



Memorandum in Support: S1209A (Montgomery)/ A10389 (Clark)

GMHC urges the passage of S1289A/A10389, an act to amend the New York State civil practice law and rules, as well as the criminal procedure law, in relation to the use in evidence of the possession of a condom.

Condoms are a vital tool for New Yorkers in practicing safer sex and protecting themselves from HIV. According to the U.S. Centers for Disease Control and Prevention (CDC), “a number of carefully conducted studies, employing rigorous methods and measures, have demonstrated that consistent condom use is highly effective in preventing HIV transmission.” Condoms should be promoted by all levels of government as a vital public health and HIV prevention method.

The threat of condoms being used as evidence of sex work endangers the public health of all New Yorkers. Proven prevention methods are a crucial component of sound public policy, responsible budgeting and, and quality law enforcement procedures. We must do all that we can to promote safer sex and end the HIV epidemic. Possible use of condoms as evidence of sex work undermines the efforts of New York State, New York City, and countless non-governmental organizations in promoting safer sex tools and multi-level HIV prevention.

New York City has made significant efforts to combat HIV and sexually transmitted infections, as well as to educate individuals on safer sex. Since 1971, the City of New York has distributed free condoms to promote public health. The City increased these efforts in 2007 by dramatically increasing free condom distribution and awareness throughout its five boroughs. A study published in the *American Journal of Public Health* showed that increasing availability of condoms, through centralized access in schools or distribution by outreach workers raises the likelihood that sexually active youth will use condoms.

New Yorkers disproportionately impacted by HIV must be supported, not criminalized, in using and distributing condoms. Transgender women of color are at disproportionate risk for HIV. They are also disproportionately subjected to the confiscation of condoms and prosecution for sex work using condoms as evidence.

As our city and state governments continue to confront a deteriorating fiscal climate and contemplate further budget cuts, it is vitally important that we consider the value of scientifically proven HIV prevention methods. Making condoms more accessible is not only sound public health policy, but fiscally prudent and responsible. A November 2006 study, published in the journal *Medical Care*, estimated that investing in HIV prevention could save \$303,100 per case of HIV prevented. According to the state AIDS Institute in 2007, (the last year data was available for) 4,585 New York state residents found out that they are living with HIV. If just these cases were prevented, that would translate into almost \$1.4 billion in savings for New York State.

Our public health and policy strategies fail when fear or lack of access results in a New Yorker not carrying or using condoms. The CDC released findings in August 2008 reporting that annual new HIV infections had been underestimated by up to 40%, and that an estimated 56,000 new cases of HIV occur each year nationally. The failure to prevent new infections has grave implications for the New Yorkers disproportionately affected by HIV. We cannot afford to allow fear to put New Yorkers at risk for HIV.

GMHC strongly supports the passage of **S1289A (Montgomery)/ A10389 (Clark)** as a sound public health measure.