Common Cause

Prescription For Power

How Brand-Name Drug Companies Prevailed Over Consumers in Washington

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A Report From the Common Cause Education Fund

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Common Cause — a citizens' grassroots lobby with 200,000 members throughout the country — is dedicated to making government more open, honest and accountable at the national, state and local levels.

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June 2001

Their Strategy

In the early 1990s, at a time when the Clinton Administration, Congress and public opinion all had rallied against the pharmaceutical industry and the rising prices of prescription drugs, brand-name drug companies used a time-honored medicine to ease political pressure and pain and kept upping the dosage.

Over the past five election cycles, the Pharmaceutical Research and Manufacturers Association (PhRMA) — the trade group for brand-name drug companies — and PhRMA members wrote a prescription for an estimated **$360 million in political contributions, lobbying and advertising campaigns** to protect its legislative agenda.

- Between January 1, 1991 and December 31, 2000, these special interests gave **$38.1 million in political contributions**, including more than $21.4 million in soft money donations to the national political parties and more than $16.6 million in Political Action Committee (PAC) donations to federal candidates, according to Common Cause. Soft money donations alone increased ten-fold over the past decade.
- Between January 1, 1996 and December 31, 2000, the pharmaceutical industry also spent more than **$256 million to lobby** Congress, the White House and federal regulators. (This estimate is only a partial estimate since some of the year-end 2000 reports are not yet available.)
- It is estimated that since 1993, PhRMA alone has spent well over **$65 million on advertising campaigns** to fight legislative proposals with which it disagreed, often funneling the money through other groups.

The industry's money cure disarmed its critics and played a key role in stopping any attempts to rein in prices or increase competition with generic drugs. As Kim D. Slocum, director of strategic planning and business development at AstraZeneca recently remarked, "Our industry has had a very successful run over the past six to seven years. It's about as good as you can get…."

Indeed, since 1994, the financial health of the drug industry has grown more and more robust, as it racked up one legislative victory after another. With annual sales of $110 billion, the pharmaceutical industry's 18.6 percent return on revenues ranked it as the nation's most profitable industry last year.

"The drug industry used the tried and true formula for success in Washington — spend hundreds of millions of dollars to buy access and influence with Congress and the White House, while burnishing your public image," said Common Cause President Scott Harshbarger. "This industry, however, racked up its successes at the expense of the American public. We all rely on life-saving medicines, and no one faults this industry for its quest for reasonable profitability. But these companies, whose profits exceed all other industries', used their political power to sabotage all efforts to reduce the cost of prescription drugs for American families. Their conduct hurts our pocketbooks and jeopardizes our health. Their success is a testament to the ability of big money to trump fair and reasonable public policies."

Design For Giving

Between January 1, 1991 and December 31, 2000, PhRMA and the companies that belong to the trade group gave a total of $38.1 million in political contributions, including more than $21.4 million in soft money donations.

Of that total, $28.7 million went to Republicans and $9.4 million went to Democrats.

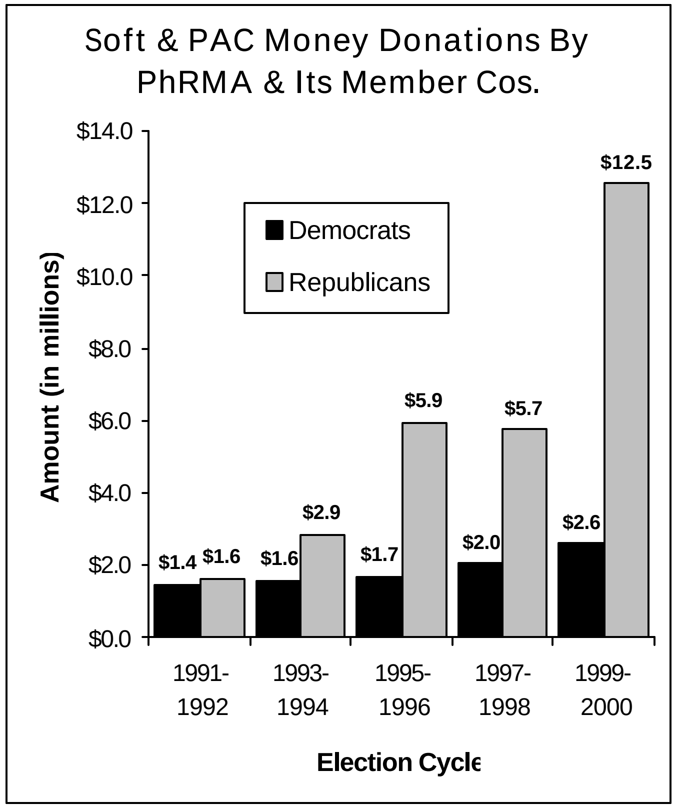
PhRMA and its member companies gave the $38.1 million wisely.

Its contributions increased when the industry was fighting particular legislative battles.

For example, drug interests' giving increased by 45 percent during the 1993-94 election cycle, as the industry — whose poor public image then ranked on a par with tobacco companies — faced a newly elected Bill Clinton who had campaigned on the promise that he would go after greedy drug companies.

Giving spiked again to $7.6 million during the 1995-96 election cycle as brand-name drug companies successfully fought to prevent Congress from fixing a glitch in the General Agreement on Tariffs and Trades (GATT) that resulted in a patent extension windfall for 100 brand-name prescription drugs.

And donations soared to $15.1 million in the 1999-2000 election cycle, as drug companies struggled to derail a Clinton Administration proposal that would extend prescription drug benefits to Medicare recipients, a proposal that companies feared would lead to price controls.



(PAC & soft money donations cover the period January 1, 1991 through December 31, 2000)

Top Contributors of PAC & Soft Money Among PhRMA & Its Member Companies

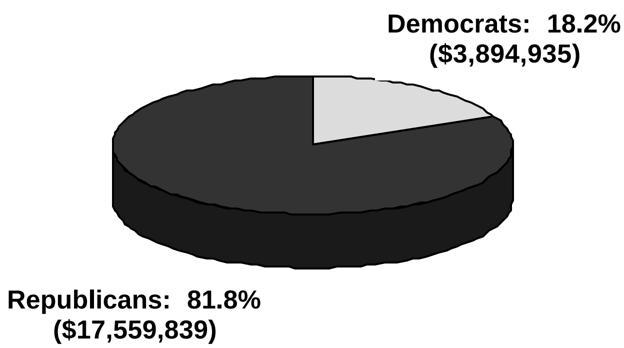
Donor	Amount
1. Pfizer Inc	$5,118,247
2. GlaxoSmithKline	5,066,315
3. Bristol-Myers Squibb Co	3,807,427
4. Eli Lilly & Co	3,527,295
5. Schering-Plough Corp	2,516,085
6. Novartis Pharmaceuticals	2,278,313
7. Aventis Pharma AG	2,229,653
8. Hoffman-La Roche Inc	1,757,995
9. Pharmacia Corp	1,670,293
10. American Home Products Corp	1,483,293
17. PhRMA	837,012

The industry increasingly allied itself with the Republican party, which it perceived as more supportive of its goals, and which took control of Congress in 1995.

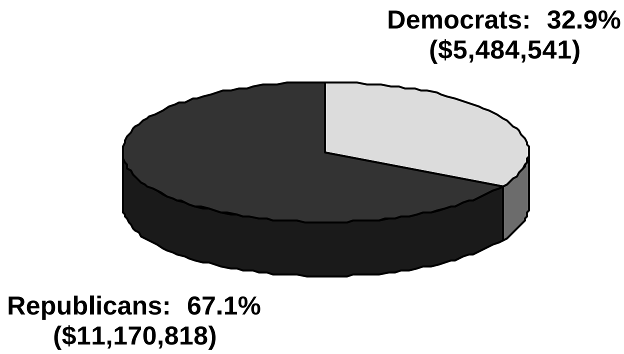
In the 1991-92 election cycle, when Democrats were the majority in the House and Senate, the industry gave about the same amount to each party. But when Republicans took over control of the House and Senate in 1995, the periodical *Pharmaceutical Executive* predicted "a whole new ball game in Washington" and drug companies began to tilt heavily towards the GOP.

By the 1995-96 election cycle, PhRMA and its member companies gave $5.9 million to Republicans, more than three times the industry's contributions to Democrats that election cycle. By the 1999-2000 cycle, Republicans received nearly five times as much as Democrats.

Soft Money Donations to the National Parties From PhRMA & Its Member Companies
January 1, 1991 through December 31, 2000



PAC Money Donations to Federal Candidates From PhRMA & Its Member Companies
January 1, 1991 through December 31, 2000



Top Recipients of PAC Contributions From PhRMA & Its Member Companies
January 1, 1991 through December 31, 2000

Senate	
1. Hatch (R-UT)	$257,802
2. Frist (R-TN)	164,707
3. Santorum (R-PA)	162,484
4. Dodd (D-CT)	141,898
5. DeWine (R-OH)	135,133
6. Specter (R-PA)	128,550
7. Lieberman (D-CT)	119,600
8. Ensign (R-NV)	119,099
9. Grassley (R-IA)	103,000
10. Bond (R-MO)	93,369

House	
1. Thomas (R-CA/21)	$192,000
2. Johnson (R-CT/6)	150,741
3. Hastert (R-IL/14)	120,250
4. Rangel (D-NY/15)	108,550
5. Upton (R-MI/6)	99,842
6. Dingell (D-MI/16)	99,750
7. Coble (R-NC/6)	98,179
8. Bilirakis (R-FL/9)	97,491
9. Barton (R-TX/6)	95,052
10. Matsui (D-CA/5)	94,419

Nevertheless, the drug industry continued to cultivate some key Democrats.

The industry has always been generous to powerful Democrats representing states with heavy concentrations of drug companies, such as Senator Joseph Lieberman (D-CT), Senator Robert Torricelli (D-NJ), and former Senators Bill Bradley (D-NJ) and Frank Lautenberg (D-NJ).

During the 2000 Democratic convention, Johnson & Johnson, Novartis Pharmaceuticals and Merck all helped finance parties, dinners and breakfasts for Democratic delegates from New Jersey, including a reception honoring Senator Torricelli and the New Jersey congressional delegation, co-sponsored by Honeywell and drug giant Merck.

The industry also has had cordial relations with Senator John Breaux (D-LA), who co-chaired the Bipartisan Medicare Commission and has co-sponsored Medicare prescription drug legislation that agreed with the industry's approach. Indeed, during the 2000 campaign, Merck & Co, Novartis and Bristol-Myers Squibb were among the corporate sponsors of a Mardi Gras event at Paramount Studios in Hollywood honoring Breaux.

The industry gave to power.

Drug interests concentrated their giving on Members of Congress with the most sway over their business. A decade of strategic giving has given the drug industry likely allies on key committees.

In the 107th Congress, Members of the House Ways and Means Committee have received more than $1.6 million in industry contributions since 1991. On average, Ways and Means Committee members received $39,769 from PhRMA and its member companies, or more than double the average contribution of $16,164 to House Members.

That strategic giving intensifies at the subcommittee level. For example, members of the Subcommittee on Health alone have received $586,841 from PhRMA and its members, or an average contribution per member of $45,142.

Likewise, members of the current Senate Finance Committee have received $1.2 million from drug interests, or $61,199 on average, nearly one and one-half times the $41,495, on average, that the industry gave to all Senators since 1991.

The same trends persist in the House and Senate Judiciary Committees, which have jurisdiction of drug patent issues. Current members of these committees have received a total of more than $1.4 million from drug interests.

The industry has adapted to new political trends.

Since 1991, PhRMA and its members have given a total of $529,550 to the 53 Leadership PACs of current Members of Congress. They've given $83,250 to the New Democrat Network, founded by Senators Lieberman and Breaux, $58,500 to then-Senate Majority Leader Trent Lott's (R-MS) New Republican Majority Fund, and $53,000 to then-Senate Judiciary Chair Orrin Hatch's (R-UT) Campaign for America's Future.

Top Recipients Of PAC Money From PhRMA & Its Member Companies Among the Leadership PACs of Current Members of Congress
January 1, 1991 through December 31, 2000

Committee	Politician	Amount
New Democrat Network	Lieberman (D-CT); Breaux (D-LA)	$83,250
New Republican Majority Fund	Lott (R-MS)	58,500
Campaign For America's Future Inc	Hatch (R-UT)	53,000
Republican Majority Fund	Nickles (R-OK)	38,500
Palmetto Leadership PAC	Thurmond (R-SC)	25,500
Americans For a Republican Majority (ARMPAC)	DeLay (R-TX)	24,500
The Freedom Project	Boehner (R-OH)	23,500
Defend America PAC	Shelby (R-AL)	20,000
Keep Our Majority PAC (KOMPAC)	Hastert (R-IL)	18,500
Volunteer PAC	Frist (R-TN)	14,000

Lobbying

PhRMA and its member companies have spent at least $256 million on lobbying over the past five years, according to federal lobbying reports. Money has bought drug interests some of the most well-connected political operatives in Washington.

PhRMA has directly retained key political operatives to advance the industry's agenda. Former congressional staff on PhRMA's payroll have included: Barry Caldwell, former chief of staff for Senator Arlen Specter (R-PA); Rodger Currie, a former Majority Counsel for the House Commerce Committee; Peter Rubin, former legislative director for Representative Jim McDermott (D-WA); Rebecca Jones, former staff member, Senate Special Committee on Aging, and Ann-Marie Lynch, former staff director for the House Ways and Means Committee's Subcommittee on Health. According to *National Journal*, PhRMA in 1999 retained former Representatives Vic Fazio (D-CA) and Vin Weber (R-MN) for its Medicare lobbying efforts.

And PhRMA members have retained well-connected lobbying firms to make their case on Capitol Hill. For example, in 1999, according to Public Citizen, PhRMA, Bristol-Myers Squibb, Johnson & Johnson, Pfizer and Wyeth-Ayerst spent $900,000 on services from Steelman Health Strategies — more than the drug companies paid any other firm that year. The firm's head, Deborah Steelman, a former official at the Office of Management and Budget (OMB), reportedly had close ties to Representative Bill Thomas (R-CA), then chair of the Ways and Means Health subcommittee. Steelman also served on a Bipartisan Commission on the Future of Medicare, which Thomas co-chaired. According to Public Citizen and the Center for Responsive Politics, employees of Steelman's firm who lobbied for drug clients included Shawn Coughlin, a former Ways and Means staffer, and Steve Jenning, former Chief of Staff to Senator Ron Wyden (D-OR). (Steelman now is vice president for corporate affairs for Eli Lilly & Co. Eli Lilly's senior vice president Mitchell Daniels Jr. now serves in the Bush Administration as head of the Office of Management and Budget.)

That same year, Anthony Podesta and his lobbying firm, podesta.com, took in $540,000 from the pharmaceutical industry. Mr. Podesta's brother is John Podesta, a former chief of staff in the Clinton Administration.

Lobbying Expenditures By PhRMA & Its Member Companies

Year	Amount
1996	$46,812,890
1997	53,462,346
1998	49,084,066
1999	60,351,654
2000*	47,095,075

**Some year-end 2000 reports are not yet available.*

(Charts and graphs of lobbying expenditures cover the period 1/1/96 through 12/31/00)

Top Spenders On Lobbying Among PhRMA and Its Member Companies

Donor	Amount
Pfizer Inc	$31,800,628
GlaxoSmithKline	27,866,116
Merck & Co	25,560,000
PhRMA	23,800,000
Schering-Plough Corp	23,790,508
Eli Lilly & Co	20,166,442
Bristol-Myers Squibb Co	16,837,685
Abbott Laboratories	15,235,447
American Home Products Corp	12,720,090
Pharmacia Corp	11,129,669

Also in 1999, lobbyist Scott Hatch, Senator Hatch's son, had Schering-Plough, Glaxo Wellcome, and Pfizer as clients.

For the past several years, drug giant Schering-Plough also has enlisted an army of Washington insiders to lobby Congress, including former Senate Majority Leader Howard Baker (R-TN), former Watergate prosecutor Richard Ben-Veniste, former Gore fundraiser Peter Knight, former Senator Dennis DeConcini (R-AZ), and Linda Daschle, wife of then-Senate Minority Leader Tom Daschle (D-SD). (Linda Daschle, however, lobbied only in the House, not the Senate.)

Just a Spoonful of Citizens Makes the Medicine Go Down

Drug companies know that lobbying campaigns directly mounted by them can come under suspicion. According to the *New York Times,* since 1993, PhRMA has formed three "grassroots" groups with names that hinted of no drug company involvement to convey its message to the public. In each case, these groups were coalitions that included citizen and patient organizations, many of whom received some of their financial support from pharmaceutical companies. But it was PhRMA money and the public relations and marketing expertise the trade group brought to the table that got the groups off the ground and kept them running.

In 1993, when brand-name drug companies wanted to prevent the Clinton Administration effort to help control Medicaid spending on prescription drugs, their trade group, then called the Pharmaceutical Manufacturers Association (PMA), retained a public relations group to start the Coalition for Equal Access to Medicines. The coalition, which described itself as "an ad hoc volunteer organization" included officials from the National Rainbow Coalition, the National Urban League and the National Multiple Sclerosis Society. "We don't want this to be looked at as a drug industry issue alone because we have an obvious self-interest," a PMA vice president told *The New York Times.*

But John Rother, legislative director of the AARP, called the coalition "a pretty dubious effort to hide behind some minority groups and protect your economic interests in so doing."

In 1994, PhRMA provided startup money for Citizens for the Right to Know (CRK). The spokesman for the group, who testified before Congress in the summer of 2000 in defense of brand-name drug companies, is employed by the Perry Communications Group, a public relations firm which has PhRMA for a client. CRK is based at the Perry Communications' Sacramento office and Perry's president serves as the CRK's executive director. CRK's web site states the group's goal is "to pursue basic consumer fairness in health care." The web site contains stories of CRK's lobbying in California to prevent Health Maintenance Organizations from limiting the prescription drugs for which they would provide coverage.

Citizens for Better Medicare (CBM), whose executive director, Tim Ryan, had been PhRMA's advertising director, was formed by PhRMA in 1999. The group spent an estimated $65 million in the 1999-2000 election cycle fighting the Clinton Administration's proposal to extend a prescription drug benefit to Medicare.

Rx for Legislative Victory

The brand-name drug industry has embraced a winning strategy:

- Inoculating Themselves Against Competition: Congress has helped brand-name companies hold on to their patent rights on their most profitable products, preventing consumers' access to cheaper generic versions of these popular drugs.
- Unreasonable Prices: Congress and federal regulators resisted pleas from patient and consumer groups to ensure that drugs developed at taxpayer expense are not sold at exorbitantly high prices.
- Tax Breaks Are Good Medicine: Despite evidence that brand-name drug companies pay far less federal taxes than other companies, Congress has done little to eliminate these lucrative tax benefits. In the one instance where Congress voted to phase out a tax break, it did so on the terms and timetable most favorable to the industry.
- Other Victorious Fights: The industry has successfully fought back all other legislative proposals that would result in lower prices for brand-name prescription drugs.

Inoculating Themselves Against Competition

Brand-name drug companies lose profits when the patents on their most popular drugs expire, permitting generic drug companies to manufacture much cheaper versions of the same medicines, without having to repeat the clinical studies used to develop the brand-name drugs. The loss of patents can mean the loss of billions of dollars for the major drug companies, leading them to fight fiercely to hold on to those patents for as long as possible.

"There should be no mistake that the whole thing is about cash," health economist Uwe Reinhardt told *Newhouse News Service*. "If I worked for one of these [brand-name] companies, I'd do whatever I could to block a product that took cash away from me. That's the name of the game."

But in this quest for corporate profits, there is a loss to consumers. Restricting access to generic drugs has cost consumers as much as $550 million a year. Much of these costs have been borne by senior citizens. People over age 65 account for about one-third of all spending on drugs and 12 million older Americans lack insurance coverage for prescription medication.

Drug companies exploited a loophole that benefits brand-name companies that was unintentionally created in 1994 when Congress passed legislation implementing the latest round of the General Agreement on Tariffs and Trade (GATT).

The GATT changed the rules on patents, and as a result, many companies were going to be allowed to keep their patents for an extra year or two.

Consumer groups and generic drug companies asked Congress to eliminate this unplanned windfall for brand-name drug companies, but Congress failed to listen. As a result, the generic versions of more than 100 prescription drugs were delayed by up to 2 years; those drugs included Glaxo Wellcome's Zantac (ulcer), Merck's Mevacor (cholesterol), and Bristol-Meyer Squibb's Capoten (heart).

Lobbied hard by Glaxo and other drug companies, Congress refused to pass legislation that would undo GATT's impact on drug patents. As a result, the GATT changes may ultimately cost consumers an estimated $6.2 billion in higher drug prices over a 17-year period, according to estimates from the Prime Institute at the School of Pharmacy, University of Minnesota. (The Prime Study was funded by the generic drug industry.)

GATT's impact on Glaxo Wellcome's popular Zantac gained the company a $1 billion windfall, according to Prime director Stephen Schondelmeyer. Glaxo increased its political giving when Congress was considering closing the GATT loophole. The company gave its first $100,000 soft money contribution to the Republican party on June 28, 1996, the day after it won a key Senate vote.

Congress' failure to act "proves that a majority of Senators choose to side with major campaign contributors such as the giant pharmaceutical companies, and not consumers, taxpayers and senior citizens," said James P. Firman, president of the National Council on the Aging.

There have been other attempts by drug companies to extend the life of their patents. In 1996, for example, G.D.Searle & Co., convinced Congress to extend the patent on its arthritis drug, Daypro, one of the company's most popular products which brought in about $280 million in sales in 1996. Searle argued that it was entitled to the extra time because of FDA delays in approving the drug. The extension, which is worth millions of dollars to Searle, was quietly dropped into the 1996 omnibus budget bill, with the help of former Representative John Porter (R-IL), in whose district many Searle employees reside.

Because of the changes in the GATT, and due to a provision of the Hatch-Waxman law, Schering-Plough had already received two extensions totaling nearly four years on the patent for its popular allergy medication, Claritin, with annual sales of about $3 billion, 80 percent generated from American consumers.

With such rich revenues at stake it's not surprising that Schering-Plough was unwilling to let go of its Claritin patent and has been lobbying intensely for congressional passage of a patent extension bill that would help it and several other drug companies delay the 2002 expirations of their best-selling products.

Schering-Plough didn't lack for congressional champions. In the 106th Congress, for example, Senator Torricelli introduced a bill that would give Claritin and six other drugs the chance to have their patents reviewed and lengthened by the U.S. Patent and Trademarks Office.

Senator Torricelli introduced his bill on May 27, 1999, one day after Schering-Plough made a $50,000 donation to the Democratic Senatorial Campaign Committee, which Torricelli then chaired. Only 17 days before, Torricelli's staff had assured the *New York Times* that the Senator had no plans to sponsor the bill.

On August 4, 1999, Senator Hatch, as chair of the Senate Judiciary Committee, held hearings on the Claritin bill. Between July and September of that same year, Senator Hatch — then a candidate for the Republican presidential nomination — and his staff flew on the Schering-Plough Gulfstream executive jet five times, according to the *Associated Press*.

But consumer outrage and bad publicity over these patent extension attempts have so far stymied these congressional efforts. And Schering-Plough now is fighting on another front, strongly opposing efforts by one California health insurance company to persuade the Food and Drug Administration (FDA) to permit consumers to buy Claritin and two other popular allergy drugs without a prescription, a development, industry experts say, that could greatly reduce the price of the drug and eat into Schering-Plough's profits.

But Schering-Plough likely won't have to worry about the FDA acting any time soon on over-the-counter sales, since many doubt the agency has the authority to require the companies to take this action and since the Bush Administration has yet to name a new FDA Commissioner.

And Schering-Plough — and other brand-name drug companies — are finding other ways to extend their valuable patents, using tactics which Congress up until now has failed to prevent.

Companies now routinely will file patents on some element of their brand-name drugs — the shape of the tablets or the process for making the product — and then sue a generic drug company for patent infringement. Suing automatically keeps the patent from expiring for 30 months, or until the case is resolved.

In the 106th Congress, Senators Charles Schumer (D-NY) and John McCain (R-AZ) sponsored legislation to make it more difficult for brand-name companies to delay the introduction of generic versions of their products. The legislation, introduced in September 2000, never moved out of committee.

But Senators Schumer and McCain are trying again in the 107th Congress. At a press conference in April 2001, flanked by representatives of consumer, senior citizen, and union groups, and noting the support of auto and health insurance companies for their efforts, Senator McCain said that he hoped the coalition that he and Senator Schumer had put together "would match the power of the drug industry."

Unreasonable Prices

The National Institutes of Health (NIH) finance almost one-third of medical research, much of which leads to the development of groundbreaking new drugs. But federal regulators and Congress have failed to require that companies that profit from this research promise to sell their products at reasonable prices.

As a consequence, Tamoxifin, for breast cancer, Xalatan for glaucoma, and other drugs crucial to patient care earn the companies millions. One dose of Tamoxifin costs a consumer $241.

More than a decade ago, the NIH had a "reasonable pricing" rule for drugs developed in part through federally-funded research. The companies that NIH selected to test and sell these drugs got exclusive rights to market them for a limited time, but would be required to offer them at a price that reflected the public investment in the product and the need to serve the public interest. The drug companies resisted this rule, and refused to cooperate with the NIH on joint ventures. As a consequence, the NIH reversed itself in 1995, no longer insisting that such agreements with drug companies include a reasonable pricing clause.

Taxol, a potent breast and ovarian cancer drug, resulted in part from 30 years and more than $30 million of NIH research. But from 1992 until the fall of 2000, Bristol-Myers Squibb had a monopoly on the drug, and has been able to sell the drug at a cost to consumers of about $1,000 to $2,000 a dose — $10,000 to $20,000 for a full course of treatment. Sales of Taxol brought in $1 billion a year to Bristol-Myers Squibb.

The NIH in 1992 gave Bristol-Myers Squibb exclusive market rights on Taxol rights for five years. But Bristol-Myers extended its hold on the drug by suing companies waiting in the wings to make a substantially cheaper generic version of the drug after the five years expired. That litigation brought Bristol-Myers another three years. According to *The Miami Herald*, Bristol-Myers sales of Taxol total about $3 million a day, with a profit margin estimated at 90 percent.

Even though Bristol Myers Squibb and other companies have compassionate care programs to give these expensive life-saving drugs to some impoverished patients, critics claim that the high cost of these drugs has continued to pose terrible financial burdens on many cancer victims. “There are people with second, third, and fourth mortgages on their houses to pay for this,” Jeffrey Kraws, a pharmaceutical analyst for Gruntal & Co., told *The Miami Herald.* “This isn’t cough medicine. People are dying.”

After two years of trying, Representative Bernie Sanders (I-VT) in 2000 got House approval of a rider in an appropriations bill that would have forced drug companies to charge “reasonable prices” for drugs developed at taxpayer expense. Sanders’ amendment to a spending bill for the Department of Health and Human Services passed overwhelmingly, by a vote of 313 to 109. But it died in the Senate when Senators voted, by a vote of 56 to 39, to table the amendment.

“The pharmaceutical industry is doing a good job protecting their interest,” former NIH head Dr. Bernadine Healy told CBS News. “Why is the government not protecting the government’s interest and the public interest?”

Tax Breaks Are Good Medicine

The pharmaceutical industry has successfully held onto tax breaks that help to enhance its bottom line, an accomplishment that has made the industry, according to a 1999 study by Congressional Research Service, the most lightly taxed of all major industries in the U.S.

The CRS study, released in December 1999, reported that between 1993 and 1996, drug companies were paying taxes at a 16.2 percent rate, compared to an average effective tax rate of 27.3 percent for all other major industries.

The reason for the discrepancy? Pharmaceutical companies have been able to take advantage of several tax breaks enacted by Congress over the years.

One major tax benefit for brand-name drug companies has been the research and experimentation tax credit. The credit, originally enacted in 1981 as a temporary measure, has been extended 10 times, most recently in 2000, when Congress gave it a five-year reprieve. The 20-percent credit rewards research spending above a certain base level.

PhRMA has strongly supported the extension of the credit over the years, which has saved the industry billions of dollars on its taxes. And in 2000 when Senator Paul

Wellstone (D-MN) and Representative Pete Stark (D-CA) proposed taking the tax credit away from companies that charged U.S. consumers 5 percent or more for prescription drugs than they did foreign consumers, PhRMA officials quickly responded. "The Wellstone-Stark bill penalizes the most innovative pharmaceutical industry in the world for taking on the challenge of developing about half of the world's medicines," said PhRMA spokesman Jeff Trewhitt.

Over more than two decades, PhRMA's also saved billions through another tax credit. Brand-name drug companies were the primary beneficiaries of a tax break, enacted in 1976 that permitted U.S. companies that had operations in Puerto Rico to avoid having to pay federal income taxes on their profits from those operations. The Section 936 tax break ended up granting disproportionate benefits to pharmaceutical companies, according to the General Accounting Office.

Critics cite a GAO report which noted that in 1987, drug companies received 56 percent of the $3 billion annual tax credit, but employed only 18 percent of the workers in U.S. plants in Puerto Rico. A 1999 CRS study showed that between 1990 and 1996, the Section 936 credit saved drug companies $13 billion in federal taxes.

In 1992, drug companies were able to rebuff an effort by then-Senator David Pryor (D-AR) to link the benefits of the tax credit to the ability of the companies to keep drug prices at or below the rate of inflation. The Pryor amendment was tabled by a vote of 61 to 36.

The following year, as Congress faced sharp budget cuts to deal with the growing national debt, President Clinton proposed that the credit be limited to 60 percent of the wages paid to employees in Puerto Rico.

The fight to retain the Section 936 credit consumed "more lobbying" and "more political capital … than all but the biggest-ticket items" in the proposed deficit reduction bill, according to *The Washington Post*.

One of those lobbying hard for the drug companies was Beryl Anthony, Jr., a former Democratic Member of Congress from Arkansas, and a close associate of President Clinton. The drug industry also pressured then New Jersey Democratic Senator Bill Bradley, whose constituents included thousands who worked for pharmaceutical firms based in his state. Also concerned about eliminating the tax credit was then-Senator Daniel Patrick Moynihan, with many Puerto Rican constituents in New York. In the end drug interests were able to get a better deal when Congress agreed to not require that the credit be tied to wages, and to phase in the 60 percent cut over five years.

After Republicans took control of Congress, the new House Budget Chair John Kasich (R-OH) and House Ways and Means Chair Bill Archer (R-TX) also tried to eliminate the Section 936 credit. According to *The Washington Post*, Haley Barbour, then chairman of the Republican National Committee, was one of those arguing against the repeal, contending that eliminating the Section 936 program really was increasing taxes on corporations. Barbour's former lobbying firm, to which he returned after serving as RNC chair, represented PhRMA in its lobbying efforts opposing the end of the tax break, but Barbour denied there was any connection.

In 1996, Congress did vote to eliminate this particular tax break, but Members did so on the drug companies' terms. The tax break would not apply to any future investment in Puerto Rico but current investments would have 10 years until the tax break would be completely eliminated. That gradual phase-in represented a victory for the drug lobby.

"For the companies, the 10-year com-promise is probably satisfactory," noted *Crain's New York Business*, citing an industry lobbyist who believed that the gradual phase-out would give companies enough time to move operations to countries with even lower costs, such as Ireland, Mexico or Singapore.

Other Victorious Fights

- Border Wars

PhRMA invested directly in at least one advertising campaign during the 1999-2000 election cycle. The trade group fought hard to defeat efforts in Congress to permit pharmacists and drug wholesalers in the U.S. to re-import prescription drugs, most of them originally manufactured in the U.S. and then shipped to other countries. The measure was expected to sharply reduce the price of prescription drugs since most prescription drugs sold outside the U.S. are subject to government-imposed price limits. It represented, according to PhRMA president Alan Holmer, "one of the most important issues we're facing in Washington."

PhRMA charged that re-importation would permit adulterated or tainted drug products to enter this country, posing "unacceptable health risks to patients."

But supporters of the re-importation measure argued that it would offer consumers, particularly senior citizens lacking insurance coverage, access to brand-name prescription drugs at a substantial discount. Congressional research commissioned by one of the measure's sponsors, Representative Bernie Sanders (I-VT), documented that his constituents were paying at least 81 percent more for popular prescription drugs than consumers in either Canada or Mexico.

Senator James Jeffords (I-VT), the sponsor of a similar bill in the Senate, said re-importation "will help address the curse of out-of-control drug prices" and that it could be done safely under the regulation of the FDA.

According to *The Washington Post*, PhRMA "launched an expensive advertising and lobbying blitz" against the proposal, which included TV spots in 28 TV markets and full-page advertisements in 60 newspapers. Among those targeted was then-Senator Slade Gorton (R-WA), who co-sponsored the re-importation amendment with Senator Jeffords. Gorton was in a tough Senate race last year. The advertisement mentioned Gorton by name and told viewers to call him and "stop the foreign drug-import amendment" which, PhRMA warned, posed a "deadly" threat to American consumers.

In July, 2000 alone, according to published reports, PhRMA spent $1 million on TV and print ads, targeting several key Members of the House and Senate, including Senators Thad Cochran (R-MS), Tom Harkin (D-IA), Dianne Feinstein (D-CA), and Richard Durbin (D-IL) and Representatives Joe Skeen (R-NM), James Walsh (R-NY), Marcy Kaptur (D-OH), and Rosa DeLauro (D-CT). According to the *Associated Press*, the ad campaign aimed to influence those legislators the industry expected to serve on a House-Senate conference committee that would deal with the re-importation amendment, which passed both the House and Senate.

Democratic critics said the industry ad campaign achieved the desired results and that the final version of the re-importation amendment was substantially weakened. But one of the original re-importation bill's sponsors, Representative Bernie Sanders, said that the Clinton White House also had shown "a marked lack of enthusiasm" for the measure. "[T]he pharmaceutical industry could win out because of the hold it has over the leadership of both parties," Sanders said.

The final re-importation provision required the go-ahead of the Secretary of

Health and Human Services before it could be implemented. In late December, Clinton's HHS Secretary Donna Shalala refused to request the $23 million necessary to begin to implement the amendment. In a letter to President Clinton, Shalala wrote the amendment's "flaws and loopholes … make it impossible for me to demonstrate that it is safe and cost effective."

Senator Byron Dorgan (D-ND), a co-sponsor of the re-importation legislation, faulted Shalala's actions. "They're saying it won't work, but now they won't even give it a chance," Dorgan told *The Washington* Post*.*

But PhRMA hailed Shalala's decision, saying that her findings "confirm all our concerns" about the re-importation amendment.

- 'Flo' And Dough To the Rescue

When PhRMA wanted to take on the Clinton Medicare Proposal, it did not wage its public relations campaign directly. Instead, PhRMA in 1999 formed Citizens for Better Medicare (CBM), which spent more than $50 million on TV ads and "millions more" on radio, newspaper and direct mail advertisements, according to *The Wall Street Journal.* (David Magleby of the Center for the Study of Elections and Democracy at Brigham Young University estimates that CBM spent $65 million during the 2000 campaign.) "There isn't any other industry that has spent this kind of money" on an election, said Kathleen Hall Jamieson, dean of the Annenberg School of Communications at the University of Pennsylvania.

Indeed, the drug industry's spending in the 2000 election cycle well exceeded the $40 million campaign waged by the tobacco industry in 1998 to derail a tobacco settlement bill in Congress.

The group's goal was to kill Administration proposals for a Medicare prescription drug benefit for seniors that the drug industry feared would lead to price controls. Some advertisements attacked the Clinton Administration's proposals to extend drug coverage through Medicare, featuring Flo, who doesn't want "big government" in her medicine cabinet.

But the PhRMA ads were not just about the issue; they had a political edge, and seemed timed and placed to best enhance the election prospects of Republican Members of Congress sympathetic to the industry's views on a Medicare prescription drug benefit.

According to the *Los Angeles Times*, the company that placed advertisements for CBM, National Media of Alexandria, VA, was the same company that placed ads for the Republican National Committee. And the *St. Petersburg Times* reported that Alex Castellanos in 2000 was a media consultant to Presidential candidate George Bush, the Republican National Committee and CBM, all at the same time.

In late 1999, according to a study by Public Citizen, CBM ran a media campaign that targeted vulnerable Democrats who had released drug price discrimination surveys in their districts and who were sponsors of a prescription drug bill sponsored by Representative Tom Allen (D-ME) that would have required drug companies to give discounts on drugs sold to Medicare recipients. Democrats targeted included: Representatives Mark Udall (D-CO), Bill Luther (D-MN), Darlene Hooley (D-OR) and Leonard Boswell (D-IA). In each advertisement, the Representative was accused of "playing politics, supporting a bill that may sound good but doesn't help seniors get prescription coverage."

According to the Brennan Center for Justice, Citizens for Better Medicare spent $7 million on advertisements that aired between June 1 and October 8, 2000, touting a Medicare proposal similar to the Bush proposal on Medicare, but not mentioning Bush by name. The ads ran in those parts of the country crucial to a Bush victory in the fall. What Citizens for Better Medicare spent is more than the nearly $5.2 million spent by all the pro-Gore groups during the same time period. "[G]iven the volume and targeting … they [were] an important part of the story of this presidential campaign," said the study's author, University of Wisconsin Professor Ken Goldstein.

Other CBM advertisements went after specific candidates. For example, in the fall of 2000, Citizens for Better Medicare spent $5 million on TV spots praising 17 Republican incumbents and one Democratic incumbent, who supported an industry-endorsed Republican prescription drug proposal. Typical was an advertisement supporting Representative Ernie Fletcher (R-KY) featuring a cancer victim who praises him for voting "to strengthen and improve healthcare for seniors" and making sure that "medicines are available for every senior who needs them." CBM reportedly spent almost $540,000 on TV ads in Fletcher's district.

While CBM focused most of its money on House races, it also played a role in some Senate fights as well. CBM went after Brian Schweitzer, who was trying to unseat Senate Republican incumbent, Senator Conrad Burns (R-MT). Schweitzer highlighted the problem of high drug prices by organizing bus trips to Canada to buy cheaper prescription drugs. During 2000, CBM ran TV ads that accused Schweitzer of wanting "Canadian-style government controls on prescription medicines."

Brand-name drug companies also ponied up $10 million for a $20 million ad campaign launched last October by the U.S. Chamber of Commerce in a dozen states with tight legislative battles, according to the *Wall Street Journal*. The advertisements helped defend Republican candidates who opposed the Clinton Medicare prescription drug plan and who were being attacked by labor and other groups.

As PhRMA was targeting the Clinton plan, brand-name drug companies were lobbying for a Medicare prescription plan that would not hurt their profit margins. Representative Bill Thomas (R-CA), who chaired the Ways and Means subcommittee on Health, and who is the top House recipient of brand-name drug industry PAC contributions, receiving $192,000 since 1991, last year introduced a bill that would give subsidies to private insurers to encourage them to offer prescription drug coverage to older consumers.

The Thomas bill, introduced on June 15, reflected PhRMA's priorities, expressed in testimony before Congress on June 13. "[T]he best approach would be to provide seniors access to private insurance products," said PhRMA Executive Director Judith Bello. The House Republican leadership prevented a Democratic alternative to the Thomas plan, opposed by PhRMA, to come to the floor for a vote. The Thomas bill passed by a slim margin of 217 to 214. Thomas and the bill's seven sponsors alone received more than $540,000 in contributions from pharmaceutical interests since 1991.

PhRMA's ability to stave off Clinton-style prescription drug coverage was just as successful in the Senate, which did not pass a prescription drug bill. As *The Washington Post* noted in 2000: "Senate Majority Leader Trent Lott (R-MS) and other conservatives have indicated repeatedly that they are in no rush to pass a prescription plan this year."

Conclusion

"With the sudden change of leadership in the Senate, PhRMA's priorities may have a bit rougher going, but no savvy Washington insider expects brand-name drug interests to lose all their clout," Harshbarger said. "The tens of millions that the industry has invested in key policymakers from both parties will stand it in good stead. PhRMA, and its member companies, like so many wealthy special interests, will continue to have great influence on key policymakers under our current money-driven system. Until that system changes, there's no need for PhRMA to change the prescription for buying access and influence in Washington that has worked so well for so many years."

Methodology

Soft money contribution figures in *Prescription For Power* are based on national political party committee reports of their non-federal, or soft money, accounts filed with the FEC covering the period January 1, 1991 through December 31, 2000 and political action committee (PAC) reports of contributions to federal candidates during the same period.

Under current law, corporations and labor unions are prohibited from making contributions in connection with a federal election, while individuals and political action committees (PACs) are subject to federal limits. The term 'hard money' refers to contributions that are legal under federal law for federal elections, while 'soft money' refers to contributions made outside the limits and prohibitions of federal law, including large individual or PAC contributions and direct corporate or union contributions.

National political party committees were required to disclose their soft money contributions beginning in 1991, after Common Cause filed a petition with the FEC, challenging the way in which it was treating soft money.

For more information on soft money and the most recent contributors, contact the **Common Cause Press Office** at 202/736-5770.

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