Controversial Pepco-Exelon Takeover

On Aug. 16, Public Citizen and D.C. Solar United Neighborhoods (DC SUN) filed a court challenge to the \$7 billion merger between Pepco Holdings and Exelon Corporation. The filing in the D.C. Court of Appeals came in response to the D.C. Public Service Commission's (PSC) decision earlier this year to approve the merger.

The groups maintain that the merger will hurt D.C. ratepayers and stymie progress on climate and energy policy in the District. They are challenging the PSC's decision as procedurally flawed and wrong on the merits. Among other problems, the PSC gave too little notice of hearings (12 days instead of the required 45 days); changed its mind about Exelon's takeover of Pepco without adequately explaining why (the PSC voted against it, then later reversed itself); and failed to support its contention that the merger is in the public interest.

"We predicted that the merger would be bad for ratepayers, and indeed, the ink is barely dry on the deal, and Pepco is pushing for a record-breaking rate increase," said David Arkush, managing director of Public Citizen's Climate Program. "In addition to paying more for electricity, D.C. residents will be subsidizing a company that will fight D.C.'s laudable efforts to switch to renewables and mitigate climate change."

—Don Owens

## Texas Under Threat of High-Level Radioactive Waste Storage

The U.S. Department of Energy (DOE) should disavow attempts by the private sector to build a high-level radioactive waste storage facility in West Texas, Public Citizen has told the agency.

On July 29, Public Citizen filed comments with the DOE in an effort to define what constitutes consent by the community to accept this type of waste. The agency has held hearings across the country in states that want to rid themselves of waste, but not in Texas and New Mexico, which have companies that are applying to "store" this waste.

An application for a new, high-level radioactive waste dump in Andrews County, West Texas, is moving through the process at the U.S. Nuclear Regulatory Commission (NRC). Public Citizen, which is participating in the campaign to block the dump, maintains that the application is premature because of the ongoing DOE process.

The dump, proposed by Waste Control Specialists, which now operates a low-level radioactive waste dump at the site, would involve more than 10,000 shipments of deadly, high-level radioactive across much of the United States over 20 or more years. —Angela Bradbery

## Public Citizen Opposes Subsidy for Aging New York Nuclear Plants

Public Citizen is working to ensure that New Yorkers don't foot the bill for expensive, failing nuclear power plants. On July 22, Public Citizen filed comments in a New York Public Service Commission proceeding opposing the commission's proposal to provide more than \$4.6 billion in ratepayer-funded subsidies to three aging nuclear power plants in the state.

Public Citizen stated that the proposed subsidy is an ill-advised and expensive handout to the two corporations that own the state's nuclear power plants. The owners — Illinois-based Exelon Corp. and Louisiana-based Entergy Corp. — profited from running these facilities under New York's deregulation experiment, but now that the old nuclear power plants are no longer profitable, the proposal represents an inappropriate transfer of risk from corporate shareholders to New York's 8 million ratepayers.

Public Citizen is considering all options to oppose this proposal, including appeals to the court or a complaint before the Federal Energy Regulatory Commission. —Rhoda Feng

## Battle Over Florida Solar Initiative Dominated by Just Four Utility Companies That Spent \$12 Million to Support the Initiative

A new Public Citizen report highlights \$12 million in corporate spending by utility companies to undermine a grassroots ballot initiative in Florida that sought to expand consumer access to rooftop solar. The companies maneuvered to keep it off the November ballot and managed to place their own measure on the ballot instead. If passed, Florida's Amendment 1 will empower utility corporations to restrict and raise costs for rooftop solar. For the utilities, the grassroots initiative threatened their monopoly on energy sales.

During the grassroots rooftop solar campaign's petition-gathering, utility companies led by Florida Power & Light Company (a subsidiary of NextEra Energy) launched their competing petition-gathering effort, paying petition-gatherers double the rooftop solar campaign's rate and sowing confusion among voters.

Through their ability to mobilize vast sums of corporate cash, Florida Power & Light, Duke Energy, Tampa Electric (an Emera Incorporated subsidiary) and Gulf Power (a Southern Company subsidiary) effectively bought a place for their deceptively labeled "Florida Right to Solar Choice" initiative on the ballot as "Amendment 1."

If passed, utility companies would be empowered to restrict and raise costs for rooftop solar. The grassroots rooftop solar campaign was unable to get enough signatures for this year and is aiming for the 2018 ballot. —Rick Claypool 🇺🇸



Talib Kweli fires up the crowd at Rock Against the TPP, a free concert held in Seattle on Aug. 19 to raise awareness about the potential harms of the Trans-Pacific Partnership. Public Citizen helped organize the tour, which featured concerts and teach-ins in California, Colorado, Oregon and Washington. Credit: Rick Barry

# Are your medicines SAFE?

Many drugs that come to market have risks that outweigh their benefits. Others, found to have risks only after they are approved, are left on the market for dangerously long periods of time. Find out which drugs are safe — and which you should avoid — with Public Citizen’s WorstPills.org and *Worst Pills, Best Pills News*.

To subscribe to WorstPills.org, our website, for only \$15 a year, visit [www.WorstPills.org](http://www.WorstPills.org), and type in promotional code LP4J5PC when prompted.

To subscribe to the monthly print edition of *Worst Pills, Best Pills News* for a discount — \$10 a year — mail in the form below. (Phone orders without this coupon are \$20.)

**Yes! I will subscribe to the print edition of *Worst Pills, Best Pills News* for only \$10 for 12 monthly issues.**

ALL ORDERS MUST BE PREPAID  CHECK (MAKE PAYABLE TO PUBLIC CITIZEN)  
CHARGE TO CREDIT CARD:  VISA  M/C  AMEX  DISCOVER

_____	_____
CREDIT CARD NUMBER	EXP. DATE
_____	
SIGNATURE (AS IT APPEARS ON CARD)	
_____	_____
NAME	8-DIGIT ID NO. (FROM MAILING LABEL)
_____	
STREET ADDRESS	CITY/STATE/ZIP
_____	_____
EMAIL ADDRESS	PHONE NUMBER

LP4J5PC

**Send order to:**

**Public Citizen**  
P.O. Box 96978,  
Washington, DC 20090-6978

[www.WorstPills.org](http://www.WorstPills.org)



## IN THE SPOTLIGHT

The following are highlights from our recent media coverage.

**Robert Weissman, Public Citizen president:** On the controversy over the escalating price of EpiPens: CNBC, Reuters, Marketplace, NPR, The New York Times, The Washington Post. On Hillary Clinton and revolving doors: TIME, Politico, The Washington Post. On environmental rules created by the Obama administration: Power Magazine, Natural Gas Intel. On an anti-regulatory bill: The Hill. On Pharma’s influence on Medicare Part B reform: Fierce Healthcare. On *Citizens United*: The Intercept.

**Lisa Gilbert, director of Public Citizen’s Congress Watch division:** On Hillary Clinton’s presidential transition team: Politico. On the Democratic Party’s platform to hold Wall Street accountable: Politico. On Clinton’s campaign promises: The Los Angeles Times. On the Republican National Convention: The Boston Globe. On a financial transaction tax: Pensions & Investments. On who really pays for political conventions: Inside Sources.

**Lori Wallach, director of Public Citizen’s Global Trade Watch:** On three revisions to the Trans-Pacific Partnership (TPP) draft: Politico. On the TPP: The Hill, Northwest Arkansas Democrat Gazette. On Clinton, Sanders and Trump’s opposition toward the TPP: Truthout. On the Rock Against the TPP tour: The Hill, Denverite.

**Tom “Smitty” Smith, director of Public Citizen’s Texas office:** On shutting down Texas’ power plants: Texas Observer. On how Texas judges should be elected: Victoria Advocate. On Florida-based NextEra Energy’s \$18.4 billion deal to buy the largest electric transmission utility in Texas: The Texas Tribune. On a dangerous proposal for a nuclear waste site in West Texas: Odessa American.

**Tyson Slocum, director of Public Citizen’s Energy Program:** On the environmental impacts of building gas pipelines: Bloomberg BNA. On millennials’ push to end the Keystone pipeline project: Energy Intelligence. On home solar leasing companies: Grist. On abandoning a proposal to give for-profit corporations authority over markets: Morning Consult.

**Dr. Michael Carome, director of Public Citizen’s Health Research Group:** On the need for the U.S. Food and Drug Administration (FDA) to allow generic drug manufacturers to update warning labels: The Los Angeles Times. On clinical trials and for-profit review boards: Stat News. On FDA guidance for accepting gifts from regulatory industries and outside sources: Bloomberg BNA. On opioid drugs: Modern Healthcare, McClatchy

DC, Missouri Scorecard. On closing a loophole regarding malpractice payment reporting: Fierce Healthcare, HealthLeaders Media.

**Dr. Sidney Wolfe, founder and senior adviser of Public Citizen’s Health Research Group:** On the risks of taking a popular weight loss pill, Alli: STAT. On the sale of the prescription drug Humira: Forbes. On doctors who sexually abuse patients: The Atlanta Journal-Constitution.

**Craig Holman, government affairs lobbyist with Public Citizen’s Congress Watch division:** On special interests influencing political conventions: USA Today, The Center for Public Integrity, Newsmax, Sinclair Broadcasting, C-SPAN, The Baltimore Sun, Cox TV, AZ Central, NJ Advance Media, Philadelphia Inquirer, The Intercept, Pittsburg Post-Gazette. On government contractors making campaign contributions (pay-to-play): The Philadelphia Inquirer. On anti-pay-to-play laws: Penn Live.

**Bartlett Naylor, financial policy advocate with Public Citizen’s Congress Watch division:** On the HSBC money-laundering case: The New York Post, The Jewish Voice. On banning executives from Federal Reserve boards: Morning Consult. On a proposal to break up JPMorgan: Reuters. On the need for Wall Street regulations: Roll Call.

**Rick Claypool, research director, president’s office:** On a Public Citizen report showing that the pharmaceutical industry gives more money to the lawmakers who are against Medicare Part B reform: Benefits Pro, Stat News, The American Prospect. On a Public Citizen report showing that patients’ groups that receive money from pharmaceutical companies are more likely to oppose Medicare Part B reform: AlterNet, STAT.

**Vijay Das, health care policy advocate with Public Citizen’s Congress Watch division:** On millions of undocumented residents being banned from Obamacare in California: Univision. On a Public Citizen report showing that only six states provide consumers with online tools to help them find out the costs of medical procedures: Alternet, Aboutlawsuits.com, Thom Hartmann Radio show, Colorado Public Radio, Politico, Truthout, Fierce Healthcare.

**Peter Maybarduk, director of Public Citizen’s Access to Medicines Program:** On EpiPen price gouging: CBS Radio News, NBC Nightly News, Democracy Now!, Fox Business News, Politico.

# FOR YOUR ENTERTAINMENT

## Public Citizen Crossword By Sam Bellotto Jr.

Answers are on page 16.

**ACROSS**

- 1 Smartphone download
- 4 Tunesmith's org.
- 9 Invigorating
- 14 Mary who married Robert Shaw
- 15 Carried on the wind
- 16 Gained prominence
- 17 Pave the way?
- 18 These are overwhelmed with inmates suffering from
- 20 Quondam
- 22 Org. established by Eisenhower in 1958
- 23 Canc'n crowd?
- 24 Disbeliever
- 27 \_\_\_\_\_-Magnon
- 29 Recommended alternative to incarceration
- 35 Cephalopods
- 37 Former Meadowlands team
- 38 Zion saver of film
- 39 "Darkman" director Sam
- 40 SpongeBob's home
- 41 Cruise or Pitt
- 43 "I" problem
- 44 Chickpeas
- 46 "Seinfeld" character
- 47 See 18 Across
- 50 Inn intake
- 51 Baltimore's time zone
- 54 Tip
- 57 "Cool!" old-style
- 60 Birds yielding red meat
- 61 Less than half of 18 Across offer these
- 65 Like Beethoven's "Seventh

Symphony"

- 66 Horatio or Hiss
- 67 Windy isle off Venezuela
- 68 You, in Metz
- 69 Squalid
- 70 Bristly
- 71 Mobius strip's lack

**DOWN**

- 1 Motorcade members
- 2 Shenanigan
- 3 Discernment
- 4 Walt Disney Co. network
- 5 South Korean PM Han Duck-
- 6 Captain of cereal
- 7 FDR's daughter
- 8 Feathered friends?
- 9 Blues singer Mahal
- 10 Soapbox occupant
- 11 Hard-boiled film genre, familiarly
- 12 Man or Youth
- 13 Pool opening?
- 19 Palm Beach craft
- 21 Downs in Surrey
- 25 Average
- 26 Here, in France
- 28 Used-car deals
- 30 Ninja Turtles' friend April
- 31 1773 Boston Harbor flotsam
- 32 Target of the ADL
- 33 Lowly laborer
- 34 Long past
- 35 City NNW of Provo
- 36 Nicolas in "National Treasure"

1	2	3		4	5	6	7	8		9	10	11	12	13	
14				15						16					
17				18						19					
20			21			22					23				
24				25	26				27	28					
		29						30	31				32	33	34
35	36							37					38		
39						40				41	42				
43				44	45				46						
47				48					49						
			50						51					52	53
54	55	56			57	58	59				60				
61				62						63	64		65		
66							67						68		
69							70						71		

- 40 School subj.
- 42 Social stratum
- 45 Kagan of the Supreme Court
- 46 Bambi's mother-in-law
- 48 Rode to the runway
- 49 Freed
- 52 Harangue
- 53 Anti-inflammatory acronym
- 54 You love, in Latin class

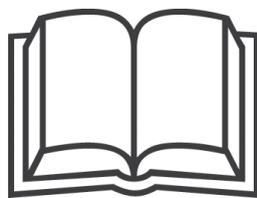
- 55 Soccer great nicknamed "O Rei"
- 56 Stopping result
- 58 Itinerary data
- 59 Suffix for billion
- 62 Break down
- 63 Olajuwon's org.
- 64 Abe's "Godfather" role

Sam Bellotto Jr., a former magazine editor, constructs the crossword gratis. Public Citizen appreciates his generous contribution.

## Public Citizen Recommends ...

**'The Great Suppression: Voting Rights, Corporate Cash, and the Conservative Assault on Democracy'**  
By Zachary Roth  
Crown; \$26

Zachary Roth's "The Great Suppression" is a glaring reminder that elections are predicated on something many have, mistakenly, come to take for granted: the right to vote.



In his book, Roth argues that American elections are suffering a wave of new voting restrictions that are just one part of a larger movement to undermine democracy. Roth illustrates the pervasive nature of the current attacks on voting rights from national elections down to the local races for school boards in towns and cities.

Roth also guides us through history: It took 100 years of jostling over personal liberties to end overt voter discrimination against all men in the U.S. It would be another 50 years

for most – but not all – women to gain the constitutional right to vote in 1920. Many believed America had struck down the last vestiges of entrenched assaults on voting rights with the 1965 passage of the Voting Rights Act. But as "The Great Suppression" shows, 45 years later, the present-day U.S. Supreme Court rapidly undid much of that progress.

Roth documents the very real and deliberate campaign to transform our democracy into an oligarchy and sell this final product back to Americans as a better, yet far less representative form of participation where only trusted elites should vote in elections.

The answer is via a long and difficult process of politics itself: The American electorate must be the watchdogs of democracy. –Don Owens

**'Enough Said: What's Gone Wrong With the Language of Politics?'**  
By Mark Thompson  
St. Martin's Press; \$27.99

Public rhetoric has degraded. TV talk shows feature guests on opposite sides of an issue hurling clipped and hostile sound bites past each other. Politicians use language of extremism that doesn't allow any room for discussion. News stories are shorter, offering perfunctory coverage of news rather than deep dives into issues.

For Mark Thompson – president and CEO of *The New York Times*, and author of "Enough Said: What's Gone Wrong With the Language of Politics?" – the breakdown in public rhetoric is more than just a symptom of a problem. It is a contributor to the problem: "When public language fails and collective deliberation is no longer possible ... the wider culture goes south, and the institutions of politics and the state begin to spiral down." There can be no healthy

political debate.

Quoting everyone from Aristotle and George Orwell to Beyoncé, Thompson takes us through history, analyzing speeches of Winston Churchill, Tony Blair, Margaret Thatcher, Franklin Roosevelt, Donald Trump and more.

The solution, he says, is for politicians to stop trying to fool voters, media to spend more time explaining policy and schools to teach children how to listen critically to what media, celebrities and politicians say. Thompson offers a glimmer of hope. People usually can detect lies. Satire, such as the type served up by late-night comedians, boils issues down to their essence. And when influential figures like the pope speak about fairness and humanity, people listen.

It might take decades, but Thompson is optimistic we'll get there. –Angela Bradbery

To order books, contact the publisher or visit your local bookstore or library.

# Court Upholds Public Interest in Immigration Judges Case

By Rhoda Feng

In a win for judicial transparency, a federal appeals court on July 29 issued an important decision in a legal fight over disclosure of information about whether the government adequately investigates and resolves misconduct complaints against immigration judges. The lawsuit was filed in federal district court in Washington, D.C., by the American Immigration Lawyers Association (AILA), a national association of more than 14,000 attorneys and law professors who practice and teach immigration law. Public Citizen served as lead counsel, along with the American Immigration Council.

The appeals court held that the government could not categorically withhold the names of immigration judges from complaint records disclosed in response to AILA's Freedom of Information Act (FOIA) request. Rather, to justify withholding, the government must instead make a more specific showing that the public interest in disclosure is outweighed by judges' privacy interests.

The court also rebuffed the government's attempt to withhold bits of information in disclosed records by calling that information "non-responsive." It concluded that once an agency determines that a document is responsive to a FOIA request, it must disclose all information in that document that is not covered by a specific FOIA exemption.

"The decision is an important step in holding the government accountable for addressing im-

migration judges' misconduct and in opening up the secretive complaint process to the public," said Julie Murray, an attorney with Public Citizen and lead counsel in the case.

Last year, in immigration courts around the country, immigration judges conducted more than 180,000 court proceedings to determine whether noncitizens are subject to removal from the United States. A large share of these individuals defended themselves without attorneys. The lack of legal representation makes it easier to both detain and deport undocumented immigrants.

In recent years, observers have documented misconduct by immigration judges and weaknesses in the integrity of the nation's immigration courts. Compounding this problem, formal discipline of immigration judges has been rare, and the federal process for resolving complaints has been opaque.

In November 2012, AILA submitted a FOIA request to the U.S. Department of Justice's Executive Office for Immigration Review (EOIR), asking that the agency disclose complaints against immigration judges, who

are federal employees empowered to resolve disputes relating to immigration law. The group also asked for records relating to the adjudication of those complaints.

The agency didn't provide a substantive response, so with the help of Public Citizen, AILA filed suit to compel the release of the requested information. The agency then released more than 16,000 pages of information. But it redacted the names of immigration judges, which it deemed necessary to ensure the judges' right to privacy. It also redacted pieces of information from records otherwise disclosed that it claimed didn't respond to the records request; it did not rely on any of FOIA's specific exemptions to justify the redactions, as required.

After an unfavorable lower court opinion, Public Citizen appealed. A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court on two important legal issues. It determined that the privacy interests of immigration judges do not categorically outweigh the public interest in records regarding complaints against those judges.

case back to the district court to reassess the propriety of releasing individual immigration judge names and to determine whether the government can assert that information originally redacted as non-responsive is covered by one of FOIA's exemptions.

The court also rejected the agency's practice of redacting individual sentences and paragraphs of released documents that the agency had labeled "non-responsive."

"This practice of slicing and dicing records has invited abuse by government agencies that want to withhold embarrassing information," Murray said. "As the court held, it has no basis in law."

The court of appeals sent the



Credit: David Carillet/Shutterstock.com

## Crossword Answers (from page 15)

A	P	P	A	S	C	A	P	T	O	N	I	C		
U	R	E	B	O	R	N	E	A	R	O	S	E		
T	A	R	C	O	U	N	T	Y	J	A	I	L	S	
O	N	C	E	N	A	S	A	T	R	E	S			
S	K	E	P	T	I	C	C	R	O					
	P	S	Y	C	H	O	T	H	E	R	A	P	Y	
O	C	T	O	P	I	N	E	T	S	N	E	O		
R	A	I	M	I	S	E	A	A	C	T	O	R		
E	G	O	C	E	C	I	E	L	A	I	N	E		
M	E	N	T	A	L	I	L	L	N	E	S	S		
			A	L	E			E	A	S	T	E	R	N
A	P	E	X	N	E	A	T	E	M	U	S			
M	E	D	I	C	A	T	I	O	N	S	I	N	A	
A	L	G	E	R	A	R	U	B	A	T	O	I		
S	E	E	D	Y	S	E	T	A	L	E	N	D		

## IN THE NEXT ISSUE

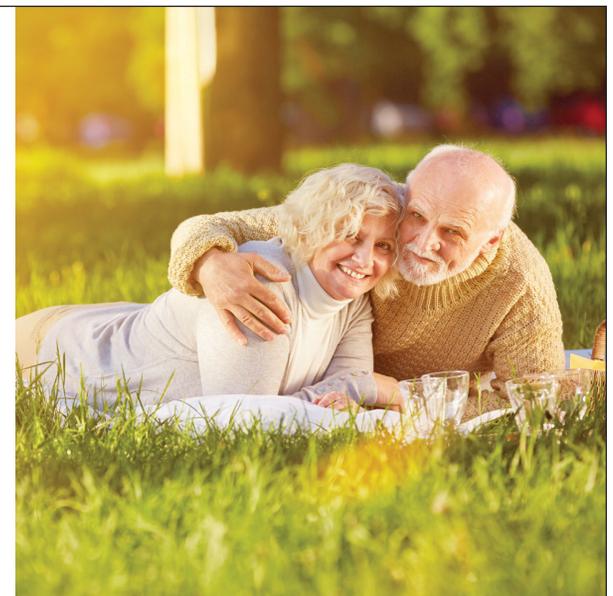
We will update readers on Public Citizen's effort to gather petition signatures opposing commercialism in national parks.

case back to the district court to reassess the propriety of releasing individual immigration judge names and to determine whether the government can assert that information originally redacted as non-responsive is covered by one of FOIA's exemptions.

## CHARITABLE GIFT ANNUITY A Gift That Gives Back to You!

A charitable gift annuity is a simple contract between you and Public Citizen Foundation that supports us while providing you (and/or another individual) with a charitable deduction and payments on a quarterly basis for the rest of your life. The minimum gift to establish this annuity is \$10,000 using cash or securities, and the minimum age is 65. The following are some of the payments we offer for one individual. Payments for two people are available upon request.

Age When Established	Annuity Factor	Annual Payment Based on \$10,000	Age When Established	Annuity Factor	Annual Payment Based on \$10,000
65 years	4.7%	\$470	80	6.8%	\$680
70	5.1	\$510	85	7.8	\$780
75	5.8	\$580	90 & over	9	\$900



To receive your free illustration of the payments you and/or another will receive from this gift, contact Amanda Fleming at 202-588-7734 or [afleming@citizen.org](mailto:afleming@citizen.org).