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Power Couples: Lawmakers, Lobbyists, and the State of Their Unions

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SCHOOL OF LAW

Susan Frelich Appleton
Lemma Barkeloo & Phoebe Couzins Professor of Law

November 20, 2007

Dear Colleagues,

Ordinarily, I allow my reprints to speak for themselves, but special circumstances prompt this departure from my usual practice of not including a cover letter. Robyn Rimmer, my co-author on *Power Couples*, died suddenly on October 10, 2007, just after our final review of the book pages. Sharing this story provides a small way for me to honor Robyn's memory.

Robyn was an exceptionally bright, determined, and successful law student. Beyond earning top grades in several courses (including two of mine), she was an energetic, engaged, and compassionate member of the law school community, who adored every new challenge. During her last semester in law school, spring 2003, Robyn excelled in her work as a legal intern in the office of Senator Hillary Rodham Clinton, as part of Washington University School of Law's Congressional and Administrative Law Clinic; later Robyn returned to D.C. as an associate at Akin Gump Strauss Hauer & Feld. While she was there, we began corresponding about frequent news reports of politically powerful spouses and the inferences to be drawn from their marriages – a topic that combined my interest in family law and hers in politics. Robyn and I agreed to write a short essay on this topic once the editors of the *Washington University Journal of Law & Policy* decided to organize a volume that would focus on marriage.

Nothing unfolded the way we expected. Most significantly, the on-the-ground research that Robyn planned to do in D.C. was cut short when increasingly frequent and severe migraine headaches required her to take a medical leave from Akin Gump and return to St. Louis. After we submitted our first draft, our once little examined topic became the subject of law reform proposals and ultimately new Congressional rules and legislation; then, key players got caught in various new scandals. As a result, the focus of our essay proved to be a moving target, and our analysis grew longer and our conclusions became more "hedged." As often happens, the publication schedule kept getting delayed, exacerbating these problems. Over the months, Robyn's disabling headaches meant many days when work on the project wasn't possible for her. Despite these adverse circumstances, Robyn did her best to complete her share, including flying back to the D.C. area so that we could present an early version of the paper at the Annual Meeting of the Law & Society Association in Baltimore in July 2006.

When Robyn was pain-free, she was a terrific co-author! But as time passed, those days came less frequently. Sometimes, I thought that this project was too much for her, and I seriously considered stopping before we finished. Usually, however, I kept



pushing us forward because I sensed that working on this project was especially meaningful for Robyn. Perhaps under different circumstances, we would have agreed that new developments required a more thoroughgoing revision or withdrawal of the piece altogether – at least until the area became more settled.

I've taught many law students in over thirty years. I've developed close relationships with a number of them. Yet, because of who Robyn was, I had the type of connection with her that a professor knows comes very rarely and deserves to be treasured and nurtured. I know I learned an enormous amount from Robyn.

In reflecting on our collaboration now, I feel grateful for the opportunity to have reminded Robyn that she had an important identity apart from her debilitating migraine headaches. I hope that she found some satisfaction in this chance to demonstrate her talents as a lawyer, to sharpen her ability to investigate the latest “buzz” in D.C., and to indulge in her fascination with a good political intrigue. I also hope that our essay and its context can provide readers with a glimpse of Robyn's courage, persistence, drive, and enthusiasm – as well as of the bright future that should have been hers.

Sincerely,

A handwritten signature in black ink that reads "Susan Frelich Appleton". The signature is written in a cursive, flowing style.

Susan Frelich Appleton

Power Couples: Lawmakers, Lobbyists, and the State of Their Unions

Susan Frelich Appleton^{*}
Robyn M. Rimmer^{**}

In recent years Congress has made marriage a staple of its legislative menu, introducing constitutional amendments to “protect marriage,”¹ deploying public funds to encourage “healthy marriage,”² and seeking tax reform to abolish forever the so-called “marriage penalty.”³ Yet, for many years, Congress’s well-publicized preoccupation with marriage law and policy has revealed notable gaps. First, Congress has ignored a phenomenon blossoming in its own backyard, the growing number of lawmakers married to

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1. See H.R.J. Res. 88, 109th Cong. (2006) (proposed federal constitutional amendment); S.J. Res. 1, 109th Cong. (2005). Twenty-seven states have adopted constitutional amendments banning same-sex marriage. See CHRISTINE VESTAL, SAME-SEX MARRIAGE RIPE FOR DECISION IN 3 COURTS 5 (2007), http://www.stateline.org/live/digitalAssets/7990_Same-sex_marriage.pdf.

2. See Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7103, 120 Stat. 138 (to be codified at 42 U.S.C. § 603). This 2006 reauthorization of welfare reform legislation includes \$100 million annually for state initiatives to promote “healthy marriages,” specifically pro-marriage programs. *Id.*; see generally Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL’Y & L. 307 (2004); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform’s Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647 (2005).

3. See H.R. 3384, 109th Cong. (2005); S. 78, 109th Cong. (2005) (proposals “to make permanent marriage penalty relief”).

lobbyists—unions that we call “power couples” for short.⁴ This first gap discloses a second and related omission: lawmakers have avoided looking behind the slogans to grapple with the tensions that pervade contemporary understandings of marriage—tensions created by the challenge of reconciling concepts of spousal individuality, marital unity, and gender equality in a modern incarnation of a very traditional institution.⁵

With action at the start of the 110th Congress, however, the Senate has taken a small step into the breach by proposing significant restrictions on spouses in legislator-lobbyist marriages. Responding to widespread news of government corruption, the Senate passed comprehensive ethics reform, including a previously little-noted amendment by Senator David Vitter (R-LA)⁶ that would prohibit all senators from having official contact with any senator’s spouse who is a registered lobbyist or who is employed or retained by a registered lobbyist.⁷ As of this writing, uncertainties about whether the measure will become law remain, given the much more modest regulation of power couples adopted by the House of Representatives in its new House Rules⁸ and its subsequently adopted bill.⁹ Indeed, even

4. We borrow the phrase “power couples” from colloquial discourse to refer specifically to legislator-lobbyist marriages. Of course, there are other types of “power couples” that evoke similar, yet distinct, questions. For example, the activities of “First Ladies,” here and abroad, have received analysis. *See, e.g.*, Sara Krausert, Comment, *From Baking Bread to Making Dough: Legal and Societal Restrictions on the Employment of First Ladies*, 5 U. CHI. L. SCH. ROUNDTABLE 243 (1998) (discussing, inter alia, the service of attorney Hillary Rodham Clinton during Bill Clinton’s presidency); David Carr, *Is Shriver Still Working for “Today”?*, N.Y. TIMES, June 6, 2005, at C1 (discussing journalist Maria Shriver, “first lady of California”); Alan Cowell, *British Press Scolds Mrs. Blair Over a Speech in the U.S.*, N.Y. TIMES, June 10, 2005, at A8 (discussing attorney Cherie Booth, wife of British Prime Minister Tony Blair).

5. Several high-profile judicial opinions and commentaries suggest that the debate focuses exclusively on whether the central purpose of marriage is sexual reproduction and childrearing. *Compare* Goodridge v. Dep’t of Pub. Health, 798 N.E.2d 941, 962 (Mass. 2003), with *Hernandez v. Robles*, 855 N.E.2d 1, 7–8 (N.Y. 2006), and *Andersen v. King County*, 138 P.3d 963, 969 (Wash. 2006). Cf. *Lewis v. Harris*, 908 A.2d 196 (N.J. 2006).

6. We find information about the legislators’ party affiliations and states relevant to our analysis. As a result, we have inserted these abbreviated indications parenthetically after the first reference in the text to a legislator by name. When a legislator’s name appears in a footnote before it appears in text, we have also included this parenthetical information in the footnote.

7. S. 1, 110th Cong. § 113(a), (b), (d) (2007). The measure includes an exception for spouses who worked as lobbyists for a year before the election or marriage. *Id.* § 113(c).

8. H.R. Res. 6, 110th Cong. (2007); *see infra* notes 31–32 and accompanying text (discussing H. Res. 6, 110th Cong. (2007)). These changes were adopted as rules for the House, not as legislation, so they do not need to pass the Senate nor get the President’s signature.

senators who supported the measure have expressed doubts about its ability to survive in the Senate-House Conference Committee.¹⁰

Whatever the ultimate fate of the Senate's response to spousal lobbying, the measure provides a revealing lens through which to examine a number of unsettled issues. For example, one set of issues is political and practical. Prior to the Senate's unexpected action, observers had predicted that meaningful reform would never reach these power couples, regardless of the party controlling Congress, because of the incidence of such marriages among Democrats and Republicans alike.¹¹ What prompted the Senate to defy such predictions and to take the particular approach that it adopted, passing a significant ethics reform bill with numerous amendments that escaped individual votes?¹²

In addition, the Senate's regulation of power couples—as part of a more sweeping response to entanglements between Congress and K Street¹³—invites reflection on the practice of “business as usual” in

9. H.R. Res. 2316, 110th Cong. (2007); *see infra* notes 45–46, 205 and accompanying text (discussing this bill).

10. *See* Interview by Fox News with Senator David Vitter (Jan. 19, 2007) (Vitter's expressions of doubt); *see also* Gail Russell Chaddock, *After House's "100-Hour" Rush, a Senate Slowdown*, CHRISTIAN SCI. MONITOR, Jan. 22, 2007, <http://www.csmonitor.com/2007/0122/p02s01-uspo.html> (quoting skepticism about enactment of such “strengthening” amendments by Senator Tom Coburn (R-OK), who voted against the bill).

11. *See, e.g.*, David D. Kirkpatrick, *Democrats Split on How Far to Go with Ethics Law*, N.Y. TIMES, Nov. 19, 2006, § 1, at 1; John Solomon, *Lawmakers' Lobbying Spouses Avoid Hill Reforms*, WASH. POST, Jan. 17, 2007, at A1; *see also infra* notes 50–60; *cf.* Will Sullivan, *Much Easier Said Than Done*, U.S. NEWS & WORLD REP., June 4, 2007, at 22 (reporting difficulties encountered by ethics reform, despite Democrats' pledge).

12. The Senate barely debated Senator Vitter's various efforts to stop spousal lobbying. *See* 153 CONG. REC. S742 (daily ed. Jan. 18, 2007); 153 CONG. REC. S637–41 (daily ed. Jan. 17, 2007); 153 CONG. REC. S491–92 (daily ed. Jan. 12, 2007); 153 CONG. REC. S322–23 (daily ed. Jan. 10, 2007). Further, no committee considered the amendment, it had no hearing, and the vote occurred only after the amendment, along with several others, was incorporated into the bill by unanimous consent. In addition, members of both the Democratic and Republican leadership expressed opposition to Vitter's efforts, although they voted for the bill. *See* Solomon, *supra* note 11 (noting opposition of Majority Leader Senator Harry Reid (D-NV)); Chaddock, *supra* note 10 (noting concerns of Minority Whip Senator Trent Lott (R-MS)); *see also* Fredreka Schouten, *Senate Democrats Fight Proposal to Ban Relatives Lobbying; Some Back It Only if Family Members Are Grandfathered*, USA TODAY, Jan. 18, 2007, at A4 (noting opposition of Reid and Rules Committee Chair Senator Dianne Feinstein (D-CA)).

13. K Street, a short-hand way to refer collectively to lobbyists, is the site of many influential lobbying firms in Washington, D.C. Led by former House Majority Leader Tom DeLay, Republicans launched the “K Street Project” in 1995 to press lobbying firms to fill high-level positions with Republicans. SourceWatch, K Street Project, <http://www.sourcewatch>.

the nation's capital in the early twenty-first century. Criticizing government corruption, pundits had raised questions about power couples. One news story asked, "How can a member of Congress possibly share a bed and a bank account with a member of the persuasion industry without a life laced by conflicts of interest?"¹⁴ Frank Clemente, director of Public Citizen's Congress Watch, ranked the legislator-lobbyist marriage "way up there on the unseemly scale."¹⁵ Another news report on family lobbying called the phenomenon "an increasingly popular maneuver in the age-old game of influence-seeking in Washington" and observed that today "when a corporation or interest group wants support from a key member of Congress, it often hires a member of the lawmaker's family."¹⁶

These ethical issues, in turn, raise theoretical questions about our contemporary understanding of marriage—questions of family law at the heart of this essay. First, some ethics experts identify the problem raised by power couples, put in its most benign form, as one concerning appearances.¹⁷ Given the importance of appearances and a prevailing ethical standard that emphasizes the need to avoid even appearances of impropriety, perceptions of the activities and relationships of legislator-lobbyist spouses necessarily loom large. What does the response to such power couples say about how we conceptualize marriage today?¹⁸ Second, this essay reveals the

org/index.php?title=K_Street_Project (last visited Feb. 2, 2007); see *infra* notes 22–30 and accompanying text. The House of Representatives ended the K Street Project via rules adopted at the beginning of the 110th Congress. H.R. Res. 6, 110th Cong. § 202 (2007).

14. See Glen Justice, *When Lawmaking and Lobbying Are All in the Family*, N.Y. TIMES, Oct. 9, 2005, § 4, at 3.

15. *Id.*

16. Chuck Neubauer et al., *The Senators' Sons; A Washington Bouquet: Hire a Lawmaker's Kid*, L.A. TIMES, June 22, 2003, at A1. Of course, such accusations emphasize that the lobbying firms and their clients should not escape responsibility for the problems attributed to the rise of power couples.

17. Justice, *supra* note 14 (attributing this view to Stanley Brand, an ethics advisor to lawmakers and former Democratic counsel to the House).

18. This significant element of our analysis, standards in which appearances of impropriety serve as a touchstone for unethical conduct, brings an unavoidably circular quality to the inquiry. Under this appearance-based standard, public perceptions and understandings of marriage, of politics, and of integrity all mark out the ethical limits. And although we do not reject the possibility that government actors support and follow high ethical standards for their own sake, we acknowledge that contemporary officials' emphasis on "spin" means that those held to these standards not only make the rules but also work hard to construct the very

importance of taking a closer look at “the state of the unions” in question, specifically the variations among these marriages and the manner in which these couples exercise, use, and share the power colloquially attributed to them. Ultimately, we question the conventional wisdom that the rise of power couples necessarily manifests gender equality in the public sphere. Instead, we suspect that these couples often re-inscribe the traditional stereotype, in which the husband is the preeminent spouse and the wife plays the role of helpmate, and we urge consideration of this issue in any evaluation of the Senate’s action and other possible reforms.

In exploring power couples, the appearances that they evoke, and the web of relationships that we can trace to each of the spouses, this essay ventures not only into the space between the political and theoretical, but also into the space between the rules for marriage entry¹⁹ and marriage exit²⁰ that have dominated popular and scholarly conversations.²¹ We begin by looking back, examining the calls for ethics reform that preceded the Senate’s move to restrict spousal lobbying, the anecdotes and data that establish the prevalence of power couples during the 109th Congress, and still earlier history tracing the rise of so-called “political spouses.” Next, we consider pertinent statutes and other rules that prevailed before the 110th Congress embarked on serious reform, and we compare these to the new restrictions and to other possible changes. We then situate these laws—old, new, and merely hypothetical—in the context of modern family law’s construction of marriage, asking whether marriage merits treatment different from that of other intimate and family relationships and what role considerations of gender equality should play. We conclude by identifying a challenge: the difficulty of

perceptions that account for the all-important appearances. Of course, whatever the significance of appearances in the existing regime and in possible reforms, this focus should not obviate consideration of substantive problems and changes.

19. See *supra* notes 1–2 and accompanying text.

20. See, e.g., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002); Robin Fretwell Wilson, Op-Ed., *Don’t Let Divorce Off the Hook*, N.Y. TIMES, Oct. 1, 2006, § 14, at 13.

21. Although discussions of marriage entry and exit predominate, a few scholars have addressed the subjects of the ongoing marriage and its legal treatment. Of these, Milton Regan and Stephanie Coontz stand out. See *infra* notes 135–36, 156–59 and accompanying text (relying on their work).

developing a nuanced approach that confronts directly the competing values at stake, such as protecting the public trust and institutional stature that belongs to Congress; maintaining respect for autonomy, pluralism, marriage, and gender equality; and minimizing exploitation and unequal access to government.

I. PRACTICES AND OFFICIAL RULES

A. *Calls for Reform*

The scandal involving lobbyist Jack Abramoff not only exposed corruption on the part of United States Representatives Tom DeLay (R-TX), Randy Cunningham (R-CA), and Bob Ney (R-OH);²² it also reminded the public of the very common phenomenon of family ties between legislators and lobbyists. For example, news articles outlined the role of Pam Abramoff, Jack's wife, as co-director of a nonprofit organization that served as a conduit for distributing funds from his lobbying clients to other projects.²³ Such stories also detailed the involvement of legislators and their spouses implicated by Abramoff's activities, including Representative John T. Doolittle (R-CA) and his wife, Julie Doolittle, who worked on marketing and event planning for Abramoff, and Representative Tom DeLay and his wife, Christine DeLay, who received consulting fees from a firm connected with Abramoff.²⁴ Indeed, agents of the Federal Bureau of Investigation (FBI) reportedly referred to the numerous spouses of lawmakers and lobbyists in the Abramoff investigation as "The Wives Club."²⁵

22. See, e.g., Philip Shenon, *Ohio Congressman Is Said to Agree to Plead Guilty*, N.Y. TIMES, Sept. 15, 2006, at A14.

23. See Philip Shenon, *Lobbying Cases Highlight Prime Targets' Family Ties*, N.Y. TIMES, Apr. 9, 2006, § 1, at 26. This article also reports questionable activities of Abramoff's brother, Robert Abramoff, and the role of wives of lobbyists of the Alexander Strategy Group, which closed after revelations of links to Abramoff. *Id.*; see also Anne E. Kornblut, *Once Just an Aide, Now a King of K Street*, N.Y. TIMES, Feb. 6, 2006, § 4, at 1 (describing how Capitol Hill staffers often become lobbyists).

24. See Shenon, *supra* note 23.

25. See *id.*; see also Bill Marsh, *Capital Alert: The Unfolding Story of Brent Wilkes*, N.Y. TIMES, May 21, 2006, § 4, at 16 (depicting "The Abramoff Web"); Norah O'Donnell, *Did Washington Wives Benefit from Abramoff?*, MSNBC.COM, Jan. 9, 2006, <http://www.msnbc.msn.com/id/10774913>.

In the move to reform the way Washington does business that followed the revelations about Abramoff and others, concerns about spouses began to surface. The *New York Times* asked “When Lobbyists Say ‘I Do,’ Should They Add ‘I Won’t’?” and reported a call by Senate Republican leaders for major rule changes, including a prohibition on lobbying by spouses and relatives.²⁶ Then-Senator Rick Santorum (R-PA) touted his effort to add restrictions on lobbying by spouses and family members to the proposed Legislative Transparency and Accountability Act of 2006.²⁷ The issue was not entirely a new one. In 2004, Senator Harry Reid (D-NV) sought a wide-ranging revision of ethics rules, including rules limiting lobbying by family members,²⁸ amidst stories questioning the work of then-Senate Minority Leader Tom Daschle’s (D-SD) lobbyist wife.²⁹

Nonetheless, the 109th Congress ended with no significant change and more of the same predicted for the 110th even after the Democrats prevailed in the November 2006 elections.³⁰ The rules package swiftly adopted by the House limited power couples’ activities directly, but—true to predictions that little change would occur—only to the extent of barring spousal lobbyists from using exercise facilities open exclusively to members, other officials, and spouses,³¹ and indirectly through an earmark disclosure provision mandating certification that neither the sponsoring representative nor a spouse has a financial interest or other special benefit in the earmark.³²

26. David D. Kirkpatrick, *When Lobbyists Say ‘I Do,’ Should They Add ‘I Won’t’?*, N.Y. TIMES, Feb. 19, 2006, § 1, at 30.

27. See Press Release, Senator Santorum Continues Work on Lobbying Reform Legislation (Feb. 28, 2006), available at <http://www.politicspa.com/pressreleasedetailed.asp?id=1526>. Senator Santorum lost his bid for reelection in November 2006. John M. Broder, *Democrats Topple G.O.P. Incumbents in Three Senate Contests*, N.Y. TIMES, Nov. 8, 2006, at P5.

28. Paul Kane & Damon Chappie, *Ban on Family Lobbying Eyed*, ROLL CALL (Wash., D.C.), Jan. 28, 2004, available at 2004 WLNR 4022025; see also Paul Kane, *GOP Makes Issue of Daschle’s Wife*, ROLL CALL (Wash., D.C.), Oct. 26, 2004, available at 2004 WLNR 4025331 (citing regulations proposed by Senator Reid).

29. See Kane, *supra* note 28.

30. See *supra* note 11 and accompanying text.

31. H.R. Res. 6, 110th Cong. § 511(c) (2007).

32. See *id.* § 404(b)17. The House took up ethics issues again, passing a bill, H.R. 2316,

In the Senate, however, developments took a more tortuous course. After the initial reading of the ethics reform bill on January 4, 2007, the first day in session for the 110th Congress, debate began with the majority party allowing the minority party the opportunity to offer amendments.³³ The next week witnessed continued debate, the introduction of amendments, and votes on such amendments, until a Republican effort to insert presidential line-item veto authority precipitated an impasse that threatened to derail the entire bill.³⁴ The Democrats' call for a cloture vote, which in turn limited subsequent amendments only to those deemed "germane," set the stage for a little noticed measure introduced by Senator David Vitter that a majority of the Senate proved unwilling to oppose.³⁵

Senator Vitter's original amendment would have criminalized all congressional lobbying by any spouse of a member of Congress, unless the spouse had worked as a registered lobbyist for at least one year before the member's election.³⁶ Senator Vitter later changed the amendment to a prohibition aimed at lawmakers, narrowing it to address only senators and their spouses' lobbying the Senate, in part to satisfy the procedural requirement of "germaneness."³⁷ The modified provision was adopted by unanimous consent, along with several other amendments *en bloc*.³⁸

on May 24, 2007, which now goes to conference with the Senate's bill. See 153 CONG. REC. H5776 (daily ed. May 24, 2007).

33. See *supra* note 12.

34. See David D. Kirkpatrick, *Quarrel Stalls Movement of Ethics Bill in the Senate*, N.Y. TIMES, Jan. 18, 2007, at A24; see also Erin Billings & John Stanton, *Senate GOP Fires a Salvo*, ROLL CALL (Wash., D.C.), Jan. 22, 2007, available at 2007 WLNR 1241173. Ultimately, the issue of the line-item veto was to be addressed as part of a minimum-wage bill. *Id.*

35. See *supra* note 7 and accompanying text.

36. See 153 CONG. REC. S322-23 (daily ed. Jan. 10, 2007). Senator Vitter also has introduced a separate measure that would punish such conduct by congressional spouses. S. 105, 110th Cong. (2007). It has been referred to the Committee on the Judiciary. Thomas, S. 105, <http://www.thomas.gov/cgi-bin/bdquery/z?d110:SN00105:@@L&summ2=m&> (last visited May 6, 2007); see *infra* notes 207-19 and accompanying text.

37. 153 CONG. REC. S637-41 (daily ed. Jan. 17, 2007); see also 153 CONG. REC. S491-92 (daily ed. Jan. 12, 2007).

38. 153 CONG. REC. S742 (daily ed. Jan. 18, 2007); see Greta Wodele, *Stalemate Broken, Senate Passes Major Lobbying Measure*, CONGRESS DAILY, Jan. 19, 2007, <http://nationaljournal.com/> (search "Stalemate Broken"; then follow "Item 1" hyperlink).

The Senate overwhelmingly passed the amended bill,³⁹ with the following language included in section 113:

(a) If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee, and leadership offices) from having any official contact with the Member's spouse or immediate family member.

(b) Members and employees on the staff of a Member (including staff in personal, committee, and leadership offices) shall be prohibited from having any official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist.⁴⁰

(c) The prohibition in subparagraph (a) shall not apply to the spouse of a Member who was serving as a registered lobbyist at least 1 year prior to the election of that Member to office or at least 1 year prior to [his or her] marriage to that member.⁴¹

Subsection (a)'s modest restrictions, which simply make an individual senator's office off-limits to lobbying by that senator's *own* family members, including spouses, track measures that the Senate passed in earlier sessions.⁴² Subsections (b) and (c), however,

39. See U.S. Senate, Legislation & Records Home, http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=1&vote=00019 (listing roll call votes for the first session of the 110th Congress).

40. S. 1, 110th Cong. § 113 (2007); 153 CONG. REC. S491-92 (daily ed. Jan. 12, 2007). As passed, the provision applies only to the Senate (with "Member" meaning "Senator"). *Id.*

41. S. 1, § 113; 153 CONG. REC. S491-92 (daily ed. Jan. 12, 2007). Senator Vitter has carefully distinguished this exception from a "grandfather clause" that some senators requested to allow those spouses currently lobbying to continue to do so. *Id.*; see Interview, *supra* note 10.

42. S. 2349, 109th Cong. § 110 (2006). This bill passed the Senate on March 29, 2006, but never became law. Like its predecessor in the 109th Congress, Senate Bill 1 defines "immediate family member" as "the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Member." S. 1, § 113(d).

emerged directly from Senator Vitter's more ambitious efforts to stop spousal lobbying.⁴³ And although, read literally, the exception for those whose lobbying careers preceded the marriage or the senator's election applies to subsection (a), media reports, including interviews with Senator Vitter, indicate that the exception applies to subsection (b).⁴⁴

The House responded several months later with a weaker, more restrained approach. Under the House's ethics reform bill, just as under subsection (a) of Senator Vitter's amendment, a representative must prohibit his staff from having official conduct with his own spouse if she is a lobbyist.⁴⁵ In addition, the House bill includes a statement of "the sense of Congress that the use of a family relationship by a lobbyist who is an immediate family member of a Member of Congress to gain special advantages over other lobbyists is inappropriate."⁴⁶ The divergent approaches taken by the House and Senate as well as earlier news reports⁴⁷ raise the possibility of significant change to Senator Vitter's language once the two chambers must reconcile their competing approaches to make ethics reform law. Such changes might entail enlarging the prohibition in subsection (b) to cover other family members⁴⁸ or, alternatively, eliminating the restriction altogether.⁴⁹

43. 153 CONG. REC. S492 (daily ed. Jan. 12, 2007).

44. See Interview, *supra* note 10; see also Jan Baran & Robert Bauer, *More Disclosure Likely with Senate Changes to Lobbyist Disclosure Act*, ROLL CALL (Wash., D.C.), Jan. 24, 2007, available at 2007 WLNR 1396204; Tory Newmyer, *Lobby Loophole Clears Senate Spouses*, ROLL CALL (Wash., D.C.), Jan. 24, 2007, available at 2007 WLNR 1396175; Jonathan Weisman & Jeffrey H. Birnbaum, *Senate Passes Ethics Passage: Parties Reach Hard-Fought Deal on Lobbying and Other Reforms*, WASH. POST, Jan. 19, 2007, at A1. The Senate's late-night frenzy explains the probable error. See Wodele, *supra* note 38 (quoting Senator Trent Lott (R-TN), who said "[A]nytime you're in session after 9 o'clock, you're going to mess things up and embarrass yourselves.").

45. H.R. 2316, 110th Cong. § 401 (2007).

46. *Id.* § 209; see 153 CONG. REC. H5770-71 (daily ed. May 24, 2007).

47. See *infra* notes 48-49 and accompanying text.

48. See Newmyer, *supra* note 44.

49. See Chaddock, *supra* note 10.

B. Capitol Hill as a Family-Friendly Workplace

Consider a few of the many illustrations of the power-couple phenomenon as the 109th Congress drew to a close in late 2006: Senator Elizabeth Dole (R-NC) is married to former Senator Bob Dole (R-KS), who now works at Alston & Bird as a registered lobbyist with many clients, including the Dubai-owned company once set to assume management of six United States seaports.⁵⁰ Abigail Blunt, the wife of Representative Roy Blunt (R-MO), once the acting House Majority Leader, works as a lobbyist for the Altria Group (Philip Morris's parent company),⁵¹ and Ted Stevens (R-AK), former chair of the powerful Appropriations Committee, is married to Catherine Stevens, a lobbyist at Mayer, Brown, Rowe & Maw where her work has focused on appropriations⁵² (although her firm denies that she lobbies Congress anymore⁵³). Linda Daschle, the wife of former Senator Tom Daschle, has long lobbied on behalf of the airline industry, among others.⁵⁴

The cited examples reveal only the iceberg's tip. According to one list compiled in November 2006,⁵⁵ twenty-one sitting senators had close family members lobbying Congress or working for firms that do so, including seven wives, one husband, fourteen sons (plus one son-in-law), and two fathers.⁵⁶ In the House of Representatives, eighteen legislators had close family members lobbying Congress and/or state legislatures, including five wives, five sons, three daughters (plus one daughter-in-law), two brothers, one sister, and

50. See Jeffrey H. Birnbaum, *Role of Senator Dole's Husband at Issue*, WASH. POST, Feb. 24, 2006, at A6; see also, e.g., Kirkpatrick, *supra* note 26.

51. See Justice, *supra* note 14.

52. Kane & Chappie, *supra* note 28; Editorial, *Family Ties, Cont'd*, ROLL CALL (Wash., D.C.), Feb. 11, 2004, available at 2004 WLNR 4022255.

53. See Newmyer, *supra* note 44.

54. Jim Drinkard, *Majority Leader Daschle, Lobbyist Wife Vow to Keep Careers Separate*, USA TODAY, June 5, 2001, <http://www.usatoday.com/news/Washington/june01/2001-06-06-daschle-linda.htm>.

55. See *infra* app. 1.

56. See *id.* Because our analysis focuses on the 109th Congress, we do not include in our count Senator-elect Jim Webb (D-VA), whose ex-wife works as a registered lobbyist, and we do include outgoing (now former) Representative Harold Ford, Jr. (D-TN), whose father lobbies. More significantly, the prospect of reforms from the very start of the 110th Congress probably influenced behavior so that prospective family lobbyists might have decided to "wait and see" before making employment decisions.

one cousin.⁵⁷ A compilation from 2007 found sixty-three lawmakers in Congress with relatives who have lobbied or consulted on government matters recently.⁵⁸ The lawmakers on these lists include some of the most senior and influential members of the 109th Congress—with names such as McCain, Hatch, Hastert, and Reid appearing in addition to those mentioned above.⁵⁹ SourceWatch, a project of the Center for Media and Democracy, calls these lobbyists “Kith & Kin Inc.,” based on a *New York Times* editorial from 2004.⁶⁰

These data raise several noteworthy questions. Beyond the general question whether the situations described reveal a problem—be it a conflict of interest, evidence of “influence peddling,” inequitable access to government, or an appearance of impropriety—more particularized questions include whether “the problem” presented by spouses is the same as that presented by any of the other close family members listed. Also, what of unmarried couples and others who escape the labels and hence such lists—despite their intimacy and their behavior as functional family members? Finally, what should we make of the gender questions, given the prevalence among the lobbyists of wives over husbands—and sons over daughters for that matter?

C. The Emergence of the “Political Spouse”

The phenomenon of family lobbying emerged with the rise of wives in the paid workforce.⁶¹ According to Donald A. Ritchie, a Senate historian, marriages joining lobbyists with lawmakers were unheard of several decades ago, but since the 1960s, he said, such unions have become more common as the numbers of lobbyists have

57. *Id.*; see also Justice, *supra* note 14.

58. Marisa Katz, *Family Ties*, NAT’L J., Jan. 31, 2007, at 47.

59. See *infra* app. 1; see also Carl Hulse, *In Capitol, Last Names Link Some Leaders and Lobbyists*, N.Y. TIMES, Aug. 4, 2002, § 1, at 1 (noting at the time that “relatives of three of the four top members of Congress work as lobbyists illustrat[ing] how pervasive and accepted the practice has become”).

60. See Kith & Kin Inc., http://www.sourcewatch.org/index.php?title=Kith_%26_Kin_Inc. (last visited June 11, 2007). The name comes from Editorial, *Kith & Kin Inc.*, N.Y. TIMES, Feb. 14, 2004, at A18.

61. See Neubauer et al., *supra* note 16.

exploded.⁶² One report, emphasizing this larger social context, contends that the issue first surfaced in 1978, when the Senate Ethics Committee was asked whether a spouse could lobby.⁶³ Recalling that time, William Canfield, former senior staff counsel to this committee, has commented in the *Los Angeles Times*:

It would have been easier, cleaner to say: “To hell with a changing society. It’s wrong. You can become a plumber. You can be anything you want. But you can’t lobby” “But they said she could, and now we’re splitting hairs 25 years later. . . . The horse has left the barn.”⁶⁴

A few years later, in 1985, the Congressional Management Foundation published a guidebook by Marc E. Miller, *Politicians and Their Spouses’ Careers*.⁶⁵ This slender volume, purportedly designed to prevent the embarrassment of the unwelcome public spotlight,⁶⁶ assumes that lawmakers and their spouses seek to act in good faith, but need an advice manual to avoid being blindsided by the peculiar ways of Washington.⁶⁷ The book acknowledges the gendered reality of 1985, namely that “the Members of Congress are usually men, and the affected spouses are usually women,”⁶⁸—a generalization that remains accurate now, more than twenty years later,⁶⁹ notwithstanding the slowly growing number of female lawmakers.⁷⁰ Despite this story of origins, however, a precipitating event for the guidebook appears to have been the House inquiry into the exemption to the required disclosure of a spouse’s financial interests claimed by

62. Kirkpatrick, *supra* note 26.

63. Neubauer et al., *supra* note 16.

64. *Id.* (second ellipsis in original).

65. MARC E. MILLER, *POLITICIANS AND THEIR SPOUSES’ CAREERS* (1985).

66. *Id.* at 14.

67. *See id.* at 40–41.

68. *Id.* at 15.

69. Today, an organization of “lawmakers’ spouses,” the Congressional Club, goes by a gender-neutral name, but news stories nonetheless refer to it as a “wives club.” *See* Jonathan E. Kaplan, *Wives Club Asks \$50,000 for Lunch with First Lady*, THE HILL (Wash., D.C.), Jan. 31, 2006, at 1.

70. During the 109th Congress, women occupied 138 of the 435 seats in the House of Representatives and 14 of the 100 seats in the Senate. In the 110th Congress, the number of women in the House declined to 71 but the number in the Senate rose to 16. Thus, men continue to predominate in both.

the first woman on a presidential ticket, former Representative Geraldine Ferraro (D-NJ), the Democratic nominee for Vice President of the United States in 1984.⁷¹

Consistent with its premises of good faith and naiveté, the book helps clarify why a lawmaker's spouse might find tempting work as a lobbyist. The reasons include: the need for the lawmaker's family to supplement the congressional income;⁷² the nice fit between a lobbyist's schedule and the perceived necessity of a spouse's participation in periodic re-election campaigns;⁷³ and the constraints on a spouse's official work imposed by both anti-nepotism rules,⁷⁴ which limit opportunities for government employment, and the Hatch Act,⁷⁵ which limits political activities. Despite these attractions and the absence of rules restricting spousal lobbying,⁷⁶ the guidebook cautions that ethical constraints impose a higher standard,⁷⁷ that appearances matter and demand self-policing,⁷⁸ and that society views a married couple as a single unit, sharing both communication and economic benefits.⁷⁹

Miller proposed a "smell test" for legislators and their spouses to head off any improprieties or appearances thereof.⁸⁰ The

71. Miller's book includes as an appendix an excerpt from the "House Committee on Standards of Official Conduct Report on Rep[resentative] Ferraro's Financial Disclosure." MILLER, *supra* note 65, at 96–99.

72. *Id.* at 10.

73. *Id.* at 8–10.

74. *See id.* at 9.

75. 5 U.S.C. § 7324 (2000) (restricting federal employees' participation in political activities). Thus, the Hatch Act precludes one who takes a federal job from participating in a spouse's re-election campaign. *See* MILLER, *supra* note 65, at 11.

76. MILLER, *supra* note 65, at 19. Miller notes that the only rules directly affecting spouses require disclosure of financial activities and that these operate primarily as a prophylactic, deterring income and gifts that would raise questions once reported. *See id.* at 24.

77. *Id.* at 19.

78. *See id.* at 23.

79. *Id.* at 20.

80. *See id.* at 39. He writes:

What we are suggesting is a method of implementing what could be called a "smell test": if it doesn't smell right, chances are something's rotten. The smell test may not be elegant or precise, but conscientious consideration of . . . [specific] factors . . . should give a reasonable indication of whether a particular situation is likely to raise troublesome issues in the future.

Id.

recommended multi-factored standard is designed to ferret out job opportunities that would make the spouse little more than a conduit to the lawmaker or, if exposed, would create embarrassment.⁸¹ Yet, as one observer has noted, despite the “clichéd test of propriety . . . whether the person involved would be comfortable [seeing] an activity reported on the front page of the *Washington Post*[,] having a thick skin or, at least, [a] willingness to run risks is an important

81. *See id.* at 38–39. The factors listed constitute a series of questions for the spouse to ask him- or herself:

- Are my skills commensurate with the job being discussed? In other words, am I being considered for a position because of the talents I can bring and apply to it, or, am I being considered for other reasons? If so, what are they?
- Are the responsibilities of the position reasonably clear, or are they so vague that I may find myself responsible for activities which are inappropriate for a Member's spouse?
- What responsibilities will relate, even indirectly, to my spouse's position as a Member? For example, will I be working with issues involving my spouse's colleagues, and, if so, is it possible that my position (or my spouse's) will be affected? How?
- Am I comfortable enough with my prospective employer that, once I am hired, it would be unlikely that I will be asked to undertake tasks which could present practical or ethical dilemmas in view of my role as a congressional spouse?
- Is the salary offered commensurate with the job described? If it seems high, why is this so?
- Am I being considered for this position primarily because my spouse is a Member of Congress?
- Is this job an appropriate career step for me, irrespective of my spouse's office? If my spouse is no longer in Congress two or four years from now, will this job have advanced my own career goals?
- Can I make a reasonable assessment of how the demands of my job can affect my relationship with my spouse? Is it likely to add unacceptable levels of stress or tension to our relationship?
- If I do not perform satisfactorily, will my employer be able to dismiss me, or will that be too difficult because I am a congressional spouse?
- How important for me is the flexibility to have unfettered involvement in my spouse's political career? Will this position offer that flexibility—not only in ethical or legal terms, but in allowing me the time to travel to the District, or take time off to campaign?
- Is there likely to be anything about this job that would be embarrassing to me or my spouse if it appeared on the front page of the *Washington Post*, in the home-state newspapers, or on the evening news?

Id.

characteristic of politicians.”⁸² Confirming these reflections, social scientists have found that a sense of power increases risk-taking behavior.⁸³

In reality and over time, either the odor threshold rose, or the benefits of risk-taking proved more alluring than those of compliance with Miller’s “smell test.”⁸⁴ By 2006 the substantial number of lawmakers’ family members who were lobbying made the guidebook’s advice sound quaint. Indeed, concerns that a spouse in search of a supplementary income might unwittingly find herself the focus of unfavorable publicity had been eclipsed by a growing awareness of a new norm among influential lawmakers—the acquisition of a second (or subsequent) wife who is often a seasoned lobbyist in Washington, D.C. In describing this emerging “second wives club,” Michelle Cottle wrote in the *New Republic* that “the ultimate congressional trophy wife is herself a political animal, able to charm donors, handle the press, and spend an entire cocktail party discussing the finer points of last week’s Rules Committee hearing on lobbying reform.”⁸⁵ Two prominent examples of this “club” are the second wives of former House Majority Whip Roy Blunt and former Senate Majority and Minority Leader Tom Daschle, Abigail Blunt and Linda Daschle, both experienced lobbyists at the time of their marriages.⁸⁶

In place of the “smell test,” the prevailing approach became one that might be described as whatever the market—or electorate—will

82. E-mail from Merton Bernstein, Walter D. Coles Professor Emeritus of Law, Washington University School of Law, to Susan Appleton, Lemma Barkeloo & Phoebe Couzins Professor of Law, Washington University (June 20, 2006, 09:02 CST) (on file with author). Professor Bernstein’s experience on Capitol Hill includes service as counsel to the United States Senate Subcommittee on Labor and Labor-Management Relations, legislative assistant to United States Senator Wayne Morse, and special counsel to the United States Senate Subcommittee on Railroad Retirement, as well as the inaugural director of Washington University School of Law’s Congressional and Administrative Law Clinic, which places law students in D.C. for a semester in which their work on legislators’ and committees’ staffs and in administrative offices earns academic credit.

83. See, e.g., Cameron Anderson & Adam D. Galinsky, *Power, Optimism, and Risk-Taking*, 36 EUR. J. SOC. PSYCHOL. 511 (2006).

84. See *supra* note 80.

85. Michelle Cottle, *Arm Candy, Beltway Style: Second Wives Club*, NEW REPUBLIC, Aug. 7, 2006, at 16, 16.

86. *Id.* at 18–19.

bear. In general, when lawmakers' conduct makes them unelectable, they usually resign or at least decline to let the voters pass judgment. We can find illustrations of these broad conclusions outside the context of spousal lobbying in the resignation of DeLay, who vacated his seat as of June 10, 2006,⁸⁷ and the decision not to run in November 2006 by Ney, amidst news of the ties of both to Abramoff.⁸⁸ Whether such decisions came from each lawmaker's own assessment or party leaders' interventions, still one can infer that the information disclosed does not merely embarrass the lawmaker but rather so compromises his public standing that he is no longer politically viable.⁸⁹

When the political impact of questionable activities seems less certain, however, lawmakers' risk-taking prevails and they take their chances in the political process. Hence, for example, although Representative Blunt's marriage to Altria lobbyist Abigail Blunt might not make his district's voters look askance, it was cited as a possible explanation for the Republicans' selection in 2006 of John Boehner (R-OH)—instead of Blunt—as House Majority Leader to fill the vacancy created by DeLay's untimely departure.⁹⁰ Similarly, although cause and effect cannot be determined with certainty, former Senate leader Tom Daschle lost his seat to John Thune (R-SD) in 2004 after a campaign that emphasized, *inter alia*, alleged conflicts of interests created by Linda Daschle's work as a lobbyist.⁹¹

87. Carl Hulse, *DeLay Is Quitting Race and House*, *Officials Report*, N.Y. TIMES, Apr. 4, 2006, at A1.

88. *Id.*

89. Consider the case of Representative Mark Foley (R-FL), who quickly left the House in 2006, once his sexually suggestive messages to congressional pages became public. *See, e.g.*, Carl Hulse & Raymond Hernandez, *Top G.O.P. Aides Knew in Late '05 of E-mail to Page*, N.Y. TIMES, Oct. 1, 2006, § 1, at 1. The article quotes Foley's Democratic challenger as saying: "It looks to me that it was more important to hold onto a seat and to hold onto power than to take care of our children." *Id.*

90. *See, e.g.*, Rick Klein, *GOP Ousts Blunt as Majority Leader*, BOSTON GLOBE, Feb. 3, 2006, at A2; Michael Kranish, *Family Ties Spark Concern in Lobby Debate*, BOSTON GLOBE, Jan. 28, 2006, at A1; Sheryl Gay Stolberg, *Push to Control Lobbying Produces Unexpected Shifts and Alliances*, N.Y. TIMES, Jan. 18, 2006, at A17; Jonathan Weisman, *Lobbying Colors GOP Leadership Contest: Rivals for DeLay Post No Stranger to K Street*, WASH. POST, Jan. 11, 2006, at A1.

91. *See, e.g.*, Kane, *supra* note 28; Jeff Zeleny, *Senator Daschle "Target No. 1" for Right Wing*, CHI. TRIB., Aug. 24, 2003, § 1, at 13.

Indeed, one might construe the senators' surprising decision in January 2007 to close their chamber to spousal lobbying as an illustration of this dynamic balance between risk-taking, on the one hand, and projecting what the public will tolerate, on the other. The now conventional wisdom holds that Democrats rode to victory in November 2006 in part because voters had become disgusted with the prevailing "culture of corruption."⁹² With the looming prospect of the 2008 elections, when the White House as well as Congress will be at stake, Democrats undoubtedly felt some pressure to deliver on their promises, while Republicans feared the reactions that would ensue if they stood in the way.⁹³ Calls for change made inaction too risky and smoothed the path even for Senator Vitter's little-heralded amendment.

D. Familiar Approaches

The background against which the 2007 reforms developed is instructive. In tracing the history of government ethics, many cite Watergate as a significant impetus.⁹⁴ Before that, lawmakers largely operated under a simple and informal code of conduct that made prevailing norms of general decency the determinants of proper behavior. Watergate revealed the inadequacy of reliance on informal norms, sparking several different changes, including new rules for ethics and lobbying.⁹⁵

Such rules fall into four rough categories, with most governing the legislator's conduct and a few governing the conduct of the family member lobbyist. Across all four categories, however, appearances and perceptions stand out as significant reference points. As one ethics expert has written, "We live . . . in an appearance ethics

92. See Carl Hulse & David D. Kirkpatrick, *Ethics Overhaul Tops the Agenda as the Democrats Take Over*, N.Y. TIMES, Jan. 4, 2007, at A18.

93. See John M. Broder, *Outgoing Chief Warns G.O.P. on Outlook for 2008 Races*, N.Y. TIMES, Jan. 19, 2007, at A19; Kirkpatrick, *supra* note 34.

94. See generally Kathleen Clark, *The Legacy of Watergate for Legal Ethics Instruction*, 51 HASTINGS L.J. 673 (2000) (noting how the legal profession responded to the Watergate scandal). Some observers describe the action at the start of the 110th Congress as the most significant since Watergate. See, e.g., Chaddock, *supra* note 10.

95. See, e.g., Ann McBride, *Ethics in Congress: Agenda and Action*, 58 GEO. WASH. L. REV. 451, 456 (1990).

heyday.”⁹⁶ The brief summary below attempts to highlight those pre-2007 regulations pertinent to the power couples whom we are examining and the behavior that might raise ethical questions.

1. Disclosure Requirements

One familiar set of constraints mandates disclosure. Disclosure rules arguably deter possible misconduct and also enable the public to judge officials’ behavior, even that which is legal. If the prospect of public exposure (having conduct reported “on the front page of the *Washington Post*”⁹⁷) helps identify unacceptably risky or questionable conduct, then disclosure requirements operationalize this standard.⁹⁸ Hence, these requirements prompt those subject to the rules to anticipate how the disclosed information will appear to others.

The Ethics in Government Act of 1978 imposes on the legislator (the “reporting individual”) extensive financial-disclosure obligations about his or her own activities and those of a spouse and dependent children, including the source of any item of spousal earned income that exceeds \$1000⁹⁹; gifts to spouses or dependent children other than those “received totally independent of the relationship of the spouse or dependent child to the reporting individual”¹⁰⁰; and income, assets, or liabilities valued greater than \$1,000,000 if held jointly with the reporting individual.¹⁰¹ The law contains an exception for items that the reporting individual certifies represent solely the spouse’s or dependent child’s financial matter, outside the reporting individual’s knowledge, in no way derived from his or her interests, and with no anticipated financial benefit to the reporting individual.¹⁰²

96. Peter W. Morgan, *The Appearance of Propriety: Ethics Reform and the Blifil Paradoxes*, 44 STAN. L. REV. 593, 602–03 (1992).

97. See E-mail, *supra* note 82; see also MILLER, *supra* note 65, at 39.

98. As Miller explains the underlying theory: “Members will likely be sensitive to material on the public record which could be interpreted to present the appearance of improper behavior.” MILLER, *supra* note 65, at 24.

99. 5 U.S.C. app. 4, § 102(e)(1)(A) (2000).

100. *Id.*

101. *Id.* § 102(e)(1)(F).

102. *Id.* § 102 (e)(1)(E). It was this exception that former Representative Geraldine Ferraro

2. Gift Restrictions and Imputation Rules

At one time, the Senate had a ban on gifts exceeding the value of \$100 that applied alike to the lawmaker and the spouse or dependent.¹⁰³ But, for spouses and dependents, this rule defined “gift” to exclude anything provided “by the employer of such spouse or dependent in recognition of the service provided by such spouse or dependent.”¹⁰⁴ Miller asserted that this exception creates uncertainties for spouses who work as lobbyists.¹⁰⁵ He thus implied that such work always raises a question whether the lobbyist is providing a service, apart from her relationship with (and thus access to) the lawmaker.

Gift-giving regulations have evolved over time. During the 109th Congress, a lawmaker could accept a gift so long as its value was less than \$50.¹⁰⁶ The restrictions have not automatically applied to gifts to spouses. Nonetheless, a gift to a lawmaker’s family member may count against the limit if the lawmaker has reason to believe the gift was given because of his or her official position.¹⁰⁷ In other words, the rules impute a gift to the lawmaker when the lawmaker has the required state of mind. On the other hand, a lawmaker’s spouse has been able to accept any gift—without imputation to the lawmaker—when the gift is unrelated to the lawmaker’s position.¹⁰⁸

invoked in an effort to disassociate herself from any scandal involving her husband’s business dealings, in turn prompting an inquiry by the House Committee on Standards of Official Conduct. See MILLER, *supra* note 65, at 96–99.

103. MILLER, *supra* note 65, at 28–29 (summarizing the then-current version of Senate Rule XXXV).

104. *Id.* at 29.

105. *Id.*

106. SELECT COMM. ON ETHICS, U.S. SENATE, SENATE ETHICS MANUAL 22 (2003) (summarizing Rule XXXV). For the full text of the Rule, see *id.* at 314–19. Hereinafter, citations to this version of the Senate Rules refer to this manual. In the 110th Congress, the House changed the rule to prohibit a lawmaker from knowingly accepting any gift from a registered lobbyist or entity employing registered lobbyists. H.R. Res. 6, 110th Cong. § 203(a) (2007); see *infra* note 194 and accompanying text.

107. SELECT COMM. ON ETHICS, *supra* note 106, at 314 (Senate Rule XXXV, cl. 1(b)(2)(A)); House Rule XXV, cl. 5(a)(2)(B)(i), available at <http://clerk.house.gov/legislative/rules/rule25.html>.

108. There are no additional restrictions on gifts to spouses, other than the imputation rule for gifts reasonably believed prompted by the lawmaker’s position. SELECT COMM. ON ETHICS, *supra* note 106, at 56; see also *id.* at 315 (Senate Rule XXXV, cl. 1(c)(7)(A) governing food, refreshments, lodging, and other benefits); House Rule XXV, cl. 5(a)(3)(G)(i), available at <http://clerk.house.gov/legislative/rules/rule25.html>. A previous version of the Senate Rule

Appearances animate this rule, which determines imputation on the basis of the (possibly differing) perceptions of a gift's purpose on the part of the lawmaker, the spouse, and the donor. Further, because the restriction on gifts to lawmakers exempts gifts from relatives and gifts based on personal friendship,¹⁰⁹ the rule fails to address the appearances that emerge from marriages in which one spouse serves as a lawmaker and the other works as a lobbyist.¹¹⁰ Indeed, these exemptions remain despite the otherwise strict new rule banning gifts from lobbyists, adopted by the House during the first one hundred hours of the 110th Congress.¹¹¹

3. Conflict of Interest Rules

Several different rules anticipate possible conflicts of interests that lawmakers might face. Of course, criminal laws prohibit bribery of public officials.¹¹² The federal criminal statute on financial conflicts of interest, which mentions spouses, addresses employees and officers of the executive branch and of independent federal agencies,

asked whether the gift was given in recognition of service by the lawmaker's spouse. See MILLER, *supra* note 65, at 29. Further, when the lawmaker and spouse are dining guests, the cost of the spouse's meal is not imputed to the lawmaker so long as the lawmaker's meal costs less than fifty dollars. SELECT COMM. ON ETHICS, *supra* note 106, at 314 (Senate Rule XXXV, cl. 1(b)(2)(B)); House Rule XXV, cl. 5(a)(2)(B)(ii), available at <http://clerk.house.gov/legisAct/legisProc/rules/rule25.html>.

109. SELECT COMM. ON ETHICS, *supra* note 106, at 314 (Senate Rule XXXV, cl. 1(c)(3) & (4)); House Rule XXV cl. 5(a)(3)(C) & (D), available at <http://clerk.house.gov/legisAct/legisProc/rules/rule25.html>. A recently passed amendment to the Colorado constitution goes further, placing restrictions on gifts from lobbyists, even if the lobbyist is a family member of the lawmaker. See Bill Scanlan & April Washington, *Critics Laud Ethics but Warn of Proposal's Impact*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Nov. 8, 2006, at A14 (reporting that voters "overwhelmingly" supported the "Ethics in Government" amendment); Editorial, *A Draconian Measure in the Name of Ethics: Dangerous Overkill in Amendment 41*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Oct. 2, 2006, at A38.

110. According to Miller, registered lobbyists and their agents are deemed to have a direct interest in legislation before Congress. MILLER, *supra* note 65, at 32. Although Miller cites this point to raise questions about gifts that a lawmaker's spouse might receive from lobbyists, it also raises interesting questions about spouses who themselves are registered lobbyists. Indeed, these exemptions remain despite the otherwise strict new ban on gifts from lobbyists included in the House Rules for the 110th Congress. See H.R. Res. 6, 110th Cong. §§ 201, 203 (2007). The Senate took similar action. S. 1, 110th Cong. § 108 (2007) (passage of similar rules in the Senate).

111. See H.R. Res. 6, §§ 201, 203.

112. 18 U.S.C. § 201 (2000).

but does not cover legislators.¹¹³ Nonetheless, under congressional rules, a lawmaker may not receive any compensation, nor permit any compensation to accrue to his or her beneficial interest, as a result of “influence improperly exerted from his [or her] position.”¹¹⁴ According to Miller, these measures—designed to prevent influence peddling—implicate spouses, who might serve as conduits for efforts to sway members of Congress.¹¹⁵

Again, appearances play a critical role because of the widely shared views, discussed below, that spouses pool their incomes and that marriage imposes a financial partnership,¹¹⁶ suggesting that payments to a spouse, even as salary, might be imputed to the lawmaker. Further, the rules’ trigger—“improperly exerted” influence—requires a judgment call based on prevailing perceptions and norms, given the uncertain boundary between the proper and the improper.¹¹⁷

In addition, a senator cannot knowingly advance legislation

a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class.¹¹⁸

The rule’s narrow language offers much leeway, permitting legislation with a purpose (although not “a *principal* purpose” or the “*only*” purpose) to advance personal, familial, or other special interests.¹¹⁹

113. *Id.* § 208; see also Kathleen Clark, *Do We Have Enough Ethics in Government Yet?: An Answer from Fiduciary Theory*, 1996 U. ILL. L. REV. 57, 88–89.

114. SELECT COMM. ON ETHICS, *supra* note 106, at 321 (Senate Rule XXXVII, cl. 1); House Rule XXIII cl. 3, available at <http://clerk.house.gov/legisAct/legisProc/rules/rule23.html>.

115. See MILLER, *supra* note 65, at 29–30 (quoting columnist Jack Anderson, who criticized “‘making payments to a politician’s spouse’ as ‘a new form of the old Washington game of influence buying’”).

116. See *infra* note 151–55 and accompanying text.

117. See MILLER, *supra* note 65, at 29, 31.

118. SELECT COMM. ON ETHICS, *supra* note 106, at 321 (Senate Rule XXXVII cl. 4); see MILLER, *supra* note 65, at 30.

119. Referring to the Senate Rules, Professor Clark observes that “[a]s long as legislation affects the financial interests of others, a senator may help pass legislation which also affects

The House has approached this issue first through a rule exempting a representative from the obligation to vote when “he has a direct personal or pecuniary interest in such question.”¹²⁰ According to Miller, representatives rarely decline to vote under this disqualification, which remains a matter for the exercise of personal discretion.¹²¹ In addition, the House Ethics Manual provides general guidance with respect to conflicts of interest, defining “conflict of interest” to “denote a situation in which an official’s conduct of his office conflicts with his private economic affairs,” because the “ultimate concern” is the “risk of impairment of impartial judgment.”¹²² Accepting benefits that reasonable persons might construe as influencing the performance of official duties “would raise the appearance of undue influence or breach of the public

her own personal financial interest.” Clark, *supra* note 113, at 89.

120. House Rule III cl. 1, *available at* <http://www.rules.house.gov/ruleproc/110th.pdf>; *see* MILLER, *supra* note 65, at 33.

121. MILLER, *supra* note 65, at 33. Miller refers to the manual prepared by Thomas Jefferson when he presided over the Senate as Vice President of the United States. This manual unambiguously and more broadly disqualifies one from voting whenever “the private interests of a Member are concerned.” *Id.* Professor Clark notes that, as the result of permissive rules, “members of Congress sometimes play key roles in passing or blocking legislation that has a direct impact on their investments.” Clark, *supra* note 113, at 89.

122. COMM. ON STANDARDS OF OFFICIAL CONDUCT, ETHICS MANUAL FOR MEMBERS, OFFICERS, AND EMPLOYEES OF THE U.S. HOUSE OF REPRESENTATIVES ch. 3 (1992), *available at* <http://www.house.gov/ethics/ethicschap3.html> (“Outside Employment and Income of Members, Officers, Employees, and Spouses”). The language quoted in text appears in this context:

Although the term “conflict of interest” may be subject to various interpretations in general usage, under Federal law and regulation, this term “is limited in meaning; it denotes a situation in which an official’s conduct of his office conflicts with his private economic affairs.” The ultimate concern, “then, is risk of impairment of impartial judgment, a risk which arises whenever there is temptation to serve personal interests.”

In addition to statutory restraints limiting particular types and amounts of outside income, general ethical standards and rules restrict any outside activities that are inconsistent with congressional responsibilities. The Code of Ethics for Government Service[] affirms that a “public office is a public trust” and cautions all Government officials not to engage in any business with the Government, “either directly or indirectly, which is inconsistent with the conscientious performance” of governmental duties. This Code specifically provides that a Member or employee should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of official duties. To do so would raise the appearance of undue influence or breach of the public trust.

Id. (footnotes omitted).

trust.”¹²³ The Manual explains that this appearance-based standard “accord[s] with other professional standards,” such as an attorney’s obligation to “avoid even the appearance of professional impropriety.”¹²⁴

4. Restrictions on Spousal Lobbying

The rules canvassed above govern legislators. Until the 110th Congress, pronouncements aimed at legislators’ spouses or family members were few and far between, with restrictions regarding their lobbying especially scarce. According to the once controlling Senate Ethics Manual: “[T]he decision on whether a spouse may lobby the Senate is generally a decision for the Senator and his or her spouse, giving due regard to the potential reflection upon the Senate.”¹²⁵ This Senate Ethics Manual goes on to refer back to the conflict-of-interest limits and other restrictions applicable to the legislator: although spousal employment gives rise to compensation accruing indirectly to the senator’s beneficial interest, no violation of Senate rules arises “unless the Member has improperly exerted influence or performed official acts in order to obtain compensation for or as a result of compensation to the spouse.”¹²⁶ In addition, disclosure of a spouse’s

123. *Id.*

124. *Id.* The language quoted in text appears in this context:

Such restrictions accord with other professional standards, which may apply to particular Members and employees. For example, Canon 9 of the American Bar Association (ABA) Model Code of Professional Responsibility for lawyers cautions that “[a] lawyer should avoid even the appearance of professional impropriety.”

Id.

125. SELECT COMM. ON ETHICS, *supra* note 106, at 93.

126. *Id.* The language quoted in text appears in this context:

Neither federal law nor Senate rules specifically preclude a Member’s spouse from engaging in any activity on the ground that it could create a conflict of interest with the Member’s official duties. However, Senate rules and statutory provisions impute to the Member certain benefits that are received by the spouse. Thus the question may arise as to whether the Member is improperly benefiting as a result of the spouse’s employment.

earned income is required,¹²⁷ as noted earlier. Finally, the Senate Ethics Manual contains a hortatory reminder: “Given the heightened public interest in the professional activities of spouses of Members, the Committee hopes that spouses, as well as Members, will conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.”¹²⁸

This language emphasizes the Senate’s collective institutional image,¹²⁹ a focus that is absent from the House’s approach. Nonetheless, like the Senate’s approach, the House Ethics Manual leaves much wiggle room that eventually yields an appearance-based standard. The House Manual provides that the “mere potential of a conflict of interest” does not preclude spousal employment, that no

Senate Rule 37, paragraph 1, part of the Code of Official Conduct, prohibits a Member from receiving any compensation, or *allowing any compensation to accrue to the Member’s beneficial interest*, from any source as a result of an improper exercise of official influence. The income received by a spouse from employment usually accrues, albeit indirectly, to a Member’s interest. Nonetheless, this provision is not triggered by a spouse’s employment unless the Member has improperly exerted influence or performed official acts in order to obtain compensation for or as a result of compensation to the spouse.

Id.

127. *Id.* The language quoted in text appears in this context:

Standing Rule 34 (Public Financial Disclosure), requires a Senator to disclose the source of any earned income in excess of \$1,000 received by a spouse. The Committee has recognized that the compensated employment of spouses is a matter of interest to the public. Thus, in Interpretative Ruling No. 336 (Sept. 5, 1980), the Committee stated its view that a Senator’s spouse’s lobbying on behalf of a corporation on whose board the spouse served, might, under certain circumstances, reflect adversely upon the Senate as an institution.

Id.

128. *Id.* The language quoted in text appears in this context:

In Interpretative Ruling No. 397 (May 24, 1985), the Committee found that no rule of the Senate prohibited the spouse of a Senator from accepting compensated employment with a tax-exempt educational organization where the spouse’s responsibilities were to be focused on educational activities for the public rather than lobbying the Congress. A spouse may, of course, supervise others who lobby the Senate. As noted, compensated spousal employment must be disclosed by the Senator on the annual financial disclosure statement. Given the heightened public interest in the professional activities of spouses of Members, the Committee hopes that spouses, as well as Members, will conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.

Id.

129. *See supra* notes 125, 128 and accompanying text.

specific prohibition addresses spousal behavior that might create a conflict of interest, and that officials should “never . . . accept benefits for themselves or their families ‘under circumstances that might be construed by reasonable persons as influencing the performance’ of official duties.”¹³⁰

II. APPEARANCES OF MARRIAGE

A. *Family Law’s Two Minds About Marriage*

The pivotal role that appearances have played in determining the outer limits of permissible behavior by lawmakers and lobbyists calls for an exploration of our contemporary understanding of marriage. How do we generally think about married couples today? To what extent does this understanding rest on legal rules and constructions? More specifically, what appearances do power couples generate?

130. COMM. ON STANDARDS OF OFFICIAL CONDUCT, *supra* note 122. The language quoted in text appears in this context:

The mere potential of a conflict of interest does not preclude a Member’s spouse from accepting outside employment. However, Members should avoid circumstances suggesting that they receive direct or indirect benefits that influence official acts.

. . . .

Neither Federal law nor House rules specifically precludes a Member’s spouse from engaging in any activity on the ground that it could create a conflict of interest with the Member’s official duties. However, House rules and statutory provisions impute to the Member certain benefits that are received by the spouse. Thus the question may arise as to whether the Member is improperly benefiting as a result of the spouse’s employment.

House Rule 43, clause 3, part of the Code of Official Conduct, prohibits a Member from receiving any compensation, or allowing any compensation to accrue to the Member’s beneficial interest, from any source as a result of an improper exercise of official influence. Additionally, the Code of Ethics for Government Service (para. 5) admonishes officials never to accept benefits for themselves or their families “under circumstances which might be construed by reasonable persons as influencing the performance” of official duties. The income received by a spouse from employment usually accrues, albeit indirectly, to a Member’s interest. Nonetheless, neither of these provisions is triggered by a spouse’s employment unless the Member has improperly exerted influence or performed official acts either in order to obtain compensation for or as a result of compensation to the spouse.

Id.

An analysis of appearances in the context of marriage presents nothing new. Historically, holding out as married or “acting married” constituted an essential element for establishing the existence of a marriage at common law.¹³¹ Yet, the meaning or message conveyed by such actions, as well as by formal marriage itself, while never constant, has become even more elusive—with activists on both sides of the same-sex marriage debate contesting marriage’s essential ingredients,¹³² with single-adult households and marriage-like relationships eclipsing traditional marriages,¹³³ and with scholars recommending more flexibility even for traditional couples.¹³⁴

Professor Stephanie Coontz demonstrates the absence of a single, universal understanding of marriage, asserting that even the key ingredients of sexual activity and economic cooperation do not characterize all marriages.¹³⁵ Further, the concept of marriage has dramatically changed over the years, evolving from a mechanism for political alliances to a personal commitment based on love.¹³⁶ Even modern times have witnessed transitions in the meaning of marriage, as lived and experienced.¹³⁷ Indeed, one contemporary debate concerns whether marriage, as experienced, entails such gender-

131. See, e.g., Ariela R. Dubler, *Wifely Behavior: A Legal History of Acting Married*, 100 COLUM. L. REV. 957 (2000) (explaining how the doctrine of common law marriage emphasized whether a couple “acted married”); see also *Winfield v. Renfro*, 821 S.W.2d 640 (Tex. App. 1991).

132. See *supra* note 5.

133. See Sam Roberts, *51% of Women Are Now Living Without Spouse*, N.Y. TIMES, Jan. 16, 2007, at A1 [hereinafter Roberts, *51%*]; Sam Roberts, *It’s Official: To Be Married Means to Be Outnumbered*, N.Y. TIMES, Oct. 15, 2006, § 1, at 22 [hereinafter Roberts, *It’s Official*].

134. See, e.g., James Herbie DiFonzo, *Customized Marriage*, 75 IND. L.J. 875 (2000); Marjorie Maguire Shultz, *Contractual Ordering of Marriage: A New Model for State Policy*, 70 CAL. L. REV. 204 (1982); Barbara Stark, *Marriage Proposals: From One-Size-Fits-All to Postmodern Marriage Law*, 89 CAL. L. REV. 1479 (2001); cf. Linda C. McClain, *Family Constitutions and the (New) Constitution of the Family*, 75 FORDHAM L. REV. 833 (2006).

135. STEPHANIE COONTZ, *MARRIAGE, HISTORY: FROM OBEDIENCE TO INTIMACY OR HOW LOVE CONQUERED MARRIAGE* 26–27 (2005). On the evolving understanding of marriage in the United States, see NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* (2000).

136. See generally COONTZ, *supra* note 135.

137. See THEODORE CAPLOW ET AL., *MIDDLETOWN FAMILIES: FIFTY YEARS OF CHANGE AND CONTINUITY* 116–35 (1982) (describing experiences of marriage in “Middletown” in the 1920s, 1930s, and 1970s); see also THEODORE CAPLOW ET AL., *THE FIRST MEASURED CENTURY: AN ILLUSTRATED GUIDE TO TRENDS IN AMERICA, 1900–2000*, at 68 (2000) (discussing marriage rates).

based differences that married men enjoy measurable mental health benefits while the mental and emotional health of married women suffers.¹³⁸

Some scholars have suggested frank recognition of several different marriage regimes, designed to reflect the diversity among modern (or postmodern) families.¹³⁹ Perhaps, then, it should come as no surprise that in *Goodridge v. Department of Public Health*,¹⁴⁰ which held unconstitutional the exclusion of same-sex couples from marriage and its benefits, a majority of the Supreme Judicial Court of Massachusetts chose particularly open-ended definitional language: “We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others.”¹⁴¹ The court’s language shifts the focus from the meaning of “marriage” to the meaning of “spouses,” leaving at large just what this spousal relationship entails.¹⁴²

Despite this fluid and pluralistic understanding of “marriage” and “spouses,” modern family law’s rhetoric has unequivocally made gender equality a salient value. Transforming a set of rules that once unapologetically subordinated women¹⁴³ and confined them to the private sphere,¹⁴⁴ the United States Supreme Court has rejected gender-based roles and stereotypes for husbands and wives.¹⁴⁵ Most recently, in examining protected workplace leaves for family care,

138. See JESSIE BERNARD, *THE FUTURE OF MARRIAGE* 16–18, 26–28, 40–42, 49–50 (1982). But see LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY* 162–63 (2001).

139. See *supra* note 134.

140. 798 N.E.2d 941 (Mass. 2003).

141. *Id.* at 969.

142. Of course, *Goodridge* notes the numerous government benefits triggered by marriage. *Id.* at 955–57. But even this collection of benefits does not communicate clearly and consistently what precisely it means to be married or to unite as spouses.

143. WILLIAM BLACKSTONE, 1 COMMENTARIES *442 (“By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated or consolidated into that of the husband . . .”).

144. The classic statement appears in Justice Bradley’s concurring opinion in *Bradwell v. Illinois*, 83 U.S. 130, 139–42 (1873) (Bradley, J., concurring).

145. See, e.g., *Kirchberg v. Feenstra*, 450 U.S. 455 (1981); *Orr v. Orr*, 440 U.S. 268 (1979); *Stanton v. Stanton*, 421 U.S. 7 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Stanley v. Illinois*, 405 U.S. 645 (1972). See generally Susan Frelich Appleton, *Missing in Action? Searching for Gender Talk in the Same-Sex Marriage Debate*, 16 STAN. L. & POL’Y REV. 97, 110–15 (2005).

the Court has embraced official efforts to disrupt “mutually reinforcing stereotypes creat[ing] a self-fulfilling cycle of discrimination that [forces] women to continue to assume the role of primary family caregiver, and [that fosters] employers’ stereotypical views about women’s commitment to work and their value as employees.”¹⁴⁶ To the extent, then, that marriage is “the vehicle through which the apparatus of state can shape the gender order,”¹⁴⁷ as historian Nancy Cott has written, the language of equal opportunity brands today’s official model.

Against this background, two primary cross-currents shape the concept of marriage in contemporary family law—each with significant implications for reforms aimed at power couples. On the one hand, numerous recent developments have elevated the individual identity of each spouse over earlier notions that a married couple constitutes a single, indivisible unit. For example, old rules of interspousal immunity and spousal evidentiary privileges have given way to analyses that emphasize the separate interests of each spouse.¹⁴⁸ Similarly, in striking down a spousal notice requirement for abortion, the Supreme Court explicitly rejected the common law understanding of marriage in favor of an understanding based on individual rights.¹⁴⁹ And even the rise of unilateral no-fault divorce sends the message that membership in a family does not divest the individual of his or her autonomy, including exit rights.¹⁵⁰

Despite modern family law’s clear focus on the individual, another transformation arguably cuts the other way. An understanding of marriage as a partnership, resting on the contributions of each spouse to the joint enterprise, now drives the financial consequences of dissolution.¹⁵¹ In addition to those

146. Nev. Dep’t of Human Res. v. Hibbs, 538 U.S. 721, 736 (2003).

147. COTT, *supra* note 135, at 3.

148. *See, e.g.*, Trammel v. United States, 445 U.S. 40 (1980) (deciding that witness spouse alone can invoke privilege against adverse spousal testimony); S.A.V. v. K.G.V., 708 S.W.2d 651 (Mo. 1986) (en banc) (abrogating interspousal immunity).

149. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 896–97 (1992); *see also* Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (“[T]he marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup.”).

150. *Cf.* Wilson, *supra* note 20.

151. *See generally* PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, *supra* note 20, at

jurisdictions that follow a community property regime both during the marriage and after its end,¹⁵² even common law states now have equitable distribution laws that reflect a deferred-community approach to dividing property upon divorce. Under these laws, the breadwinning spouse's earnings during the marriage constitute marital property to be divided equitably between both spouses at dissolution.¹⁵³ And, although based on different theoretical foundations, post-dissolution support (often known as alimony or maintenance) also frequently takes into account sharing principles under which marriage is conceptualized as a partnership.¹⁵⁴ These developments find reinforcement in notions of economic unity, sharing, and partnership that underlie the treatment of married couples by federal income tax law, for example.¹⁵⁵

Professor Milton Regan explored aspects of these competing regimes in his 1999 book, *Alone Together: Law and the Meanings of Marriage*.¹⁵⁶ Positing “moments in marriage” when a spouse assumes either an “external stance” or an “internal stance,” Regan seeks to establish that “controversies over the legal regulation of marriage can be seen as conflicts over the relative weight that should attach to each vision in a particular context.”¹⁵⁷ In other words, according to Regan, in some contexts the external stance predominates (defined as

21–23 (presenting a general description of the prevailing approach to division of property upon dissolution of marriage); Laura A. Rosenbury, *Two Ways to End a Marriage: Divorce or Death*, 2005 UTAH L. REV. 1227.

152. Nine states have community property laws. See D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW: CASES AND MATERIALS* 238–39 & n.7 (3d ed. 2006) (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin).

153. See generally BRETT R. TURNER, *EQUITABLE DISTRIBUTION OF PROPERTY* § 1.02 (2d ed. 1994 & Supp. 2004). Although this approach was designed to address the inequities experienced by spouses who do not work outside the home, in modern marriages with two breadwinners each acquires a stake in the other's earnings to be realized upon dissolution.

154. See, e.g., *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION*, *supra* note 20, at 785–906 (Chapter 5 on “Compensatory Spousal Payments”).

155. See, e.g., Shari Motro, *A New “I Do”: Towards a Marriage-Neutral Income Tax*, 91 IOWA L. REV. 1509 (2006).

156. MILTON C. REGAN, JR., *ALONE TOGETHER: LAW AND THE MEANINGS OF MARRIAGE* (1999).

157. *Id.* at 5. The three specific contexts that Regan examines are attempts to apply economic analysis to marriage and divorce, spousal evidentiary privileges, and the financial consequences of marital dissolution. *Id.*

“represent[ing] an individual’s capacity to reflect critically upon, rather than simply identify with, her commitments and attachments”¹⁵⁸). But in other contexts, the internal stance tips the scales (defined as the perspective of a spouse from “‘inside’ the marriage as a participant who accepts its claims” and “from which marriage appears as a universe of shared meaning that serves as the taken-for-granted background for individual conduct”¹⁵⁹).

For the power couple, the first story about contemporary marriage or Regan’s “external stance”—emphasizing individual identity and interests—would suggest that each spouse should remain free to do his or her “own thing,” regardless of the career of the other. Even in the context of business, industry, and many professions, this understanding has been gaining ground, often for very practical and self-regarding reasons. Consider, for example, the decline of anti-nepotism policies: Once, employers thought such restrictions would check the hiring of unqualified workers, improve efficiency, and reduce conflicts in the workplace; today, as the result of the prevalence of two-career couples, some employers find that recruiting and hiring both spouses can provide an advantage in the marketplace.¹⁶⁰ In short, we have become accustomed to spouses with not only their own careers but also intersecting or overlapping employment orbits.

This first story reflects the view of the power couple that flourished at least through the end of the 109th Congress. According to this story, when one spouse is elected to Congress and moves to Washington, D.C., the other spouse—increasingly with a career of his or her own—often follows; alternatively, two individuals with

158. *Id.*

159. *Id.*

160. Anti-nepotism policies have decreased in a number of employment settings, largely because employers now consider them disadvantageous. *See, e.g.*, Deborah J. Anderson, *Academic Couples: Problems and Promises*, 53 *INDUS. & LAB. REL. REV.* 156 (1999) (reviewing *ACADEMIC COUPLES: PROBLEMS AND PROMISES* (Marianne A. Ferber & Jane W. Loeb eds., 1997), and noting increase in faculty couples); David Margolick, *The Law: At the Bar*, *N.Y. TIMES*, July 29, 1988, at B8 (reporting growing number of marriages between lawyers practicing in the same firm and the weakening of traditional anti-nepotism restrictions). *But cf.* *Vaughn v. Lawrenceburg Power Sys.*, 269 F.3d 703 (6th Cir. 2001). Nonetheless, an anti-nepotism statute still prohibits federal legislators from hiring their relatives. 5 U.S.C. § 3110 (2000).

careers in D.C. meet and marry.¹⁶¹ As Linda Daschle, an experienced aviation lobbyist at the time of her marriage to former Senator Majority and Minority Leader Tom Daschle, has remarked:

I think a congressional spouse is entitled to a career, self-fulfillment. I love what I do. I love aviation. I love aviation policy. I don't see myself walking away from a career that I've invested nearly 25 years in.¹⁶²

In other words, according to this story, the predominant appearance generated by the power couple is that of two independent professionals who happen to be married to one another. Further, this view is purportedly linked to a commitment to gender equality because the emergence of individual autonomy in marriage represents a rejection of patriarchal family laws¹⁶³ and because employment restrictions based on marriage often penalize the wife.¹⁶⁴

At the same time, however, the second understanding of modern marriage or Regan's "internal stance"—emphasizing unity and partnership—evokes criticisms of power couples. The quip quoted earlier, "How can a member of Congress possibly share a bed and a bank account with a member of the persuasion industry without a life laced by conflicts of interest?,"¹⁶⁵ encapsulates this perception. From this vantage point, power couples appear first as couples, with their marital relationship necessarily casting a shadow over their interwoven careers. In fact, some critics go further, suggesting that these lobbyists acquire their positions only because of their family ties to the legislature.¹⁶⁶

161. See Kirkpatrick, *supra* note 26.

162. Stephanie Mencimer, *Tom Daschle's Hillary Problem*, WASH. MONTHLY, Jan.–Feb. 2002 (quotation marks omitted), available at <http://www.washingtonmonthly.com/features/2001/0201.mencimer.html>.

163. A nice summary appears in the opinion in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 896–97 (1992). See also Appleton, *supra* note 145, at 110–15.

164. See, e.g., Nicole Buonocore Porter, *Marital Status Discrimination: A Proposal for Title VII Protection*, 46 WAYNE L. REV. 1 (2000); Joan G. Wexler, *Husbands and Wives: The Uneasy Case for Antinepotism Rules*, 62 B.U. L. REV. 75 (1982).

165. Justice, *supra* note 14.

166. Neubauer et al., *supra* note 16; see *supra* text accompanying note 16.

Senator Vitter's critique of spousal lobbying exemplifies this second view of the power couple. As he announced in a press release describing his amendment to the Senate's ethics bill:

"Using your office to increase your income is a fundamental problem at the heart of this [ethics] debate. Special interests that employ a senator's spouse pay large sums of money directly into that senator's family bank account. This amendment puts an end to that loophole so it can't be abused," Vitter said.¹⁶⁷

Between these two stylized descriptions of how power couples might "appear" lies a continuum with many intermediate points. Under a standard based on avoiding appearances of impropriety, in the absence of empirical investigation designed to assess public perceptions of power couples¹⁶⁸ and given the tensions built into the legal construction of marriage today, power couples have been enjoying the best of both worlds—an opportunity both reflected in and facilitated by the absence of any clear external limits in the statutes and ethical rules. Put differently, any uncertainty about whether a lobbyist spouse works as an independent individual or whether her marriage to a legislator gives her special clout and access (in turn making her a particularly valuable, and hence well-paid, lobbyist) emerges as simply one example of the many inconsistencies that seem to pervade our understanding of modern marriage, including its treatment by family law. If we have been unsure whether power couples appear to be doing anything improper, the reason is that our contemporary conceptualization of marriage is riddled with many such ambiguities and contradictions.

In contrast, Senator Vitter's approach reflects a very unambiguous understanding of marriage, but one that purports to acknowledge some differences among power couples. Thus, despite its treatment of

167. Press Release, Senator David Vitter, Vitter Wins Coburn Support for Morganza to the Gulf Project (Jan. 18, 2007), available at <http://vitter.senate.gov/?module=PressRoom/PressItems&ID=4aa5fa95-8816-4295-a796-610ded40ae96>.

168. We found one *USA Today* poll, but it considers only the narrow question of lawmakers' contacts with lobbyists in their own families. See Peter Eisler & Matt Kelley, *Public Wary of Links with Lobbyists; In Poll, 80% Say It's Wrong for Relatives to Lobby Lawmakers*, USA TODAY, Oct. 17, 2006, at A1.

spouses as a unit, the exception applicable to those spouses who worked as lobbyists at least a year before marriage to a senator or before the senator's election¹⁶⁹ reflects a conclusion that these spouses are deemed bona fide and sufficiently independent to continue their work.

Senator Vitter's approach might also signal a departure from an expansive appearance-based standard for government ethics generally and spousal lobbying in particular. One can read Senator Vitter's move to say that he has found a substantive problem, so spousal lobbying ought to be prohibited *regardless* how such activities appear to the public. Alternatively, Senator Vitter has suggested that he speaks for the public, which has discerned problematic appearances in power couples' activities.¹⁷⁰

B. A Critical Look at Power Couples' Own Responses

The contemporary construction of marriage provides a lens through which to examine the practices and norms developed over the years by power couples, who fashioned their own limits under an appearance-based standard that allowed considerable flexibility.¹⁷¹ At the time of this writing, the chances that Senator Vitter's amendment, with its rigid restrictions, will become law remain uncertain.¹⁷² If the amendment becomes law, however, then it will have a significant impact on behavior, and these earlier norms and practices will become part of the history leading to its enactment. If it does not become law, then these norms and practices might, for good or for ill, become models for future conduct of power couples. In this section, we interrogate these responses developed by some power couples themselves to set the stage for our closer look at possible reforms.

169. See *supra* notes 40–41 and accompanying text.

170. See Interview, *supra* note 10 (“It is a no-brainer to the American people. . . . [T]he good news on my spousal lobbying amendment is that it got in because of the public pressure and debate.”).

171. See *infra* app. 2 (listing congressional power couples and their self-imposed restrictions; compiled at the end of the 109th Congress); see also *infra* app. 3

172. Senator Vitter himself has conceded this point in an interview. Interview, *supra* note 10; see Sullivan, *supra* note 11; *supra* notes 45–49 and accompanying text.

Usually, power couples' practices and norms have entailed self-imposed limits on the lobbyist spouse's activities. For example, former Senator Daschle's wife claimed to have voluntarily limited her lobbying to the House alone, because of her husband's Senate leadership position.¹⁷³ Representative Blunt's wife has stated that she lobbies only the Senate, not the House, given her husband's position as Republican Whip.¹⁷⁴ Although some observers point out that the individuals in question have not consistently followed these self-imposed limits,¹⁷⁵ would adherence to such standards suffice to cure at least the problematic "appearances"? Suppose a senator receives a call that Representative Blunt's wife would like to make an appointment to discuss a tobacco issue. Should we presume that a senator would react differently from a member of the House? Does the problem underlying the "appearance" test persist?¹⁷⁶ After all, senators and representatives must work together to get legislation enacted and to agree on statutory language,¹⁷⁷ and these realities raise questions about whether the self-imposed limits go far enough.

Further, appearances might well vary depending on the details. Taken seriously, an appearance-based standard might invite distinctions based on the position, jurisdiction, and sphere of influence of each spouse, the timing of the marriage, and the way the spouses present themselves. To what extent do the leadership roles of former Senator Daschle (past Majority and Minority Leader) and Representative Blunt (once Majority, now Minority Whip) suggest a different set of limits from those that might suffice for other

173. See Drinkard, *supra* note 54.

174. Pamela Brogan, *Blunt's Tobacco Stance Highlights Haziness of Ethics Rules*, GANNETT NEWS SERV., Mar. 30, 2004; see Justice, *supra* note 14.

175. Citizens for Responsibility and Ethics (CREW) in Washington contends that Blunt attempted to insert a provision benefiting Philip Morris, at competitors' expense, in homeland security legislation. Press Release, Citizens for Responsibility & Ethics in Wash., CREW Reveals Newest Majority Leader—Representative Blunt One of the Most Unethical Members of Congress, CREW, Sept. 29, 2005, available at <http://www.citizensforethics.org/node/19081>; see also Jim VandeHei, *GOP Whip Quietly Tried to Aid Big Donor*, WASH. POST, June 11, 2003, at A1. Linda Daschle's name showed up on a list of Senate lobbyists working on behalf of a drug company seeking a patent extension on one of its products. Kane, *supra* note 28.

176. Senator Michael Castle (R-DE) suggested a similar concern on the floor of the House. 153 CONG. REC. H5770 (daily ed. May 24, 2007).

177. See e.g., House Rule XXII ("House and Senate Relations"), available at <http://clerk.house.gov/legisAct/legisProc/rules/rule22.html>.

lawmakers? Similarly, should the work of Catherine Stevens as a lobbyist on appropriations matters for Mayer, Brown, Rowe & Maw¹⁷⁸ while her husband Senator Ted Stevens chaired the Senate Appropriations Committee from 1997 to 2005 raise questions that would not arise for a lobbyist with a different focus or a lawmaker on a different committee? Although the media publicized criticisms of Stevens' financial activities, his wife's work as a lobbyist went largely unnoticed, so the Stevenses remained impervious.¹⁷⁹ Moreover, do the (second) marriages of Blunt and Daschle to women with previously established lobbying careers differentiate these cases from those in which the lobbying begins only after the spouse's election, as Senator Vitter's amendment suggests?

Some practices seem problematic because they fuel perceptions that lobbyists married to legislators have an unfair advantage over "ordinary" lobbyists¹⁸⁰ and thus provide unequal access for their clients. Some who voice this concern contend that even the spousal lobbyists' names cause unfairness, noting that nearly all lobbyist spouses have chosen to share the surname of the lawmaker spouse.¹⁸¹ (At the end of the 109th Congress, the only exceptions were Lucy Calautti, wife of Senator Kent Conrad (D-ND), and Allison Lee, wife of Representative Maurice Hinchey (D-NY).) Similar concerns arise from other, little-known practices, such as Linda Daschle's display of a large framed Senate insigne in her office¹⁸² and her firm's emphasis on her ability to report "insider intelligence."¹⁸³ Further, consider the

178. *But see supra* note 53 and accompanying text (noting denials that Catherine Stevens lobbies Congress).

179. *See, e.g.*, Chuck Neubauer & Richard T. Cooper, *Senator's Way to Wealth Was Paved with Favors*, L.A. TIMES, Dec. 17, 2003, at A1; *Watchdog Group Files Complaint Against Stevens*, CONGRESS DAILY (Wash., D.C.), Oct. 31, 2003, available at 2003 WLNR 13640123.

180. *See* Kranish, *supra* note 90.

181. Geoff Earle, *Linda Daschle to Lobby the Senate*, THE HILL (Wash., D.C.), Dec. 8, 2004, at 4.

182. Mencimer, *supra* note 162 ("[I]n case her clients forget who she's married to, behind her desk is a giant framed print of the U.S. Senate insigne.").

183. The website of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, once used this term in its profile of Linda Daschle. *See* Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, <http://www.bakerdonelson.com> (follow "Attorneys" hyperlink; then "D" hyperlink; then select "Daschle, Linda H." hyperlink) (last visited May 6, 2007). The firm, however, subsequently deleted the following paragraph, which included the reference to Daschle's access to "insider intelligence":

jewelry of Rebecca Cox (wife of former Representative Christopher Cox (R-CA)). While lobbying, she reportedly wears her “member’s spouse” pin, which both conveys “insider status” and ensures access to restricted areas of the Capitol.¹⁸⁴

Another set of practices entails limitations undertaken by the lawmaker spouse. For example, although critics have challenged their assertions,¹⁸⁵ Representative Blunt has claimed to recuse himself from any issue affecting Altria, his spouse’s client,¹⁸⁶ and Senator John McCain (R-AZ) has stated that he recuses himself from issues affecting the beer industry, because of the position of his wife, Cindy McCain, as vice president and director of the Hensley company, one of the county’s largest beer distributors.¹⁸⁷

These self-imposed restrictions and the questions that they raise show the limits of an appearance-based standard. Power couples’ practices acknowledge that their marriages merit special accommodations; yet, problematic appearances persist despite these accommodations. Further, self-imposed ad hoc restrictions fail to signal institutional concern about these difficulties. Reformers understandably have called for more.

While Linda’s experience and effectiveness are important to her clients, there is another reason they value her service – her frequent reporting of insider intelligence. Linda scours the news coming out of Washington each day for developments of concern to her clients and reports to them on what she learns. “We put a premium on keeping our clients informed,” she says. “We do not want our clients to be caught by surprise by something that the federal government might do.”

One can view this past profile of Linda Daschle by searching Google and opening cached material, which displays past postings that have since been removed or deleted, *available at* <http://72.14.209.104/search?q=cache:YEEZ7C4aAcAJ:www.bakerdonelson.com/ContentWide.aspx%3FNodeID%3D32%26PersonID%3D1820+baker+donelson+daschle+insider+intelligence&hl=en&ct=clnk&cd=1&gl=us>.

184. Mary Ann Akers, *Necklace Envy*, ROLL CALL (Wash., D.C.), Aug. 2, 2006, *available at* 2006 WLNR 13334499; Nick Baumann & Oliver Haydock, *Washington’s 60 Sizzlingest Power Couples!*, WASH. MONTHLY, May 1, 2007, *available at* 2007 WLNR 10641120.

185. Press Release, *supra* note 167; *see* James Ridgeway, *Smoke, Mirrors, and White Noise: Campaign Notebook*, VILLAGE VOICE (N.Y., N.Y.), Jan. 19–25, 2000, at 32, 32, *available at* <http://www.villagevoice.com/news/0003,ridgeway,11890,6.html>; *see also* Brogan, *supra* note 174.

186. *See* Justice, *supra* note 14. Blunt’s spokesperson “said the family had taken pains to prevent conflicts. ‘It’s something they have given a lot of thought to and they believe the policy in place is best for everyone’” *Id.* On the problems presented by a legislator’s recusal, *see infra* notes 224–25 and accompanying text.

187. Ridgeway, *supra* note 185.

C. Reforms and Their Problems

At this writing, Senator Vitter's proposal to bar official contact by senators and their staffs with spousal lobbyists stands out because it would impose explicit restrictions on power couples, and it provides a template for even more far-reaching restrictions.¹⁸⁸ In fact, however, this approach constitutes only one of several different measures that have emerged from efforts to accomplish government ethics reform. Moreover, the norms that some power couples have employed might provide additional starting points for such rules, whether included in new legislation or adopted as new internal ethics standards.

Some of the reforms initiated at the start of the 110th Congress and applicable to power couples follow familiar paths. For example, new House Rules mandate *disclosure* of earmarks,¹⁸⁹ including written certification that neither the lawmaker nor a spouse has a financial interest in the earmark or other special benefit.¹⁹⁰ The bill passed by the Senate would impose similar requirements.¹⁹¹ Alternatively, one might classify these new provisions as rules designed to prevent *conflicts of interests* on the part of legislators, another familiar approach¹⁹² even more clearly apparent in Senate prohibitions on promoting earmarks that would benefit financially a senator, spouse, or immediate family member.¹⁹³ And although the reforms do not address gifts to and from spouses, both the House and

188. In addition, it forms part on a larger ethics bill that passed the Senate by a wide margin. For a description of the circumstances of passage, see *supra* notes 12, 34–38, and accompanying text.

189. See H.R. Res. 6, 110th Cong. § 404(b)(17) (2007).

190. *Id.*

191. S. 1, 110th Cong. § 103(4)(a)(5) (2007).

192. A proposal by Representatives Rahm Emanuel (D-IL) and Chris Van Hollen (D-MD) would prevent lawmakers and their spouses or immediate family members from personally benefiting from any earmarks and would also ban earmark awards to any entity employing the sponsor's spouse, immediate family member, or former staff member or employee and to any entity represented by a lobbying firm that employs a spouse or family member of the sponsor. Press Release, Congressman Rahm Emanuel, Emanuel, Van Hollen Announce Real Earmark Reform (Sept. 12, 2006), available at http://www.house.gov/apps/list/press/il05_emanuel/EARMARKS_09122006.html.

193. See 153 CONG. REC. S783-84 (daily ed. Jan. 22, 2007).

the Senate have acted to tighten the gift limits, by eliminating gifts from lobbyists to lawmakers altogether.¹⁹⁴

Several less familiar approaches deserve attention as well. Like Senator Vitter's amendment that passed the Senate, some reforms would restrict access of lawmakers and their staffs to spousal or family lobbyists. For example, the version of the bill that was initially introduced in the Senate, before acceptance of the Vitter amendment, included a provision simultaneously broader and narrower:

If a Member's spouse or immediate family member is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such a registered lobbyist for the purpose of influencing legislation, the Member shall prohibit all staff employed by that Member (including staff in personal, committee and leadership offices) from having any official contact with the Member's spouse or immediate family member.¹⁹⁵

Similar to a bill that passed the Senate in March 2006,¹⁹⁶ this provision extends beyond Senator Vitter's approach to reach family members other than spouses, while more narrowly imposing restrictions on lobbying relationships only between a specific lawmaker's office and that lawmaker's own spouse or family member. The House's bill applies this narrow restriction only when the lobbyist is a spouse.¹⁹⁷

Kimberly Dorgan, wife of Senator Byron Dorgan (D-ND), who lobbies on behalf of the American Council of Life Insurers, has adhered only to such a self-imposed limitation and freely lobbies all legislative offices except for that of her husband.¹⁹⁸ But some sources assert that such minimal restrictions can easily be circumvented, say,

194. In the 110th Congress, the House changed the rule to prohibit a lawmaker from knowingly accepting any gift from a registered lobbyist or entity employing registered lobbyists. H.R. Res. 6, 110th Cong. § 203(a) (2007). The Senate passed a similar restriction. S. 1, § 108. Query how these measures treat gifts to lawmakers from their lobbyist spouses.

195. S. 1, § 110. Note that an identical provision passed as § 113(a) in Senate Bill 1 in the 110th Congress. *See supra* note 40 and accompanying text.

196. S. 2349, 109th Cong. (2006). This bill passed the Senate on March 29, 2006, but never became law. *See* 152 CONG. REC. S2511 (Mar. 29, 2006).

197. H.R. 2316, 110th Cong. § 401 (2007); *see supra* text accompanying note 45.

198. Earle, *supra* note 181; Neubauer et al., *supra* note 16.

by having another member of the lobbyist spouse's firm make the call.¹⁹⁹ Further, one needs little imagination to conclude that a lobbyist has special access and creates questionable appearances when she calls on her (or his) spouse's legislative colleagues. Indeed, this proposal seems to exemplify a familiar criticism of measures designed to eliminate appearances of impropriety: Such measures, in their emphasis on appearances, might well distract attention from substantive improprieties and the need for substantive reforms.²⁰⁰

Power couples' practices suggest other plausible restrictions that reach farther than one lawmaker's office but fall short of a complete ban on spousal lobbying. As noted, although their assertions have prompted challenges, both Linda Daschle and Abigail Blunt have claimed to avoid lobbying the Senate and House, respectively, depending on where their husbands served.²⁰¹ Indeed, Senator Vitter's amendment addresses only senators, their staffs, and their spouses, consistent with the self-imposed restrictions followed by the Daschles and the Blunts. Senator Vitter stated on the Senate floor, however, that he would have preferred a more expansive restriction but kept his amendment narrow in scope to meet the procedural requirement of "germaneness."²⁰²

In considering more finely-tuned approaches, the jurisdiction of a lawmaker also seems relevant to the analysis of the possible appearance of impropriety. When a lawmaker is a member of the party leadership or chair of a particular committee, the lobbyist spouse could limit her contacts accordingly. For example, to address the probable appearance of impropriety and possible conflicts of interest arising from situations such as that of the Stevenses, when the Senator chaired the Appropriations Committee while his wife reportedly worked as an appropriations lobbyist,²⁰³ a rule could prohibit a spouse's or relative's lobbying before committees that the lawmaker chairs or on which he serves as a member. Doris Matsui (D-CA) followed this approach before taking the congressional seat

199. Neubauer et al., *supra* note 16.

200. *See* Morgan, *supra* note 96, at 610–13.

201. *See supra* notes 173–77 and accompanying text.

202. *See* 153 CONG. REC. S492 (daily ed. Jan. 12, 2007); 153 CONG. REC. S640 (daily ed. Jan. 17, 2007).

203. *But see supra* note 53 and accompanying text.

of her late husband, Robert Matsui (D-CA), choosing not to lobby any member on the Ways and Means Committee, of which her husband was a senior member.²⁰⁴

To the extent that appearances of impropriety survive these tailored approaches, one might proceed further. For example, the House bill expresses Congress's sense that lobbyists act inappropriately when they use family relationships with legislators "to gain special advantages over other lobbyists."²⁰⁵ One could read this provision broadly as a general condemnation of lobbying by spouses and other family members. Alternatively, the language is susceptible of a much narrower interpretation, limited only to particular instances of family lobbying undertaken for the purpose of gaining "special advantages."

Beyond expressing a sense of the impropriety of lobbying by spouses and family members, Congress might take more direct action, endeavoring to halt all such lobbying. William Canfield, former senior staff counsel to the Senate Ethics Committee, laments that this solution was not adopted years ago, when the issue of appropriate careers for political wives first arose.²⁰⁶ Proposals by Senator Vitter illustrate two different paths for accomplishing this end. The first, which the Senate did not pass, aims at the lobbying spouse—but does so with a vengeance. Applying to members of both chambers and their spouses, it would punish under the statutes prohibiting bribery, graft, and conflicts interest:

[a]ny person who is the spouse of a Member of Congress and who was not serving as a registered lobbyist at least 1 year prior to the election of that Member of Congress to office and who, after the election of such Member, knowingly lobbies on behalf of a client for compensation any Member of Congress

204. Juliet Eilperin, *The Ties That Bind on Capitol Hill*, WASH. POST, Aug. 7, 2003, at A19.

205. See *supra* note 46 and accompanying text.

206. See *supra* note 64 and accompanying text; see also Margaret Carlson, *Ethics When Spouses Earn Paychecks*, TIME, Mar. 30, 1992, at 30 (article featuring subtitle that says "As politicians' wives increasingly forge careers of their own, questions about conflicts of interest inevitably arise").

or is associated with any such lobbying activity by an employer of that spouse²⁰⁷

Some skeptics have contended that restrictions on lobbying might violate the First Amendment's guarantee of the right "to petition the government for a redress of grievances"²⁰⁸—although surely Congress can control lobbying without violating the Constitution. By its own terms, however, this proposal would criminalize the current employment of several congressional spouses—those who began their lobbying careers post-election, such as Lucy Calautti, the wife Senator Kent Conrad.²⁰⁹ Further, this proposal would not only punish lobbying by such spouses but also their "association" with such lobbying by an employer. Although Senator Vitter initially proposed a "grandfather provision" that would protect all those lobbying on the date of enactment,²¹⁰ he subsequently removed this exception, which he said "would allow everyone who's doing it now to keep doing it."²¹¹ Nonetheless, requiring an individual to leave her job, on penalty of a criminal prosecution, goes further than restrictions in comparable contexts. For example, anti-nepotism rules are not typically embodied in criminal prohibitions, even if they might separate one spouse from employment because of the identity of the other spouse.²¹² And, even conflict of interest rules applicable to lawyer spouses generally create personal disqualifications, but not disqualifications applicable to a spouse's entire law firm.²¹³ A parallel restriction might disqualify a lobbyist from official contact with her spouse and his staff, but not with all the other members of the legislative body—much like the approach originally included in the Senate bill, before the addition of Senator Vitter's amendments.²¹⁴

207. S. 105, 110th Cong. § 1 (2007). Senator Vitter originally tried to include a provision using identical language in the ethics reform bill. *See* 153 CONG. REC. S322-S323 (daily ed. Jan. 10, 2007).

208. *See* Kranish, *supra* note 90.

209. *See* Newmyer, *supra* note 44.

210. *See* 153 CONG. REC. S323 (daily ed. Jan. 10, 2007).

211. *See* Interview, *supra* note 10 and accompanying text.

212. *See, e.g.*, 5 U.S.C. § 3110 (2000); *Vaughn v. Lawrenceburg Power Sys.*, 269 F.3d 703 (6th Cir. 2001).

213. *See* MODEL R. OF PROF'L CONDUCT R. 1.7, 1.8, 1.10 (2001).

214. *See* S. 1, 110th Congress § 113(a) (2007); *supra* note 40 and accompanying text.

In addition, although Senator's Vitter's original proposal would not apply retroactively in the sense that it would not punish conduct occurring before its enactment, it would upset settled expectations and impose opportunity costs on individuals who might have pursued different employment in the past had they known that the rules would change.²¹⁵ In other words, lobbyist spouses like Lucy Calautti would risk prosecution under this reform because the facts indicate that she began her lobbying practice after Senator Conrad's election.²¹⁶ Thus, despite her strong independent career in politics that preceded her marriage, she would be required to leave her work as a lobbyist for Major League Baseball²¹⁷ or risk prosecution. Similarly, the exception would also appear to provide no refuge for other senators' spouses, such as reputed appropriations lobbyist Catherine Stevens,²¹⁸ as well as several representatives' spouses.²¹⁹

In contrast, another proposal introduced by Senator Vitter, the one adopted by the Senate, takes a different route. First, it would prohibit members of the Senate and their staffs from having any "official contact with any spouse of a Member who is a registered lobbyist under the Lobbying Disclosure Act of 1995, or is employed or retained by such registered lobbyist."²²⁰ In its present form, this proposal would make only one chamber off limits to spousal lobbyists, but it might eventually shut down spousal lobbyists' access to all of Congress, if Senator Vitter has his way.²²¹ Thus, the spousal lobbyist would not face criminal prosecution, but part or all of her job would disappear. Second, this proposal includes an exception for not

215. Senator Trent Lott has expressed concerns about "the innocent spouse." See Chaddock, *supra* note 10.

216. See Newmyer, *supra* note 44.

217. See *id.*

218. Catherine Stevens joined her Washington, D.C., law firm in 2001. Catherine Ann Stevens, <http://www.mayerbrown.com> (follow "Lawyers" hyperlink; then type "Stevens" in the Lawyer Name Search box; then follow "Stevens, Catherine Ann" hyperlink) (last visited May 6, 2007). Senator Stevens joined the U.S. Senate in 1968. See <http://stevens.senate.gov/public/index.cfm?FuseAction=AboutSenatorStevens.Biography> (last visited June 15, 2007). But see Newmyer, *supra* note 44.

219. See Newmyer, *supra* note 44.

220. See *supra* text accompanying note 40 (quoting this provision).

221. He narrowed the scope of the provision originally proposed to satisfy the procedural requirement of "germaneness." See Solomon, *supra* note 11; *supra* notes 36–37 and accompanying text

only those spouses whose work as lobbyists began one year before the lawmaker's election, but also those whose work as lobbyists began one year before the marriage.²²² Otherwise, however, the restriction contains no "grandfather provision."²²³

This approach has several attractive features. First, it aims at the lawmaker, the real holder of the public trust, not the lobbyist. Second, it avoids some of the problems of alternative measures that also aim at the lawmaker, like the recusal procedure practiced by Representative Blunt and Senator McCain.²²⁴ The recusal of one lawmaker might fail to address significant appearances of impropriety, because—like any disqualification that applies only to one couple at a time—it might leave ample room for pressures and influences experienced by legislative colleagues, who presumably know that the spouse of "one of their own" has an interest in a particular matter.²²⁵

Finally, the version of Senator Vitter's amendment passed by the Senate appropriately attempts the difficult task of distinguishing spouses with independent careers. The exception for spouses who had pre-election or pre-marriage jobs as lobbyists seems designed to protect individuals who worked as lobbyists even before they had a formal relationship with a legislator, while obviating one of the problems that Miller hoped his "smell test" would prevent: the hiring of one spouse to lobby primarily because the other spouse is a member of Congress.²²⁶

On the other hand, especially if this approach ultimately applies to both chambers, as Senator Vitter would like,²²⁷ some wives would

222. See S. 1, 110th Cong. § 113 (2007); E-mail from Joel DiGrado, Press Secretary for Senator David Vitter, to Robyn Rimmer (Jan. 22, 2007, 10:32:19 CST) (on file with authors).

223. See Interview, *supra* note 10.

224. See *supra* notes 186–87 and accompanying text.

225. Critics of recusal also make the following points: first, constituents have the right to expect that their representatives will participate fully in the congressional activities for which they were elected to serve. See, e.g., Ronald M. Levin, *Congressional Ethics and Constituent Advocacy in an Age of Mistrust*, 95 MICH. L. REV. 1, 14–15 (1996). Second, a recusal requirement would highlight the extent to which a candidate for election or reelection might be limited in this capacity. Third, as Marc Miller pointed out years ago in first examining the issues facing political spouses, "voting is widely believed to be a constitutional right of members." MILLER, *supra* note 65, at 33.

226. See *supra* note 81.

227. See *supra* note 221 and accompanying text.

probably lose their jobs, because much of their previous work would become off limits to them. New political spouses would have fewer choices about careers in D.C., in turn perhaps prompting some to remain back in the home jurisdiction. Ironically, Senator Vitter's approach results in an official "blessing" for members of the so-called "second wives club"²²⁸—those seasoned lobbyists who marry legislators, often taking the place of "first wives," whom the new rules would treat much more strictly.

Observers have praised the Senate's action on the ground that it demonstrates the 110th Congress's serious commitment to ethics reform.²²⁹ Certainly, it highlights how the pre-existing approach, leaving all such matters within individual discretion, is not inevitable. Yet its attempt to draw lines and its consideration of some of the competing values at stake invites closer scrutiny. In the sections below, we explore the difficult questions that emerge.

D. The Uniqueness of Marriage?

Why do Senator Vitter's proposals address only power couples, without reaching legislators' other close relatives who lobby?²³⁰ In contrast, new amendments to Senate rules disallow efforts to secure the passage of earmarks that would financially benefit the Senator in question, his spouse, or any immediate family member.²³¹ And the House's "sense of Congress" statement simply speaks of "immediate family members,"²³² presumably including spouses and other close relatives. As noted, several family members of public officials other than spouses occupy positions similar to those of the lobbyists we have examined. For example, the three sons of Senate Majority Leader Harry Reid have worked for firms that lobby or seek government benefits²³³; the two sons of Senator Orrin Hatch (R-UT)

228. See *supra* note 85 and accompanying text.

229. See, e.g., *Face the Nation* (CBS television broadcast Jan. 21, 2007); Editorial, *Reform, Finally, in the Senate*, N.Y. TIMES, Jan. 20, 2007, at A10.

230. See *supra* note 48 and accompanying text.

231. See *supra* note 193 and accompanying text.

232. H.R. 2316, 110th Cong. § 209 (2007); see 153 CONG. REC. H5770-71 (daily ed. May 24, 2007).

233. See *infra* app. 1.

work respectively for the National Nutritional Foods Association and for a firm representing GlaxoSmithKline, Qwest, and Verizon²³⁴; and the son of Representative Dennis Hastert (R-IL) works as a lobbyist representing the Small Business Technology Coalition and Accurate Automation.²³⁵ What “appearances” arise from their work? Put differently, one might ask whether marriage is—or appears—unique.

Certainly, we might find in many given family relationships (say, a father and a son) the same sort of confidential communication, generosity, beneficence, caring, and concern for another’s well-being that ideally are thought to characterize marriage. Nonetheless, we speculate that marriage differs from other family relationships for purposes of this analysis. Two reasons support this distinction.

First, the legal treatment of marriage as an economic partnership distinguishes spouses from others with close family relationships. Although many different adult relatives might *choose* to share their financial resources with one another, the law *imposes* sharing principles only on spouses.²³⁶ Does the fact that the law gives each spouse a financial stake in the other’s resources upon dissolution (and during marriage in community property states²³⁷) create at least appearances of impropriety for spouses that do not pertain to other family members?²³⁸ Put differently, instead of comparing marriage and other close familial relationships, should we be comparing the rules that would apply to a legislator’s business associates or partners—given the frequency with which the “business partnership” analogy is invoked in efforts to explain the financial incidents of marriage?²³⁹ Consider here the problems raised when a lawmaker’s

234. *Id.*

235. *Id.*

236. Similar consequences follow for those deemed domestic partners under approaches like that developed by the American Law Institute. See PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, *supra* note 20, at 907–43 (Chapter 6 on Domestic Partners).

237. See *supra* note 152 and accompanying text.

238. Note, however, that the restrictions on lawmakers’ receipt of outside earned income does not take into account community property laws, so that the undivided one-half interest in his spouse’s income that a lawmaker from a community property state would get is disregarded for purposes of such restrictions. See House Rule XXV cl. 4(d)(2), available at <http://clerk.house.gov/legisAct/legisProc/rules/rule25.html>.

239. See, e.g., Stephen D. Sugarman, *Dividing Financial Interests on Divorce*, in DIVORCE REFORM AT THE CROSSROADS 130, 136–41 (Stephen D. Sugarman & Herma Hill Kay eds., 1990); cf. Katherine Wells Meighan, *For Better or for Worse: A Corporate Finance Approach*

work veers too close to a business in which he has a stake—as recently illustrated by stories about the efforts of former Senate Majority Leader Bill Frist (R-TN) to become a leader on health care legislation while a major stockholder in HCA, Inc., a large for-profit hospital chain founded by his father and brother.²⁴⁰

Second, cohabitation is a typical (although not inevitable) incident of marriage, so we ordinarily expect spouses to live in the same locale.²⁴¹ As a result of this norm, the need for a legislator’s spouse to find employment in D.C. triggers the tension that we examine.²⁴² One can find a sympathetic illustration in stories about Representative Jim McCrery (R-LA), who in 2004 planned to leave Congress to spend more time with his family in Shreveport until his wife, Johnette, a television reporter and journalism professor, found work as vice president of a prominent public relations firm in D.C.²⁴³ How should we reconcile the competing interpretations of this development, reflected in one news report stating both that the “McCrerys find happiness in D.C.” and that “the firm will no doubt find it valuable to have a pipeline to [Johnette McCrery’s] husband, who many think will be the next chairman of the House Ways and Means Committee”?²⁴⁴

By contrast, adult children, especially adult children with careers, do not necessarily or usually live in the same place as their parents—even if everyone is presumptively free to reside and work where he or she wants.²⁴⁵ Does this distinction suggest that spouses ought to present a more troublesome case for restrictions than other family members? In other words, does the peculiar dilemma of the senator’s

to *Valuing Educational Degrees at Divorce*, 5 GEO. MASON L. REV. 193 (1997); Bea Ann Smith, *The Partnership Theory of Marriage: A Borrowed Solution Fails*, 68 TEX. L. REV. 689 (1990).

240. See Sheryl Gay Stolberg, *For Frist, A Political Fortune May Be Inextricably Linked to a Financial One*, N.Y. TIMES, Oct. 25, 2005, at A1.

241. See, e.g., Janice Compton & Robert A. Pollak, *Why Are Power Couples Increasingly Concentrated in Large Metropolitan Areas?* (Nat’l Bureau of Econ. Research, Working Paper No. 10918, 2006).

242. Nonetheless, not all senators’ and representatives’ spouses move to D.C.

243. Bruce Alpert & Bill Walsh, *News from the Louisiana Delegation in the Nation’s Capital*, TIMES PICAYUNE (New Orleans, La.), July 25, 2004, at 4.

244. *Id.*

245. Indeed, not all federal lobbyists are headquartered in D.C. Many travel regularly from a different home base to D.C. to meet with legislators and their staffs.

or representative's professional spouse who wants to move with the lawmaker to D.C. call for a measure of flexibility and tolerance of which other family members, like adult children, are less deserving? What does Congress's rhetoric about marriage²⁴⁶ mean for reforms that might thwart spousal efforts to live in the same city?

Even if the focus narrows to conjugal couples who choose to cohabit in the D.C. area, however, one might raise line-drawing questions about distinguishing spouses from those in non-marital intimate cohabitation relationships. Certainly, the reported incidence of such relationships has been rising, with married couples now a minority of households nationally.²⁴⁷ Further, if economic partnership triggers conflicts or appearances of impropriety for spouses, then consider the fact that some legal authorities and family law reform initiatives provide financial protections even for informal domestic partners, in order to address the dependence often arising in such relationships, just as in marriage.²⁴⁸

Despite some significant similarities between some married couples, on the one hand, and some unmarried couples, on the other, we think marriage provides at least the best starting point for analysis of lawmaker-lobbyist relationships. The legal treatment of marriage remains more well-established than the legal treatment of cohabitation, and the public's understanding of marriage—along with the resulting appearances—no doubt should be more well-defined than the perception of other intimate relationships. Many lawmakers might well regard marriage as special, privileged, and important, just as their rhetoric insists.²⁴⁹ Finally, despite some notable

246. See *supra* notes 1–3 and accompanying text.

247. See Roberts, *51%*, *supra* note 133; Roberts, *It's Official*, *supra* note 133.

248. See, e.g., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, *supra* note 20, at 907–43 (Chapter 6 on Domestic Partners). By “informal domestic partnerships,” we mean those relationships not formally celebrated or registered under laws such as Vermont's civil union statute, VT. STAT. ANN. tit. 15 § 1201 (2002) (limiting such relationships to same-sex couples) or California's domestic partnership statute, CAL. FAM. CODE § 297(b)(5) (2004) (limiting such relationships to same-sex couples or couples in which one individual is “aged”). Family law's recent emphasis on functional tests recognizes that, in terms of lived experience, informal relationships often are indistinguishable from formal relationships. See, e.g., Hamilton, *supra* note 2.

249. Witness, for example, the statements on the Senate floor made in support of the proposed constitutional amendment to ban same-sex marriage. 152 CONG. REC. S5945 (daily ed. June 15, 2006); *id.* at S5473 (daily ed. June 6, 2006); *id.* at S5393–S5394 (daily ed. May

exceptions,²⁵⁰ most lawmakers find marrying more politically advantageous than prolonging other intimate arrangements—even when marrying entails displacing one spouse to make room for a new one.²⁵¹

III. COMPETING VALUES

A. A Closer Look at Power Couples, Power, and Gender

From this analysis, the lawmaker-lobbyist marriage emerges as both the most compelling and yet the most troublesome case for restrictions. This case is compelling because of the partnership understanding of marriage. Perhaps it should come as no surprise that Senator Vitter's home state, Louisiana, has a community property regime,²⁵² which even during marriage gives each spouse an undivided one-half interest in the earnings of the other, in contrast to equitable distribution states, which impose the concept of marital property only at dissolution.²⁵³

This case is troublesome because of the expectations and preferences that spouses will live and work in the same city and because of persistent gender disparities. Among power couples, most lawmaker spouses are men, most lobbyist spouses are women,²⁵⁴ and

26, 2006).

250. For example, the late Representative Gerry Studds incited negative publicity upon discovery of his affair with a seventeen-year-old male congressional page. *See* Damien Cave, *Gerry Studds, Gay Congressman Who Served 12 Terms, Is Dead at 69*, N.Y. TIMES, Oct. 15, 2006, § 1, at 41. However, a domiciliary of Massachusetts, by 2004 former Representative Studds was able to marry, although his husband was not eligible for a survivor's pension, given the federal law limiting recognition to male-female marriages. *See id.*; Patrick Healy, *Mrs. Clinton Wouldn't Block Law if Albany Backed Gay Marriage*, N.Y. TIMES, Oct. 27, 2006, at B5; *see also* Matt Bai, *The Outsider*, N.Y. TIMES (Magazine), Feb. 2, 2004, at 30 (profile of former Senator Gary Hart (D-CO), who had a well-publicized "fling" with former model Donna Rice).

251. *See, e.g.*, David D. Kirkpatrick, *Marianne Gingrich Wants to Sell a Book About Her Ex-Husband*, N.Y. TIMES (Magazine), July 18, 2000, at C7 (reporting the extramarital affair between her ex-husband, former Speaker of the House Newt Gingrich (R-GA), and his aide, her divorcee, and his remarriage to the aide); Kate Zernike, *What Some Politicians Fear Most: The Ex-Wife*, N.Y. TIMES, Nov. 13, 2005, § 4, at 14; *see also* Cottle, *supra* note 85 ("In some cases, the second-wife-to-be is assumed to have helped show her predecessor to the door.").

252. *See* WEISBERG & APPLETON, *supra* note 152, at 238–39.

253. *See* TURNER, *supra* note 153; *see also supra* note 151 and accompanying text.

254. *See supra* note 70. Even the token male member of the lobbying group, Bob Dole, no

restrictions more often will disadvantage lobbyists than lawmakers. Indeed, restrictions that aim at power couples while ignoring other family ties between lawmakers and lobbyists not only disadvantage women but disproportionately protect men, given the number of sons and male relatives other than spouses who lobby.²⁵⁵

This concern about gender disparities receives reinforcement from the history of the “political spouse”—a phenomenon that first received attention only at the time when significant numbers of middle- and upperclass married women had started to enter the workforce.²⁵⁶ From this perspective, the power couple seems to present a contemporary dilemma—a difficulty that we cannot escape without replacing the power couple with the more traditional and more patriarchal “power husband.” Will such consequences follow if reforms like Senator Vitter’s proposals become law?

A closer look reveals an alternative way to view the status quo and the gendered implications of change, however. Some social scientists claim that, even today, men prefer to marry women in subordinate jobs, rather than those in superior positions.²⁵⁷ One can detect this hierarchical pattern even among power couples. Observers point out that lawmakers with close family members who lobby are themselves the “top members of Congress.”²⁵⁸ Such observers also note that lawmakers “are finding that family members, especially wives, can play a valuable role in advancing their political careers.”²⁵⁹ From this viewpoint, many lobbyist spouses emerge less

doubt has his own significant connections with sitting senators, with whom he served for many years, that overshadow whatever advantages his position as Senator Elizabeth Dole’s spouse provides. *See supra* note 50 and accompanying text. In other words, Bob Dole exemplifies the problem of the so-called “revolving door” more prominently than he typifies the lawmaker’s lobbyist spouse.

255. *See supra* notes 56–57; *infra* app. 1.

256. *See supra* notes 61–71 and accompanying text.

257. *See* John Schwartz, *Glass Ceilings at Altar as Well as Boardroom*, N.Y. TIMES, Dec. 14, 2004, at F7. *But see* Annie Murphy Paul, *The Real Marriage Penalty*, N.Y. TIMES, Nov. 19, 2006, § 6, at 22 (examining perceived rise in assortive mating and consequences for class divisions); Kate Zernike, *Why Are There So Many Single Americans?*, N.Y. TIMES, Jan. 21, 2007, § 4, at 1 (same).

258. Hulse, *supra* note 59.

259. James Ridgeway, *In D.C., It’s All Relative: Congress Members, Staff, and Lobbyists—It’s All One Big Happy Family*, VILLAGE VOICE (N.Y., N.Y.), Dec. 14, 2005, at 20; *see also* Cottle, *supra* note 85; Neubauer & Cooper, *supra* note 179. Senator Vitter also introduced an amendment that would have prohibited campaign committees and political action committees

as individuals with their own independent careers than as helpmates who provide support for (and a reflection of) a particular lawmaker's exceptional power. Of course, the notion of marriage as a partnership suggests that both spouses will benefit from the status, influence, and resulting earnings of either one. The partnership concept proves too much, however, because it would permit a requirement that women married to lawmakers must be housewives²⁶⁰ on the theory that they will reap a share of the benefits of their husbands' careers.

At the same time, Senator Vitter's proposal correctly suggests that this "helpmate" characterization does not fit all power couples. The exception for those whose lobbying began at least a year before the marriage or the senator's election reflects the need to scrutinize closely for would-be independence. Yet his particular approach reveals significant difficulties. Continuing a previous lobbying career does not necessarily insulate one from functioning as an accoutrement of a legislator spouse's power. The exception, moreover, provides an ironic twist, especially for legislators whose usual pronouncements on marriage emphasize conservative and traditional family values.²⁶¹ Those like Johnette McCrery, who wish to join their spouses in D.C.,²⁶² will face significant barriers to at least certain forms of employment. By contrast, the members of the "second wives club," such as Abigail Blunt, will find their work as lobbyists protected.²⁶³ What weight should Congress give to the incentives that this framework creates and the messages that it sends?

from employing the spouses and other family members of candidates for federal office, but the Senate voted to table that measure. See 153 CONG. REC. S309 (daily ed. Jan. 9, 2007).

260. One magazine article, published during the 1992 presidential race, commented on Hillary Rodham Clinton's defiance of the then-common norms for political spouses: "[T]he unspoken rule of political life is that a wife will tend to home and family and be by her husband's side when he runs. Working violates that rule." Carlson, *supra* note 206.

261. See *supra* notes 1–3 and accompanying text.

262. See *supra* notes 243–44 and accompanying text.

263. True, at the time of this writing, the provision in Senate Bill 1 applies only to the Senate and the examples cited are House spouses, but a broader rule remains a possibility. See *supra* note 202 and accompanying text.

B. Fine Tuning

Of course, despite its salience for family law policy and gender equality, the issue of spousal lobbying implicates other important values as well. In evaluating proposals such as Senator Vitter's amendment, one cannot ignore well-founded concerns about the institutional image of Congress and the public trust that it holds. A free-rein approach to spousal lobbying raises charges of conflicts of interest, appearances of impropriety, and unequal access to government—all symptoms of the “culture of corruption”²⁶⁴—that in turn undermine the very political viability, and hence power, of lawmakers who might have the most to lose by restrictions. Yet, a range of countervailing considerations, including marriage policy, gender equality, and career autonomy, all call for restrictions that sweep no more broadly than necessary.

Senator Vitter's amendment reveals the challenges of crafting a sound rule that walks this difficult line. He concedes that he scaled back his proposal to make it “germane” and to get it passed quickly.²⁶⁵ Yet, those voting for the larger ethics reform bill could not have fully appreciated the competing values at stake in his amendment, given the absence of committee exploration, of full debate, and of a public vote. For example, what might the senators have learned from hearings on the measure and other possible alternatives, such as recusal options? Such hearings might have explored how Senator Vitter's approach would affect lawmakers, spouses now lobbying, the employment prospects of those moving to D.C. in the future, the public, and the lobbying community and also whether limiting lobbying to the other chamber addresses the ethical problems or not.

Perhaps much needed deeper investigation would reveal that legislation creates too blunt an instrument to capture the nuances that deserve recognition here. Although much has changed since Marc Miller propounded his “smell test,”²⁶⁶ the concept of a multi-factored, case-by-case assessment might well hold the best hope for the

264. See *supra* note 92 and accompanying text.

265. See *supra* notes 37, 202 and accompanying text.

266. See *supra* notes 80–81 and accompanying text.

delicate sorting and fine tuning necessary to identify the most appropriate response for a given power couple, in light of the competing values at stake.

We can envision several ways to implement an individualized or case-by-case evaluation, although we recognize that many details would require resolution. First, invigorated congressional ethics committees, with more robust investigative authority and enforcement tools, might perform this function. For example, a proposal under consideration in the House would create an independent, bipartisan ethics panel to allow nonlawmakers to file ethics complaints against lawmakers,²⁶⁷ a procedure already available in the Senate but seldom used.²⁶⁸ Telling data from the House's existing approach make the case for change: According to one report, during the past decade, over a dozen lawmakers have been indicted or investigated by law enforcement, but lawmakers have requested only three congressional investigations.²⁶⁹ Under the proposal, a panel of outsiders could filter out spurious complaints before referral to the House's ethics committee, that is, the Committee on Standards of Official Conduct.²⁷⁰

Although this process focuses on complaints for past conduct, one can imagine a more forward-looking approach. For example, before marrying a lobbyist, former Representative Jim Nussle (R-IA) met with the House ethics committee to discuss ways to avoid appearances of impropriety.²⁷¹ Such avenues for individualized discussions on a prospective basis might prove particularly useful if any legislation ultimately enacted includes a less than precise expression of "the sense of Congress that the use of a family relationship by a lobbyist who is an immediate family member of a

267. See Elizabeth Williamson, *Democrats Lose Traction on Reforms*, WASH. POST, June 11, 2007, at A15.

268. See Elizabeth Williamson, *House Hesitates on Ethics Changes*, WASH. POST, Apr. 12, 2007, at A25.

269. See Williamson, *supra* note 267.

270. Susan Ferrechio, *Pelosi Expected to Back Proposal to Allow Outsiders to File Ethics Complaints*, CQ TODAY, June 4, 2007, available at 2007 WLNR 10786577.

271. See Norman Jane, *Nussle Will Wed Lobbyist: Karen Chiccehitto, the Bride, Once Worked for Newt Gingrich*, DES MOINES REG., Oct. 5, 2001, at B1.

Member of Congress to gain special advantages over other lobbyists is inappropriate.”²⁷²

Alternatively, an independent ethics commission, proposed by Senator Barack Obama (D-IL) in the 109th Congress²⁷³ and by Senator Lieberman (ID-CN) and others in the 110th,²⁷⁴ could provide a vehicle for implementing a case-by-case evaluation. Although the Senate rejected the proposal,²⁷⁵ an ethics commission holds promise as a component of the type of approach to spousal lobbying that we believe the competing values require.

First, like an invigorated ethics committee that receives outside complaints, an ethics commission would provide an official forum for bringing to light questionable conduct that in the past got exposure only through the work of journalists. Second, although originally envisioned as a non-partisan, independent “watchdog” that would conduct initial investigations of ethics violations,²⁷⁶ an ethics commission might also use its fact-finding capacities to assess prospectively and on an individual basis the propriety of specific spousal activities, just as Senator Lieberman suggested it might approve or disapprove “privately funded trips for Members or staff.”²⁷⁷ Thus, a commission could become a mechanism for developing carefully tailored responses appropriate to the wide range of situations that power couples present. Even if the committee’s or the commission’s authority would reach only the legislators themselves,²⁷⁸ such authority could certainly affect the conduct of

272. See *supra* note 46 and accompanying text.

273. See Barack Obama-U.S. Senator for Illinois, <http://obama.senate.gov/speech> (follow “Senator Obama’s Opening Statement for Floor Debate on Ethics Reform” hyperlink).

274. See 153 CONG. REC. S433–35 (daily ed. Jan. 11, 2007); *id.* at S469–70. The co-sponsors are Senators Collins (R-ME), Obama, McCain, Feingold (D-WI), Kerry (D-MA), and Carper (D-DE).

275. The Senate voted 71 to 27 against Senator Lieberman’s proposal. See U.S. Senate, Legislation & Records Home, <http://www.senate.gov/legislature/LIS/rollcallvotecfm.cfm?congress=110&session=1&vote=00018>. Nonetheless, several observers expressed support for this measure. See, e.g., Dennis F. Thompson, *Congressional Ethics System Creates Conflict of Interest*, ROLL CALL (Wash., D.C.), Jan. 17, 2007, available at 2007 WLNR 940436; Editorial, *supra* note 229 (noting failure “to create an independent anticorruption monitor” and calling for House and Senate to join “in pursuing this needed measure”).

276. See Barack Obama, *supra* note 273.

277. See 153 CONG. REC. S434 (daily ed. Jan. 11, 2007).

278. *Id.* at S470.

spouses—as the projected consequences of Senator Vitter’s own amendment illustrate.²⁷⁹

For example, a strengthened committee or an independent commission, receiving information from the outside and focusing on facts and particular cases, might have decided that Catherine Stevens should not (as reported) have engaged in appropriations lobbying while her husband headed the Senate Appropriations Committee, without barring her from lobbying altogether.²⁸⁰ Likewise, a more robust committee or an independent commission could have responded to the alleged efforts of Representative Blunt to insert a tobacco-favoring measure in homeland security legislation, given his wife’s position as a tobacco lobbyist²⁸¹ or to the after-hours access to restricted areas of the Capitol by former Representative Cox’s lobbyist wife.²⁸² This body might decide that lawmaker recusal offers the best solution in some situations, for example, when the lobbying spouse has only one client, illustrated by the work of Senator Conrad’s wife on behalf of Major League Baseball.²⁸³ And perhaps a full consideration of all the facts would produce the conclusion that Representative McCrery’s wife should be able to conduct some lobbying in D.C. or, alternatively, that her ongoing career as a *journalist* makes questionable her decision to work as a *lobbyist*, given her husband’s position.²⁸⁴

IV. CONCLUSION

This essay examines the lawmaker-lobbyist marriage, a not uncommon relationship that has just started to attract official attention, even in this era marked by calls for government ethics reforms. We have presented examples of such power couples, as well as early advice given to political spouses, the long-standing absence of clear limits, the couples’ self-imposed restrictions, and possibilities

279. See *supra* notes 36–44 and accompanying text.

280. See *supra* note 52 and accompanying text.

281. See *supra* note 175 and accompanying text.

282. See *supra* note 184 and accompanying text.

283. See *supra* note 217 and accompanying text.

284. See *supra* notes 243–44.

for new rules—all against the background of several competing values and policies important in family law or government ethics.

When we began this project, lawmaker-lobbyist marriages were a well-kept Washington secret. Our own exploration of this phenomenon unfolded at the same time that publicity increased and some official scrutiny developed. Despite the heightened attention, as this article goes to press in mid-June 2007, the various bills directly addressing spousal lobbying have yet to become law. At one level, the fate of the current reforms might signal whether the era of appearance-based ethics will continue or whether an era of substantive limits will supersede it.

To the extent that avoiding appearances of impropriety provides the touchstone for ethical behavior, then, important variables in evaluating the status quo and possible reforms become how others understand contemporary marriage generally and how they see power couples' marriages in particular. Under an appearance-based standard, spousal lobbying has long remained in a "gray zone" because today's conception of marriage is rife with contradictions and ambiguities. Certainly, empirical investigation would teach us more about these issues and could yield valuable insights for both public policy and family law. One poll shows public disapproval of lobbyists' contacts with lawmakers in their own families,²⁸⁵ but how does the public see the work of spousal lobbyists more generally?²⁸⁶

Additional investigation might also reveal a more nuanced picture of power couples' power. To square meaningful reform with a commitment to gender equality, we need more information about lobbyist spouses—how they get their positions, whose interest they serve, and whom their work benefits.

Finally, however, this essay reveals the difficulties of a simple fix, even one like Senator Vitter's amendment, which attempts to halt spousal lobbying while making room for spouses with independent lobbying careers. Bright-line rules can halt the most egregious cases,

285. See Eisler & Kelley, *supra* note 168, and accompanying text.

286. This is a separate question that the *USA Today* poll, *supra* note 285 and accompanying text, did not address. *But cf.* 153 CONG. REC. H5770 (daily ed. May 24, 2007) (remarks of Representative Castle erroneously claiming that *USA Today* poll suggests "that 80 percent of Americans believe it is wrong for lawmakers and their staffs to have contact with family members of other lawmakers who are lobbyists").

but they do not permit the fine tuning that the competing values require. Instead, in pursuing reform that expresses official concern for the familial entanglements between lawmakers and lobbyists, Congress should gather information and confront directly the values at stake. Without foreclosing the possibility that a carefully crafted law might succeed, we find more promising an approach that would allow official and impartial evaluation on a power couple-by-power couple basis.

APPENDIX 1

**FAMILY MEMBERS LOBBYING CONGRESS*
109TH CONGRESS¹****Senate**

1. **Senator Trent Lott (R-MS)**—son, Chester T. “Chet” Lott, Jr., of the Livingston Group represents BellSouth and Edison; he also lobbies for the Thoroughbred Racing Association and a company in Louisiana that builds vessels for the oil and gas industry. Senator Lott is a senior member of the communications subcommittee of the Senate Commerce Committee.
2. **Senator Ted Stevens (R-AK)**—son, Ben Stevens, of Stevens and Associates is a government affairs consultant for various

* Craig Holman, Mary Potori, and Brian Williams of Public Citizen prepared this list in 2006, and they have approved some minor changes by the authors, who have also added the footnotes.

1. A recent *National Journal* report reveals even more apparent “power couples” among lawmakers with relatives who have strong ties to lobbying. See Marisa Katz, *Family Ties*, NAT’L J., Mar. 31, 2007, at 47. In the Senate, these couples include: (1) Senator Christopher Dodd (D-CN) and his wife, Jackie Clegg Dodd; (2) Senator Charles Grassley (R-IA) and his wife, Barbara; (3) Senator Joe Lieberman (ID-CN) and his wife, Hadassah; (4) Senator Jay Rockefeller (D-WV) and his wife, Sharon; and (5) Senator Kay Bailey Hutchison (R-TX) and her husband, Ray. See *id.*; see also John Solomon, *Reforms Omit Lobbyists Married to Lawmakers*, WASH. POST, Jan. 17, 2007, available at 2007 WLNR 889590. In the House, they include: (1) Representative John Dingell (D-MI) and his wife, Debbie; (2) Representative Tom Davis (R-VA) and his wife, Jeannemarie Devolites-Davis; (3) Representative Jo Ann Emerson (R-MO) and her husband, Ron Gladney; (4) Representative Eliot Engel (D-NY) and his wife, Pat; (5) Representative Stephanie Herseth Sandlin (D-SD) and her husband, Max; and (6) Representative James Oberstar (D-MN) and his wife, Jean. See Katz, *supra*.

Many articles refer to Debbie Dingell, the wife of Representative John Dingell, as a lobbyist. See, e.g., Steve Goldstein, *Lobbying on the Hill Is Often a Family Affair*, PHILA. INQUIRER, Feb. 21, 2006, at A1; James Ridgeway, *In D.C., It’s Relative: Congress Members, Staff, and Lobbyists—It’s All One Big Happy Family*, VILLAGE VOICE (N.Y., N.Y.), Dec. 14, 2005, at 20; Elana Schor, *Abramoff Report Reveals Ties to GOP, Democratic Members*, THE HILL (Wash., D.C.), Oct. 3, 2006, at 3. However, the *New York Times* recently ran a correction stating that its article, *When Lobbyists Say ‘I Do,’ Should They Add ‘I Won’t’?*, had “referred imprecisely to Debbie Dingell. . . . While Ms. Dingell advises General Motors on lobbying strategy in her role as executive director of community and government relations, she is not currently a registered lobbyist.” See *Corrections*, N.Y. TIMES, Feb. 23, 2006, at A2.

Alaskan interests, representing VECO, the Special Olympics, and (previously) Cook Inlet Regional Corporation. Wife, Catherine, works for Mayer, Brown, Rowe & Maw as a lobbyist previously working on appropriations matters.

3. **Senator Harry Reid (D-NV)**—three sons and a son-in-law have worked for firms that lobby or seek government benefits. Key Reid works for Lionel, Sawyer & Collins' Washington lobbying office, representing the City of Las Vegas and the City of Boulder. Son-in-law, Steve Barringer, is affiliated with MGN, which represents American Electric Power, National Mining Association, and Verizon. Sons Leif, Josh, and Rory also work for Lionel, Sawyer & Collins though they do not lobby on Capitol Hill.
4. **Senator Barbara Boxer (D-CA)**—son, Doug, lobbies for tribal and airport interests and is affiliated with Platinum Advisors.
5. **Senator Orrin Hatch (R-UT)**—son, Parry, works for National Nutritional Foods Association. Son, Scott, works at Walker, Martin & Hatch, which represents GlaxoSmithKline, Qwest, and Verizon. Senator Hatch is a champion of the dietary supplement industry and big pharmaceutical makers.
6. **Senator Evan Bayh (D-IN)**—father, Birch, former congressman, has returned to practicing law in D.C. He is affiliated with Venable, which represents Hilton Hotels, Marriott, and Verizon.
7. **Senator Kent Conrad (D-ND)**—wife, Lucy Calautti, is the chief D.C. lobbyist for Major League Baseball and is also affiliated with Hostetler.
8. **Senator Elizabeth Dole (R-NC)**—husband, Robert, is a lobbyist for Indonesia's oil interests and is affiliated with Bob Dole Enterprises and Alston & Bird, representing Kosovo and Taiwan Tyco.
9. **Senator Bryon Dorgan (D-ND)**—wife, Kimberly, is a lobbyist with the American Council of Life Insurers.
10. **Senator Michael Enzi (R-WY)**—son, Brad, is a lobbyist for the Black Hills Corporation.
11. **Senator Patrick Leahy (D-VT)**—son, Kevin, is affiliated with Downs, Rachlin, Martin, representing the American Petroleum Institute, Vermont Petroleum Association, and 3M Technologies.

12. **Senator Richard Lugar (R-IN)**—son, David, of Quinn, Gillespie & Associates represents Bell South, Citigroup, and Sony.
13. **Senator Pat Roberts (R-KS)**—son, David, is a registered lobbyist.
14. **Senator Debbie Stabenow (D-MI)**—son, Todd, works for the Michigan Credit Union League.
15. **Senator John Sununu (D-MI)**—father, John, of JHS Associates represents the U.S. Chamber Alliance for Energy and Economic Growth.
16. **Senator John McCain (R-AZ)**—wife, Cindy, is chairwoman of Hensley and Company.
17. **Senator George Voinovich (R-OH)**—son, George, opened a public affairs and lobbying agency in 2004—Voinovich, Needles, and Dalton, stationed in Columbus.
18. **Senator Dick Durbin (D-IL)**—wife, Loretta, is affiliated with Government Affairs Specialists, Inc., representing the American Lung Association of Illinois, Mazur & Associates, and Metropolitan Planning Council in lobbying the Illinois state legislature.
19. **Senator Tom Harkin (D-IA)**—wife, Ruth, is Director of ConocoPhillips.
20. **Senator Jeff Bingaman (D-NM)**—wife, Anne, has worked for telecommunications companies such as Global Crossing Limited. She is chair of the board of Valor Telecom, which she helped found in 1999.
21. **Senator Joseph Biden (D-DE)**—son, Beau, is a partner at a Delaware law firm that works closely with Simmons Cooper, one of the nation's largest asbestos-plaintiff law firms, and regular Democratic donors.

House

1. **Representative Dennis Hastert (R-IL)**—son, Joshua, is a lobbyist on Capitol Hill (despite no previous experience in politics). He represents the Small Business Technology Coalition and Accurate Automation.

2. **Representative Roy Blunt (R-MO)**—wife, Abigail, is a lobbyist for Altria (parent company to Philip Morris). Son, Andrew, is affiliated with Schreimann, Rackers, Francka & Blunt, a firm that represents Kraft Foods, Miller Brewing, Philip Morris, and other state lobbyists in Missouri. Daughter, Amy, works for Blackwell Sanders Peper Martin.
3. **Representative John Mica (R-FL)**—brother, Daniel, is Chief Executive Officer and representative of the Credit Union National Association.
4. **Representative George Miller (D-CA)**—son, George Miller IV, works for Lang, Hansen, O'Malley & Miller with clients including Liberty Mutual Insurance, Phillip Morris Management Corporation, and Wine & Spirits Wholesalers of California.
5. **Representative David Obey (D-WI)**—son, Craig, is a registered lobbyist for National Parks Conservation Association.
6. **Representative John Murtha (D-PA)**—brother, Robert “Kit” Murtha, is partner of a lobbying firm that reportedly secured at least \$20.8 million in defense contracts for ten companies it represented during 2005.
7. **Representative Nick Rahall (D-WV)**—sister, Tanya Rahall, has been contracted as a lobbyist for the government of Qatar since 2002, at a salary of \$15,000 per month.
8. **Representative Bill Delahunt (D-MA)**—daughter, Kara, joined firm of Weber Shandwick in 1998, where she lobbies on behalf of foreign interests, including the government of Colombia.
9. **Representative Luis Guterrez (D-IL)**—wife, Soraida, lobbies the Illinois state legislature on behalf of Popular Securities, Incorporated.
10. **Representative Maurice Hinchey (D-NY)**—wife, Allison Lee, lobbies the New York state legislature.
11. **Representative Corrine Brown (D-FL)**—daughter, Shantrel Brown-Fields, is an associate at the lobbying firm of Alcalde & Fay, which represents forty-four Florida government clients.
12. **Representative Connie Mack IV (R-FL)**—son, Connie Mack V, is a senior policy advisor for King and Spalding.
13. **Representative Jim McCrery (R-LA)**—wife, Johnette Hawkins-McCrery, works for Ketchum, a full service public relations and communications firm, and is a registered lobbyist.

14. **Representative Steve La Tourette (R-OH)**—wife, Jennifer La Tourette, works for Van Scoyoc Associates, which represents such companies and organizations as Alcoa, Lockheed Martin, and the U.S. Chamber of Commerce.
15. **Representative Jim Clyburn (D-SC)**—cousin, William Clyburn Jr., received \$60,000 from two consulting firms to seek federal funding for the Augusta, Georgia, airport. Representative Clyburn earmarked \$2.5 million for the project.
16. **Representative C.W. “Bill” Young (R-FL)**—daughter-in-law, Cindy Young, co-founded a lobbying firm that helped Dynamic Defense Material secure funding for body armor. Representative Young sits on the House Defense Appropriation subcommittee.

Former Notables

- Senator Tom Daschle (D-SD)—wife, Linda, works for Baker, Donelson, Bearman & Caldwell, which represents American Airlines, Boeing, and Lockheed Martin Air Traffic Management. Daughter-in-law, Jill, is registered as a lobbyist with JD Consulting, which represents Northwest Airlines and Freddie Mac through Sullivan & Baldick.
- Senator John Breaux (D-LA)—son, John Breaux, Jr., was hired by BellSouth in 2001. He works with Orion Refining Corporation, DaimlerChrysler, Distilled Spirits Council of the United States, and various Medicare service providers.
- Representative Tom DeLay (R-TX)—brother, Randolph, of the DeLay Groups represents Reliant Energy, Brownsville Navigation District of Cameron County, and Dunn-McCampbell Royalty Interest.
- Representative Robert Matsui (D-CA)—wife, Doris, was previously a lobbyist for nine clients at the law firm of Collier Shannon Scott, representing Fannie Mae, Verizon, and the Advanced Medical Technology Association. Following her husband’s death, she became a member of Congress.
- Representative Lindy Boggs—son, Thomas Jr., is a powerful D.C. attorney-lobbyist in the areas of tax issues, health care, international trade, and insurance.

- *Representative Christopher Cox (R-CA)*—now Chairman of the Securities and Exchange Commission; wife, Rebecca, is a lobbyist for Continental Airlines.
- *Representative Jim Nussle (R-IA)*—wife, Karen, represents PBS and UPS.
- *Representative Harold Ford, Jr. (D-TN)*—father, Harold, of the Harold Ford Group represents Bone, McAllister & Norton; the Community Oncology Alliance; and Strategic Government Solutions.
- *Representative W.J. “Billy” Tauzin (R-LA)*—son, Billy, works in the community relations department of BellSouth.
- *Representative Curt Weldon (R-PA)*—daughter’s, Karen’s, lobbying firm, Solutions North America, Inc., works on behalf of foreign interests.
- *Representative Michael Oxley (R-OH)*—son, Elvis, resigned as executive director of the Ripon Society in June 2005.

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APPENDIX 2

**POWER COUPLES AND THEIR SELF-IMPOSED RESTRICTIONS
109TH CONGRESS**

SENATE		
Legislator	Lobbyist	Self-Imposed Restriction(s)
Senator Kent Conrad (D-ND)	Lucy Calautti, chief lobbyist for Major League Baseball at Baker Hostetler.	Lobbyist spouse does not directly lobby lawmaker spouse. ¹
Senator Elizabeth Dole (R-NC)	Former Senator Robert Dole, lobbyist at Alston & Bird.	Lobbyist spouse does not directly lobby lawmaker spouse. ²
Senator Byron Dorgan (D-ND) (Chairman of Democratic Policy Committee)	Kimberly Dorgan, lobbyist for the American Council of Life Insurers.	Lobbyist spouse does not directly lobby lawmaker spouse; Senator Dorgan does not sponsor legislation that affects spouse's clients; lobbyist spouse does not represent foreign clients, as Senator Dorgan is one of the Senate's international tax experts. ³
Senator John McCain (R-AZ)	Cindy McCain, chairwoman of Hensley and Company (beer distributor). ⁴	Senator McCain will recuse himself from issues affecting the beer industry. ⁵
Senator Dick Durbin (D-IL) (Democratic Whip)	Loretta Durbin, lobbyist, Vice President of Government Affairs Specialists. ⁶	Lobbyist spouse does not directly lobby lawmaker spouse. ⁷
Senator Jeff Bingaman (D-NM)	Anne Bingaman, lobbyist on communications and antitrust matters. ⁸	No policy on record.

1. John Solomon, *Lawmakers' Lobbying Spouses Avoid Hill Reforms*, WASH. POST, Jan. 17, 2007, at A1.

2. *Id.*

3. *Id.*; James Ridgeway, *All in the Family: When Blood and Marriage Bind Lobbyists and Politicians*, VILLAGE VOICE (N.Y., N.Y.), Aug. 19–25, 1998, at 41.

4. See Craig Holman et al., *Family Members Lobbying Congress*, PUB. CITIZEN, Nov. 30, 2006 (app. 1).

5. James Ridgeway, *Smoke, Mirrors, and White Noise: Campaign Notebook*, VILLAGE VOICE (N.Y., N.Y.), Jan. 19–25, 2000, at 32, 32, available at <http://www.villagevoice.com/news/0003,ridgeway,11890,6.html>.

6. See Holman et al., *supra* note 4.

7. See Peter Eisler & Matt Kelley, *Public Wary of Links with Lobbyists; In Poll, 80% Say It's Wrong for Relatives to Lobby Lawmakers*, USA TODAY, Oct. 17, 2006, at A1.

8. See Holman et al., *supra* note 4; see also Nick Baumann & Oliver Haydock, *Washington's 60 Sizzling Power Couples!*, WASH. MONTHLY, May 1, 2007, available at 2007 WLNR 10641120 (Anne Bingaman previously earned \$2.5 million from Global Crossing to lobby for an FCC ruling).

SENATE		
Legislator	Lobbyist	Self-Imposed Restriction(s)
Senator Ted Stevens (R-AK) (former longstanding Chair of the Appropriations Committee)	Catherine Stevens, lobbyist (formerly on appropriations matters). ⁹	Lobbyist spouse lobbies freely. ¹⁰
Senator Tom Harkin (D-IA)	Ruth Harkin, lobbyist, international affairs and government relations, for United Technologies Corporation; Director, ConocoPhillips. ¹¹	Lobbyist spouse does not directly lobby lawmaker spouse. ¹²

HOUSE		
Legislator	Lobbyist	Self-Imposed Restriction(s)
Representative Roy Blunt (R-MO) (Republican Whip)	Abigail Blunt, lobbyist for Altria (parent company of Philip Morris).	Abigail Blunt does not lobby the House, and Representative Blunt claims to recuse himself from an issue that affects Altria exclusively. ¹³
Representative Luis Guterrez (D-IL)	Soraida Gutiérrez Arocho, lobbyist for Popular Securities, Incorporated. ¹⁴	No policy on record.
Representative Maurice Hinchey (D-NY)	Allison Lee, lobbyist at Patricia Lynch Associates. ¹⁵	Married February 2006. Lee was a former aide to Representative Hinchey. ¹⁶ No policy on record.

9. Editorial, *Family Ties, Cont'd*, ROLL CALL (Wash., D.C.), Feb. 11, 2004, available at 2004 WLNR 4022255; see also Paul Kane, *GOP Makes Issue of Daschle's Wife*, ROLL CALL (Wash., D.C.), Oct. 26, 2004, available at 2004 WLNR 4025331.

10. See Kane, *supra* note 9.

11. Norman Jane, *Nussle Will Wed Lobbyist: Karen Chiccehitto, the Bride, Once Worked for Newt Gingrich*, DES MOINES REG., Oct. 5, 2001, at B1.

12. See Eisler & Kelley, *supra* note 7.

13. See Glen Justice, *When Lawmaking and Lobbying Are All in the Family*, N.Y. TIMES, Oct. 9, 2005, § 4, at 3.

14. See Holman et al., *supra* note 4.

15. See *id.*

16. Betsy Rothstein, *In the Know (Representative Hinchey to Marry His Former Aide)*, THE HILL (Wash., D.C.), Jan. 25, 2006, available at <http://thehill.com/in-the-know/in-the-know-2006-01-25.html>.

HOUSE		
Legislator	Lobbyist	Self-Imposed Restriction(s)
Representative Steven LaTourette (R-OH)	Jennifer LaTourette, registered lobbyist as Van Scoyoc Associates. ¹⁷	No policy on record. Jennifer joined Van Scoyoc by the time her affair with her former boss, Representative LaTourette, became public. ¹⁸
Representative Jim McCrery (R-LA) (ranking Member, Ways and Means Committee)	Johnette McCrery, Vice President at Ketchum Public Affairs. ¹⁹	No policy on record.

17. See Solomon, *supra* note 1; see also *Senate Considers Spouses' Unique Ability to Lobby*, CONG. QUARTERLY (Wash., D.C.), Jan. 17, 2007, available at http://www.cqpolitics.com/2007/01/unique_ability_to_lobby_1.html.

18. Marisa Katz, *Family Ties*, NAT'L J., Jan. 31, 2007, at 47.

19. See Bruce Alpert & Bill Walsh, *News from the Louisiana Delegation in the Nation's Capital*, TIMES PICAYUNE (New Orleans, La.), July 25, 2004, at 4 (president of firm states Johnette was "a great catch for her experience in media and politics").

APPENDIX 3

**FORMER POWER COUPLES AND THEIR SELF-IMPOSED
RESTRICTIONS**

Legislator	Lobbyist	Self-Imposed Restriction(s)
Senator Tom Daschle (D-SD) (Former Majority and Minority Leader)	Linda Daschle, high-level lobbyist with clients primarily in the aviation industry. ¹	Linda Daschle did not lobby any member or committee of the Senate while Senator Daschle was Leader of that chamber. ²
Representative Jim Nussle (R-IA) (was defeated in his bid to be elected Governor of Iowa in 2006)	Karen Nussle, lobbyist for PBS and UPS. ³	No policy on record. They met with the House ethics committee before marrying to avoid the appearance of any conflict of interest. ⁴
Late Representative Robert Matsui (D-CA)	Doris Matsui, former lobbyist at Collier Shannon Scott. ⁵	Doris Matsui would not lobby any member on the House Ways and Means Committee, of which her husband was a senior member. ⁶
Representative Christopher Cox (R-CA) (left the House to become Chairman of the Securities and Exchange Commission in August 2005)	Rebecca Cox, head of government affairs for Continental Airlines. ⁷	Rebecca Cox did not restrict her lobbying activities in any way. ⁸

1. Jim Drinkard, *Majority Leader Daschle, Lobbyist Wife Vow to Keep Careers Separate*, USA TODAY, June 5, 2001, available at <http://www.usatoday.com/news/Washington/june01/2001-06-06-daschle-linda.htm>.

2. *Id.*

3. Craig Holman et al., *Family Members Lobbying Congress*, PUB. CITIZEN, Nov. 30, 2006 (app. 1). She remains a registered lobbyist for the Public Broadcasting Service, among other clients, according to the U.S. lobby registration and reporting disclosure page, available at http://sopr.senate.gov/cgi-win/m_opr_viewer.exe?DoFn=3&LOB=NUSSELE,%20KAREN&LOBQUAL=&sequence=1.

4. Norman Jane, *Nussle Will Wed Lobbyist: Karen Chiccehitto, the Bride, Once Worked for Newt Gingrich*, DES MOINES REG., Oct. 5, 2001, at B1.

5. See Mark Wegner, *Doris Matsui Will Run For Late Husband's Seat*, CONG. DAILY (Wash., D.C.), Jan. 10, 2005, available at 2005 WLNR 387930.

6. Juliet Eilperin, *The Ties That Bind on Capitol Hill*, WASH. POST, Aug. 7, 2003, at A19.

7. See Nick Baumann & Oliver Haydock, *Washington's 60 Sizzlingest Power Couples!*, WASH. MONTHLY, May 1, 2007, available at 2007 WLNR 10641120.

8. See Paul Kane, *GOP Makes Issue of Daschle's Wife*, ROLL CALL (Wash., D.C.), Oct. 26, 2004, available at 2004 WLNR 4025331.