This case displays vividly the interaction between ethics and public policy. With admitted bias, I maintain that a public policy approach best addresses problems of government ethics. Unlike law and forms of ethical theory modeled on law, a public policy approach can address all aspects of the problem, structural as well as individual, and all possible remedies, incentives as well as punishments. In this case, a structural corruption of sympathies is the problem that current legal analysis obscures, and economic incentives are the solution that law might miss.

The case uses the language of public service and corrupt actions. The prospect of high-paying lobbying jobs, it is feared, might slant legislative decisions: legislators, looking forward to such jobs, might tailor their decisions to please prospective employers and clients, and legislators-turned-lobbyists might be able to call in favors from former colleagues. (Consistent with this, the “six benchmarks” of reform mentioned at the end of the case all focus on decoupling specific decisions rendered from specific favors extended.) While both fears are apt and important, the biggest problem is both simpler and more systematic than the trading of favors: the routine prospect of vast incomes is likely to place legislators in sympathy with the very richest citizens, rather than typical ones. Corruption of sympathies, unlike corruption of overt decisions, is a matter of moral psychology rather than behavior. It is not easy to address with the tools of law or legalistic morality: defined violations, prohibitions, penalties. The tools of economic incentive are another matter. A full treatment of these issues would require deep engagement with our finest student of both corruption of sympathies and economic incentives, Adam Smith. But here is a primitive version applied to the current case.

Take Campbell’s complaint. He is not the first politician to complain that public service pays too little. But he may be one of the richest.
His jewelry design, ranching, and real estate interests gave him assets between $3 million and $9.3 million in 2003. Such assets would make most Americans feel quite well off, but Campbell clearly didn’t. This might be because he was only about the twentieth-richest senator that year. But surely being surrounded by lobbyists who make (as Campbell put it) “seven figure” salaries played a role. Regularly talking policy with people making more than a million a year can make not just the average senator but even a man of great wealth like Campbell feel he needs to make some real money — and the revolving door provides every likelihood of that happening. If we want to ask why the estate tax is so unpopular among legislators who will seemingly never pay it, look no further. The prospect of a lobbyist’s salary can make a fairly ordinary senator think of “ten million dollars” in the first person. 

Current bans on the revolving door are easy to circumvent, and proposals for bans of five years or longer are, as the case suggests, no more likely to succeed. Campaign finance reform would be welcome, but I doubt its relevance here: it works only if the basic problem is corruption of legislative decisions — not if it is, as suggested here, that lobbying careers make otherwise unimaginable wealth something legislators not only imagine but take for granted.

I would propose instead a “revolving cap.” Legislators leaving office would have two choices. They could either stay out of lobbying for twenty-five years — a generation, far enough in the future not to affect legislative thinking. Or they could go into lobbying immediately — for a salary and benefits no greater than legislators earn.

Does this sound draconian? It depends on one’s perspective. Senators and representatives earn $165,000 a year: about in the top five percent of U.S. households, not even counting spousal earnings, excellent health care, and big pensions. Perhaps the salary could stand to be a little higher. But I see little argument for encouraging salary expectations six times higher. While political scientists sometimes expect electoral incentives to keep legislators responsive to ordinary people, surely this will get ever harder if the typical senator has experiences, expectations, and social circles totally different from those of the typical voter. We cannot expect the right kind of devotion to public policy and public services from legislators who find upper-upper-middle class status insufficient, public schools and student loans for their kids beneath them, buying a Toyota Corolla unthinkable. I would stress that the question is not the right to pursue immense wealth but the expectation of automatic and favored wealth. A legislator who hopes on leaving office to have the same oppor-
tunities to make money as everyone else, shares the American Dream. One who expects a special job, not open to others, that guarantees wealth based on connections rather than talent has abandoned that dream for the sake of something quite different — in fact, quite feudal.

The revolving cap would be an incentive — not a ban — and a focused incentive at that. It would not prevent people from becoming highly paid lobbyists, provided that they were not previously legislators. Lobbying is said to be an honorable profession, even a calling, providing impartial, specialized advocacy on public issues. But a salary cap on former legislators would endanger none of the public goods that defenders of lobbying cite. If legislative advocacy requires so much expertise as to be worth seven figures, as some quoted in the case suggest, that expertise could be provided well (perhaps better) by people who made a career of only lobbying and had never needed to acquire skills irrelevant to this task, such as the ability to win votes. Of course, this will not be true if lobbying’s critics are right and what lobbyists really provide is not expertise but inside connections. But the selling of connections to the highest bidder is a harm to the public good, not a benefit. Possible interference with that market is a feature, not a bug. The revolving cap would precisely track, and motivate, the kinds of lobbying that might be socially useful.

Note as well that legislators would still be allowed to become lobbyists, at a salary far above what most college graduates and even most lawyers make. To be sure, this would tip the balance between external and internal motivation; legislators who became lobbyists under the cap would have to be doing it more because they loved politics and advocacy, less because they sought maximum profit. But this brings up one more benefit: the cap would help level the playing field between corporate clients and everyone else. If former legislators could be hired for senator salaries, these super-lobbyists would be accessible not just to the wealthiest interests but to a wider range of those who seek to influence government. There might indeed be fewer such lobbyists if the pay were lower and love of the work were the only motivation. But given that super-lobbying is mostly a zero-sum game — the main benefit to hiring a great lobbyist is to beat another great lobbyist — it is, again, not clear that choking that market would be a public harm.

The main drawback to this proposal is its dubious constitutionality. Ever since the Supreme Court in *Buckley v. Valeo* enshrined the principle that limiting the money spent on advocacy is the same as limiting speech itself (a doctrine recently reaffirmed in *Randall v. Sorrell*), public debate on
money in politics has been constrained by the need to get reform proposals past judicial scrutiny. The revolving cap admittedly ignores that need. Capping lobbyists’ salaries could be portrayed, however dubiously to those unfamiliar with campaign law, as an assault on free speech. And because the reason cited for imposing the cap — structural distortions in legislators’ sympathies — involves no overt offense, it is not the kind of reason that those trained in law find important enough to trump the alleged speech harm.

There is a larger problem here. Reformers talk mostly about individual corruption, neglecting the economic issues discussed here, precisely because the courts have told us that fighting the reality and appearance of corruption provides a “compelling interest” for allegedly limiting free speech — while larger political and economic equality concerns do not. Since the Court examines the motivations of those adopting a policy, its declarations of which interests count as compelling render public debate one-sided and slightly dishonest in ways few ordinary citizens realize. Campaign reformers have to talk about individual corruption even if their real concern is economic and political inequality. (Compare the career of “diversity”: this was an obscure value, mentioned by almost nobody, until Justice Powell in the Bakke case laid down the doctrine that diversity provided a compelling justification for affirmative action in higher education while equality, opportunity, or combating societal discrimination did not.)

So the most appropriate solution to this problem may be unconstitutional according to current law: even mentioning the arguments for it could cause constitutional trouble. It is also, of course, politically absurd: legislators would contemplate all kinds of complicated revolving-door legislation, and even public financing of campaigns, before they would dream of giving up their millions in future earnings. And it is very hard to get the median voter sufficiently excited about such issues to change the political calculus involved.

But it would be a mistake to dismiss the right solution too quickly in favor of the possible one. Telling the truth about the nature of the problem and the kinds of solutions that might really fix it could spur a debate about fundamental issues that might, over time, change these legal and political calculations.
NOTES

1 “Allard Makes Less than his Campaign Manager,” *Rocky Mountain News*, June 14, 2003, p. 32A.
