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From Baking Bread to Making Dough: Legal and Societal Restrictions on the Employment of First Ladies

SARA KRAUSERT†

The paradigmatic First Lady\(^1\) embodies the traditional role played by women in the United States. Since the position’s creation, both Presidents and the public have wanted First Ladies to be seen and not heard. Some First Ladies have stayed within these confines, either by doing no more than simply supporting their husbands, or by taking care to exercise power only behind the scenes. Several First Ladies in this century, however, have followed the lead of Eleanor Roosevelt, who broke barriers in her vigorous campaigns for various social causes, and they have brought many worthy issues to the forefront of the American consciousness.\(^2\) Most recently, with the rumblings of discontent with the role’s limited opportunities for independent action that accompanied the arrival of the women’s movement, Rosalynn Carter and Hillary Clinton attempted to expand the role of the First Lady even further by becoming policy-makers during their husbands’ presidencies.\(^3\)

This evolution in the office of First Lady parallels women’s general progress in society. Today, more women have careers outside the home than ever before. Some of these women are married to politicians. As a natural result, the First Ladies of Barbara Bush’s generation—full-time mothers

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1. The term “First Lady” will be used throughout the Comment, although the same arguments can be applied to a “First Husband,” should a married woman become President.

2. See the discussion of Betty Ford, Rosalynn Carter, Nancy Reagan, and Barbara Bush in subsection I.

working in charities rather than pursuing careers—are fading into the past, and a new generation of political wives with careers of their own are becoming First Ladies. The debate over whether the President’s spouse may take any kind of job in her husband’s administration, official or otherwise, or maintain employment in the private sector, promises to grow more heated with each new President. Legal restrictions may prevent the First Lady from holding these jobs at all, and potential conflicts of interest may cause uneasiness among members of the public. However, if solely reputational fears prevent the First Lady from continuing to work outside the White House when she wishes to do so, the country may be forgoing the abilities of a valuable citizen who could put her specialized knowledge to excellent use in the professional world.

This Comment argues that society should allow First Ladies to maintain outside employment during their husbands’ presidencies. First Ladies do not currently face any legal restrictions preventing them from taking either a government job or outside employment, though the laws restricting government jobs may well change in the future, and negative public opinion regarding First Ladies who interfere with government policy may prove prohibitively restrictive. Regardless, the public and press should not only tolerate but support a First Lady’s career outside the White House. Such a career may present the appearance of a conflict of interest to the voting public, but professional political wives have shown such adeptness at avoiding and diffusing conflicts that this problem should not prevent a First Lady from continuing with her outside employment.

This Comment consists of five Parts. Part One explores the traditional role of the First Lady, and suggests that the increase in the numbers of women in the workforce may make that traditional role less desirable for some First Ladies. Part Two sets forth the legal and societal restrictions that might impede a First Lady’s employment options, whether she aspires to take a government job or seek private employment. Part Three considers four potential careers—government employment, nonprofit employment, corporate board member, and attorney—the First Lady might pursue, illustrating the legal and

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4. Hereinafter, a “government job.”

5. See Jean Marbella, Role Playing: Will The Real Hillary Clinton Please Stand Up? Will We Let Her?, Balt Sun 1E (Jan 16, 1996) (quoting Kathleen Hall Jamieson, dean of the Annenberg School for Communication at the University of Pennsylvania) (“The problem is something we haven’t yet discussed well as a society, when the husband and wife are working in inter-connected domains and both have real power.”). See also Scott Shepard, Candidates’ Wives Untraditional, Patriot Ledger 7 (Mar 18, 1995) (quoting Chuck Jones, a political analyst at the Brookings Institution) (“We’re in a period where, in contrast to the Reagans and Bushes, two professionals head up families. It is a fact of life, and it’s going to be a fact of politics.”); Craig Crawford, Wives Enjoy New Roles In Presidential Politics: When Hillary Clinton and Elizabeth Dole Speak, The Voters Listen and Like What They Hear, Orlando Sentinel A1 (Aug 28, 1996) (“What happened to presidential wives who stayed in the background, only seen when it was time to gaze lovingly at their gallant husbands? Those days are gone for good, most likely. Modern political wives have careers of their own.”).
societal restrictions involved in each, and discusses the experiences of prominent political wives in each of these professions. Part Four argues that legal and societal restrictions should not prohibit a First Lady’s outside employment if she wishes to continue in her career, because the First Lady’s traditional duties are not logistically indispensable, whereas her outside employment may be good for the country. Part Five looks to the future—the presidential election in the year 2000—and shows that the transition from traditional First Ladies to working First Ladies has not yet been negotiated fully.

Part I. The Traditional Role of the First Lady and Its Inevitable Decline

The so-called “traditional” role of First Lady involves acting as hostess and/or organizer of White House social events, representing the United States abroad, and, since Eleanor Roosevelt’s tenure, publicly supporting worthy causes. First Ladies’ social activism has typically entailed giving speeches about particular issues, but some First Ladies have gone further, writing newspaper columns, supporting legislation, and testifying before Congress.

The press and public considered anomalous Eleanor Roosevelt’s support of social causes as well as her voicing opinions on policy issues. The First Ladies immediately following Mrs. Roosevelt—Bess Truman, Mamie Eisenhower, and Jacqueline Kennedy—chose not to pursue social causes and concentrated instead on performing their domestic duties and supporting their husbands. However, Lady Bird Johnson began the trend anew with her high-
way beautification campaign, although, unlike Eleanor Roosevelt, she was not an innovator. As the women's movement gained momentum, more First Ladies chose the activist route: Betty Ford supported breast cancer awareness and the Equal Rights Amendment, and Rosalynn Carter supported mental health concerns. By the time Nancy Reagan became First Lady, social activism was not only commonplace, but expected by the press and public, and Mrs. Reagan's reputation suffered for her lack of a cause when she entered the White House. When she eventually began her "Just Say No to Drugs" campaign, her public image improved dramatically. Following Mrs. Reagan, Barbara Bush chose to support literacy, and although Hillary Clinton initially opted to take a government job rather than support a social cause, she later became an advocate for children's issues. First Ladies can use their worldwide name recognition to bring their social causes to the forefront of the public's consciousness. Social causes also give First Ladies the opportunity to engage in an activity independent from their husbands.

Moreover, the makeup of today's labor force is not the same as during Eleanor Roosevelt's tenure as First Lady—or even Nancy Reagan's. In the late 1940s, 33 percent of all women in America worked outside the home. In late 1997, there were 61 million working women in the United States, comprising nearly half the work force, and the number continues to grow. The U.S. Census Bureau has estimated that the number of female workers will increase by 17 percent by 2005, compared with an increase of only 8 percent for male workers. The numbers are even increasing for women with young children; 67 percent of women with children under the age of 6 were participating in the work force by 1995, compared to only 10 percent fifty years earlier. With the rising number of working women, it is probable, if not certain, that there will be an increase in the number of working political wives.

13. Mrs. Johnson's Committee for a Beautiful Capital had two main goals: to beautify the parts of the city seen by the most numbers of people, and to attack the ugliness of the inner city. Nancy Kegan Smith, Private Reflections on a Public Life: The Papers on Lady Bird Johnson at the LBJ Library, 20 Presidential Studies Q 737, 743 (1990). Mrs. Johnson's plan was to lend support to her husband's programs, not initiate new endeavors. Gutin, The President's Partner at 123 (cited in note 7).
14. See Cynthia Z. Rachlin, The World of Nancy Reagan, Newsweek 22 (Dec 21, 1981) (stating that the First Lady appeared to be an "idle-rich, queen-bee figure" who was "obsessed with fashion and society").
17. Id at 369-70.
20. Id.
who will be loath to abandon a career to support a social cause—no matter how personally fulfilling the cause may be. The question, therefore, is not whether a First Lady will want to continue her outside employment, but whether she will be able to do so.

Part II. Legal and Societal Restrictions on the First Lady’s Employment Options

A. GOVERNMENT EMPLOYMENT

1. Legal Restrictions

Many political wives seek employment inside the government as a way to avoid the potential conflicts of interest posed by their employment in the professional world. This route may not be available to First Ladies, however, because of a number of legal pitfalls, the contours of which remain undefined. While the First Lady can hold an unpaid government job under current interpretations of the Federal Anti-Nepotism Act and the Antideficiency Act, the language of these statutes may invite narrower interpretations in the future.

Determining the proper application of these statutes is complicated by the fact that Congress has not clearly established the limits of the First Lady’s role. Congress has recognized the role of the First Lady in the government to the extent that it has authorized assistance and services for her when she helps the President in his duties. However, the authorizing statute does not delineate the type of assistance the First Lady may provide for the President. The legislative history merely states that the provision “[a]uthoriz[es] assistance and services to the spouses of the President and Vice-President,” without specifying the services the spouses may provide. This lingering ambiguity over the First Lady’s proper role forms the background of this Comment’s examination of specific statutes.

a. Federal Anti-Nepotism Act

The Postal Rates and Federal Salaries Act of 1967 states that a “public official may not appoint, employ, promote, advance . . . in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.” The President is a “public official” for

22. Virginia I. Postrel, Have A Cookie: A politician whose spouse works will be exposed to the ‘real’ world; is that bad?, LA Times 5 (Apr 5, 1992).
23. 5 USC § 3110(b) (1994).
24. 5 USC § 3110(c) (1994).
25. 3 USC § 105(e) (1994). The statute reads, in pertinent part: “Assistance and services authorized pursuant to this section to the President are authorized to be provided to the spouse of the President in connection with assistance provided by such spouse to the President in the discharge of the President’s duties and responsibilities.”
27. 5 USC § 3110(b) (1994).
purposes of this Act, and a spouse is specifically included in the definition of "relative." The legislative history of the statute suggests that the statute was designed to prevent persons such as the President from engaging in nepotism, and a President's appointment of his wife to a government position would seem to fall under this definition. This desire to limit the President's power is logical. Otherwise, the President could fill his Cabinet and staff with his spouse or other relatives not chosen on the basis of merit without suffering legal repercussions. Under this interpretation of the statute, the President could not appoint the First Lady to any government position.

However, there are strong arguments that the statute should not apply to the President. First, commentators have argued that this statute is unconstitutional as it applies to the President, because it restricts his power to appoint. This argument is based on the explicit language of the Appointments Clause of the Constitution, which states that the President may choose any individual to fill any office governed by the clause. Second, the statute's applicability to the President depends on the definition of "agency." Is the President an "agency" bound by the Act? Finally, if the statute applies to the President, it would also seem to violate the statute authorizing expenditures for the First Lady, which allows the President to delegate duties to his spouse without specific limitation.

In 1993, the D.C. Circuit attempted to resolve these difficult issues in *American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton.* The case arose after President Bill Clinton appointed a Task Force on National Health Care Reform chaired by his wife Hillary Clinton and charged it with conducting public hearings and submitting draft legislation. The task force initially met in secret in order to avoid pressure from lobbyists and other outside influences.

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28. 5 USC § 3110(a)(2) (1994).
29. 5 USC § 3110(a)(3) (1994).
30. Federal Pay Legislation, Hearings on S 1489 and HR 7977 before the Senate Committee on Post Office and Civil Service, 90th Cong, 1st Sess 357-72 (1967). John W. Macy, Jr., the Chairman of the United States Civil Service Commission, repeatedly stated that, as written, the Act would apply to the President and his advisors. Id at 361, 363, 364-72. The Act was passed in this form. See also Carl David Wasserman, *Firing the First Lady: The Role and Accountability of the Presidential Spouse,* 48 Vand L Rev 1215, 1242 n 113 (1995) (quoting the statement of F.T. Davis, General Counsel to the Reorganization at the White House, at hearings on the White Personnel Authorization Act) ("[The bill] would not exempt [the laws at issue] from the restrictions under the nepotism statute because of the specific provisions of that act which apply to the president.").
31. US Const, Art 2, § 2, cl. 2. See Richard P. Wulwick and Frank J. Macchiarola, *Congressional Interference with the President's Power to Appoint,* 24 Stetson L Rev 625, 636 (1995) ("This constitutional provision appears to give the President the sole prerogative to choose any individual to fill a principal office, or other office whose appointment is governed by the Appointments Clause, without any prenomination influence by the United States Senate.").
33. 3 USC § 105(e) (1994).
34. 997 F2d 898 (DC Cir 1993).
35. 997 F2d at 901. See also Wasserman, 48 Vand L Rev at 1220 (cited in note 30).
The Association of American Physicians and Surgeons, a health care lobbying group, then filed suit against Hillary Clinton, claiming that the Federal Advisory Committee Act of 1972 ("FACA")\(^\text{36}\) required that all of the Health Care Task Force's meetings be public.\(^\text{37}\) The Act requires advisory committees to advertise their meetings in advance and open them to the public.\(^\text{38}\) The public also must have access to all of the committee's records, transcripts, and document drafts.\(^\text{39}\) However, FACA exempts from these requirements those advisory committees comprised solely of full-time federal officers or employees.\(^\text{40}\) The issue in the case was therefore whether Hillary Clinton, as First Lady, was a government officer or employee. If so, the meetings did not have to be open to the public; if not, the Task Force was required to open the meetings.

The D.C. Circuit held that Clinton was a full-time officer or employee for the purposes of FACA.\(^\text{41}\) In reaching its decision, the court noted that Congress has recognized the President's spouse to be the "functional equivalent of an assistant to the President."\(^\text{42}\) While the court acknowledged that it was stretching the "officer or employee" definition by including the First Lady, it said that such an interpretation was necessary to avoid the constitutional problems that would arise if she had no official status.\(^\text{43}\) Therefore, the court ruled that the Health Care Task Force could continue its closed meetings and that the President could seek and accept advice from the First Lady and the Task Force.

This ruling implies that a First Lady can engage in activities normally performed by government employees. First, the D.C. Circuit held that the Federal Anti-Nepotism Act did not prohibit the First Lady from seeking employment in her husband's administration. The court determined that the White House and the Executive Office of the President were not agencies under the Anti-Nepotism Act.\(^\text{44}\) Although the Act does bar the President from appointing his spouse to a paid position, it does not preclude the President from seeking help from his spouse. Therefore, the President may appoint his relatives to advisory positions in his executive offices.\(^\text{45}\)

\(^{37}\) American Physicians, 997 F2d at 901.
\(^{38}\) FACA, 5 USC App 2 §10 (1994).
\(^{39}\) Id.
\(^{40}\) 5 USC App 2 § 3(2)(C)(i) (1994).
\(^{41}\) American Physicians, 997 F2d at 916.
\(^{42}\) 997 F2d at 904 (citing 3 USC § 105(c)). The court added, "We see no reason why a President could not use his or her spouse to carry out a task that the President might delegate to one of his White House aides." Id.
\(^{43}\) 997 F2d at 909-10 (expressing concern that if Mrs. Clinton had no official status and therefore was not permitted to serve on the task force, FACA would interfere with president's right to receive confidential communications from advisors).
\(^{44}\) 997 F2d at 905 ("We doubt that Congress intended to include the White House or the Executive Office of the President [as an executive agency].").
\(^{45}\) Id at 905 ("For example, a President would be barred from appointing his brother as Attorney General, but perhaps not as a White House special assistant.").
A potential First Lady should not rely excessively on this opinion when deciding whether or not to pursue government employment. The reasoning of the court’s decision has come under criticism from both academics and the D.C. District Court. In addition, a concurring opinion in the case argued that the use of the definite article “the” in the Anti-Nepotism Act implies that every public official belongs to some agency, extending to the entire executive branch and prohibiting the President from appointing his wife to an office in that branch.

In 1997, the Eighth Circuit considered the issue of whether or not the First Lady is a government official, but provided little useful guidance. The case arose when Hillary Clinton attempted to invoke attorney-client privilege to block a federal grand jury from obtaining notes of her meetings with White House lawyers. Mrs. Clinton argued that she was a White House representative in those meetings, and thus, a client of the White House lawyers. The court refused to give Mrs. Clinton the privilege, but did not decide whether she was a government official. Instead, the court explained that, even if Mrs. Clinton was a government official, she should have hired private counsel if she wished to have a privileged conversation.

The issue of whether the First Lady is a government official was addressed again in 1998 in the context of executive privilege, with somewhat clearer results. A federal district court judge, echoing the decision in *American Physicians and Surgeons*, ruled that Mrs. Clinton was a senior advisor to the President, and therefore entitled to the protection of executive privilege to shield her conversations with White House aides. Quoting *American Physicians and Surgeons*, the court again acknowledged Congress’s recognition that the

46. See Wasserman, 48 Vand L Rev 1215, 1259 (cited in note 30) (arguing that the First Lady is not an officer or employee under the Constitution); Jay S. Bybee, *Advising the President: Separation of Powers and the Federal Advisory Committee Act*, 104 Yale L J 51, 95-6 (Oct 1994) (“The court renders its interpretive powers irrelevant when it makes construction of terms such as ‘full-time officers or employees’ turn on debates over unrelated terms in Article II, the removal power, or presidential privilege.”).

47. See *American Physicians*, 997 F2d at 920 (Buckley concurring) (arguing that Hillary Clinton is not a government officer); *Northwest Forest Resource Council v Espy*, 846 F Supp 1009, 1014 (D DC 1994) (The court in *American Physicians* used “adroit semantics and near-clairvoyant discernment of legislative intent” to reach its conclusion, and in doing so, the *American Physicians* majority “incurred stern disapprobation from concurring brethren who were less squeamish.”).


50. *In re Grand Jury Subpoena*, 112 F3d at 914.

51. *In re Grand Jury Subpoena*, 112 F3d at 921 (“An official who fears he or she may have violated the criminal law and wishes to speak with an attorney in confidence should speak with a private attorney, not a government attorney.”).


53. Id at *5.

President's spouse acts as the functional equivalent of an assistant. The court also noted that Mrs. Clinton is widely seen as an advisor to the President. The decision adds further support to the conclusion that the First Lady is a government official, although the opinion's wording may call into question its blanket application for First Ladies beyond Mrs. Clinton.

b. Antideficiency Act

Even if the Anti-Nepotism Act allows the First Lady to hold a government job, it does prohibit her from receiving payment for her work. However, another statute, the Antideficiency Act, may prohibit the First Lady from performing volunteer services for the government. The Act prohibits federal agencies from making expenditures or incurring obligations in excess of the amounts appropriated for it. Therefore, agencies may not accept voluntary services without express statutory authority to do so. Congress adopted the Act to prevent the acceptance of free services for which Congress had made no appropriation and over which the volunteer might later sue for compensation such as overtime or back pay. Thus, a First Lady may be caught between a rock and a hard place: she may not be able to hold a government job which pays because of the Anti-Nepotism Act, and yet she may also be unable to hold an unpaid job because of the Antideficiency Act.

There are indications, however, that the First Lady may be exempt from the Antideficiency Act if she takes certain positions. The Justice Department's Office of Legal Counsel ("OLC") has set forth two conditions under which the govern-

56. Id.
57. See Marie Cocco, It's Official: Hillary Rodham Clinton Is Official, Newsday A51 (Jun 4, 1998) (quoting constitutional law scholar Susan Bloch) ("I guess one could imagine a spouse who only talks about the children and the meals and bakes cookies. . . . In that case, you don't need executive privilege. And in that case, the person wouldn't be the president's confidante.")
58. 5 USC § 3110(c) (1994). The statute reads, in pertinent part: "An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced." See also American Physicians, 997 F2d at 905 (agreeing with this interpretation).
59. See Wasserman, 48 Vand L Rev at 1248 (cited in note 30) (arguing that the Antideficiency Act applies to the First Lady).
60. 31 USC § 1342 (1994) ("An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.").
61. This authority may be statutory gift authority, which permits an agency to accept and use donations that would otherwise belong to the general Treasury. Beth Nolan, Public Interest, Private Income: Conflicts and Control Limits on the Outside Income of Government Officials, 87 NW U L Rev 57, 123 (1992).
62. Id at 124.
ment may accept uncompensated services without statutory authority: (1) when rendered in an official capacity under regular appointment to an office; and (2) when otherwise permitted by law to be nonsalaried because there is no minimum required salary. 64 Most civil service positions have a minimum salary, but when the Civil Service Classification Act does not govern an appointment and there is no other mandatory minimum, the salary may be set at zero, thereby circumventing the Antideficiency Act. 65 Positions where the salary may be set at zero include special assistants and task force heads.

Neither Congress nor the courts have addressed the issue of whether the Antideficiency Act applies to the First Lady. 66 However, First Ladies who desire a government job must keep this potential legal pitfall in mind, as the only opportunity to receive a definitive answer will most likely arrive when the next First Lady tries to take such a job.

c. Criminal Conflict of Interest Statute

The criminal conflict of interest statute—18 USC § 208(a)—prevents officers or employees of the executive branch from personally and substantially participating in government decisions that affect their financial interest, the financial interests of their spouses, or the financial interests of any organization with whom he or she is in negotiations or has a prospective employment relationship. 67 If the First Lady holds a government job and is considered a government officer or employee, she may be subject to this statute. 68 The statute’s application to the First Lady is unclear because courts have declined various opportunities to rule on this issue. 69

In 1997, some members of Congress tried to clarify this issue by introducing the Special Government Employee Act. 70 This bill would have amended the criminal conflict of interest statute by expanding the definition of “special gov-

64. Nolan, 87 Nw U L Rev at 126 & n 265 (cited in note 61).
65. Id at 126 & n 266 (noting that, in applying these guidelines, the OLC ruled that Professor Laurence Tribe could provide uncompensated services to the independent counsel office investigating Iran-Contra without violating the Antideficiency Act).
66. American Physicians, 997 F2d at 911 n 10 (declining to address the issue).
67. 18 USC § 208(a) (1994).
68. See subsection II.A.1.a for the current determination of whether the First Lady is a government officer or employee under this statute.
69. See American Physicians, 997 F2d at 911 n 10. The Office of Government Ethics also declined to rule on the issue when responding to a probe by Congress. Questions were raised when Mrs. Clinton commented on the health care industry while she held investments in a fund that profited from a decline in drug stocks. See Judi Hasson, First lady invests in fund with health ties, USA Today 4A (May 20, 1993). The Director of the OGE, Stephen Potts, stated in a letter: "We do not believe that simply because she is the First Lady she has the status of an officer or employee of the executive branch. . . . [T]hat is not to say the spouse of a President could never be an officer or employee." See Wasserman, 48 Vand L Rev at 1253 n 172 (cited in note 30).
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eernment employee." The objective of the bill was to require more public
accountability of White House “volunteers” who advise the President and
presidential employees. This arguably would have included the First Lady in
her position as chair of the Health Care Task Force, or in any other comparable
position. Until Congress passes this bill, however, the ambiguity will remain.
Still, the fact that legislators introduced such a bill to amend the definition
implies that the current definition does not encompass the First Lady if she
chooses to take a government position.

2. Societal Restrictions

In addition to considering the legal ramifications, First Ladies must also
think about societal constraints on taking a government job. Assuming that the
President could appoint the First Lady to an official government position, the
public’s disapproval of such an untraditional role could still prove prohibitive.

Image is important to all public figures, but especially to the First Lady, due
to the enigmatic nature of her position. She does not receive compensation for
her role, the Constitution does not define her job, and she is not elected or
approved by the Senate. Nevertheless, she influences the President, and she has
a budget, a staff, and an office in the White House. The First Lady’s largely
undefined role thus makes her image controlling, particularly because the public
has a preconceived notion of who the First Lady should be and how she should
behave. According to journalist Laura Blumenfeld, “Americans want to see an
idealized woman at their president’s side, combining the grace of Jackie Kennedy,
the nurturing of Barbara Bush and, most important, the reflective talent for
making her man look good. In other words, women may be breaking bound-
daries in the world outside of the White House, but the public remains somewhat
resistant to a First Lady who takes a policy role without considering press
reaction and her husband’s constituents.

71. The bill was sent to the House Committee on the Judiciary, and later referred to
the Subcommittee on the Constitution. It seems to have died in committee.
72. Special Government Employee Act of 1997, Hearings on HR 1966 before the Sub-
committee of Government, Management, Information and Technology of the House
Committee on Government Reform and Oversight, 105th Cong, 1st Sess 23 (May 1, 1997)
(statement of Representative John L. Mica).
73. Special Government Employee Act of 1997, Hearings on HR 1966 before the Sub-
committee of Government, Management, Information and Technology of the House
Committee on Government Reform and Oversight, 105th Cong, 1st Sess 78 (May 1, 1997)
(statement of Gregory S. Walden) (testifying that legislative revision of the definition is
needed, due in part to Bill Clinton’s general reliance on advisors and consultants, and
Hillary Clinton’s role on the task force).
74. Karen N. Peart, The First Lady: Homemaker or Policy-maker, Scholastic Update
13 (Sept 6, 1996).
75. See, for example, Laura Blumenfeld, First Lady Face-Off: Dole vs. Clinton: In This
Contest Of Image, Who Will Shine Brighter In the Public’s Eye?, Wash Post B1 (Mar 29,
1996).
76. Id.
77. Patt Morrison, Time for a Feminist as First Lady?, LA Times A1 (July 14, 1992)
Commentators have identified many possible reasons for the public's discomfort. One strain of thought argues that the American public is slow to change. An activist First Lady simply makes them feel threatened and uncomfortable, particularly if she is a smart woman with legal credentials who aspires to take a role in her husband's administration. This need to cling to a "traditional" First Lady has been evident during Hillary Clinton's tenure, for example. Another theory holds that the President and First Lady are seen as symbols of the country, and thus, many people believe, they should reflect a national ideal. The ideal First Lady, in this view, is not an active policy-maker.

B. OUTSIDE EMPLOYMENT

A different set of issues will be raised if the First Lady chooses to work in the private sector rather than in a government job.

1. Legal Restrictions

The legal restrictions on outside employment are significantly fewer than those on a government job. First, the Anti-Nepotism Act would no longer be a concern because the President would not be giving her a job. Second, while conflict of interest laws for government employees remain in the picture, the fact that the First Lady receives no salary for her position as the President's wife seems to exempt her from these provisions. The Ethics in Government Act of 1978, for example, limits the amount of outside earned income for upper-level "officers" or "employees" of the federal government, and also limits the types...
of employment in which these officers or employees may engage.\textsuperscript{82} Even if the First Lady is considered an officer or employee under this statute, however, she would be exempted from its provisions, as she receives no compensation for her duties as First Lady.\textsuperscript{83} Finally, the First Lady’s profession might have its own laws or regulations governing conflicts of interest. Specific examples, including lawyer and corporate board member, are discussed below.

2. Societal Restrictions

A First Lady who decides to keep her career may find the public and media reaction to her position the biggest obstacle. Even if outside employment is legal, the President and First Lady may not want to jeopardize their political futures by doing something that either the public or interest groups would condemn. Although many other political wives have outside careers,\textsuperscript{84} the public and press might not tolerate a similar role for the First Lady.\textsuperscript{85} One journalist believes that the public attributes to First Ladies the anxieties they feel about the increase in numbers of working women, which has led to conflicts in families and

also may not accept any payment for appearances, speeches or articles, or any honoraria given on behalf of the officer or employee to a charitable organization. This payment to a charitable organization may also not exceed $2000 or be made to a charitable organization from which an individual or her spouse derives any financial benefit. 5 USC App 4 § 501(a)(2)(c). This could have posed problems for Elizabeth Dole in her position as president of the American Red Cross, as discussed in subsection III.B.1.

82. Id.

83. This statute only applies to an officer or employee who is “a noncareer officer or employee and who occupies a position classified above GS-15 of the General Schedule or . . . for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.” 5 USC App. 4 § 502. If this statute did apply to the First Lady, it would severely limit her opportunities for outside employment. She would be unable to be employed by a firm or corporation which provides professional services involving a fiduciary relationship; her name could not be used by any such entity; she could not practice a profession which involves a fiduciary relationship; she could not serve as an officer or a member of the board of any association or corporation; and she could not receive compensation for teaching without approval of the appropriate ethics committee. These restrictions would block career paths such as attorney, corporate board member, or member of the clergy.

President Bush also issued Executive Order No. 12,674 in 1989, prohibiting executive branch employees from engaging in outside employment that conflicts with official government duties and responsibilities (later codified as amended in 5 USC § 7301). See Wasserman, 48 Vand L Rev at 1252 (cited in note 30). However, the order, like the Ethics in Government Act, contains a provision limiting the scope of the provision to employees earning above a certain salary. Since the First Lady receives no salary, this order does not apply to her.

84. See, for example, the discussions of Elizabeth Dole and Wendy Gramm in subsections III.B and III.C.

85. The First Lady is different from a wife of a congressman or other official in the public’s eyes. See Zimnite, \textit{Fuss Over First Lady} (cited in note 79) (“While most people have come to accept recent social changes that have placed women in a more prominent role in the workplace and in politics, many voters remain reluctant to let go of traditional ideals when it comes to the White House.”).
Thus, some analysts predict that a Republican First Lady with an outside job may receive more criticism than a Democratic one, because of the GOP family values agenda. In addition, some observers believe that the public harbors anxiety about the First Lady upstaging her husband.

On the other hand, a working First Lady would satisfy the large segment of the public that wants the First Lady to remain uninvolved in policy issues. In the public's eyes, positions outside of government may have fewer negative associations attached to them, and therefore may be a politically safer option. Indeed, in the aftermath of Hillary Clinton's failed health care plan, at least one columnist suggested that she take a job outside the White House in order to restore her and the President's standing in the polls. Whatever her career choice, the public and press might respond best to a First Lady who takes affirmative steps to distance herself from policy decisions, and who appears to balance her career with being a supportive wife.

Part III: Legal and Societal Restrictions—Some Representative Careers

This Part explores four career paths that First Ladies might choose and details the potential legal and societal restrictions involved in each. In order to suggest how the press and public would react if a future First Lady were to follow one of these paths, this Part also uses concrete examples of prominent political wives, including Hillary Clinton, who have made similar choices.

A. GOVERNMENT EMPLOYMENT

1. Legal Restrictions

A First Lady who opts to take a job in her husband's administration faces no legal pitfalls at the moment, although this may change in the future. Possible statutes affecting this type of job include the Anti-Nepotism Act, the Antideficiency Act, and the Criminal Conflict of Interest statute. The First Lady could also face the appearance of a conflict of interest if the President signs bills which delegate funds to the First Lady's job or in any way supports her task force or initiatives. Further potential for a conflict of interest would lie in the President's attempt to seek the political support of the interests with whom his

86. Blumenfeld, First Lady Face-Off, Wash Post at B4 (cited in note 75).
87. Judi Hasson, Rewriting role of first lady: Dole could open door for career women, USA Today D1 (Oct 30, 1995). Andrea Shelton, president of the Traditional Values Coalition, denied this allegation. Id.
88. Id (quoting presidential chronicler Doris Kearns Goodwin).
91. 5 USC § 3110 (1994).
92. 31 USC § 1342 (1994).
93. 18 USC § 208(a) (1994).
wife works, and the First Lady must take care not to lobby these interests for her husband, as that would give the appearance of undue influence on the campaign donors.

The legal pitfalls surrounding Hillary Clinton’s appointment as head of the Health Care Task Force demonstrate many of these points. Her problems form much of the background of the public’s current attitude toward whether any First Lady should be able to hold a government job. Lurking behind the cries of illegality was a fear that Mrs. Clinton was exercising too much influence on policy matters. Hillary Clinton’s attempt to hold a job in her husband’s administration illustrates not only the legal tightrope all First Ladies must walk, but also the ways in which a First Lady’s dealings with the public can make or break her political reputation.

Another political wife whose troubles illustrate the danger of conflicts of interest inherent in a government job is Wendy Gramm, wife of Senator Phil Gramm of Texas and former chair of the Commodity Futures Trading Commission. While Mrs. Gramm was at the CFTC, Senator Gramm sometimes sought the political and monetary support of the agricultural and business interests his wife was regulating. Mrs. Gramm also helped her husband raise funds from Texas agricultural interests in 1989, combining campaigning for her husband with CFTC business on her trips to Texas. Since the CFTC regulates agriculture interests, this brought widespread accusations of a conflict of interest. Furthermore, some of Phil Gramm’s fellow senators temporarily blocked passage of a bill that would have given more power to the CFTC due to rumors of Gramm’s favoritism of his wife. Gramm denied any impropriety, stating that the bill did not emerge from his committee. While both Senator and Mrs. Gramm denied the allegations of favoritism, the appearance of impropriety remained.

94. See the discussion of American Physicians in subsection II.A.1.a.
95. See subsection II.A.2.
98. Michelle Mittelstadt, Associated Press Political Service, Gramm Holds Up Banking Legislation Over Bill Involving Wife’s Agency, 1992 WL 5145050 (Oct 8, 1992). Senator Gramm’s recusal from the Senate’s vote on the bill would have helped matters in this case, although it would not have completely tempered his influence. See Kevin G. Salwen, Senate Feels the Impact of Marriage as Gramms Push Through a Markets Bill, Wall St J B4C (Apr 26, 1991) (quoting William Proxmire, a former Democratic senator and chair of the Senate Banking Committee, of which Phil Gramm is a member).
If a First Lady chooses to take a government job, she will have to battle Hillary Clinton's negative legacy. The press has been inclined to support independent First Ladies in the past, but coverage quickly takes on a negative tone when she appears to "meddle" in public policy. Therefore, the next First Lady who attempts such a job should take care to court the press and public as much as possible. She should disclose any planned initiatives to the public, and keep the media updated on any changes in her plans. She should hold regular press conferences in order to disclose this information and to answer any other questions the press may have. When time allows, she should schedule speaking engagements on college campuses or in auditoriums around the country, much like a more "traditional" First Lady would, to tout her social causes. This First Lady, however, would be describing her stance on her area of policy and explaining her plans. Her public persona should be friendly, open, and honest in order to win the people's trust, and she should deny exerting influence on the President's policy decisions in any other substantive area. If the First Lady happens to make a mistake and falls into public disfavor, she should perhaps scale back her policy role for a little while, and then try again with a more refined approach.

Hillary Clinton could have benefited from this advice during her tenure as chair of the Health Care Task Force. When she accepted the position, public and press opinion was cautiously optimistic, which was quite encouraging for a ground-breaking First Lady. Although an NBC/Wall Street Journal poll in December 1992 reported that 59 percent of the public opposed Mrs. Clinton having an official position in the administration, other indicators showed that the post-election honeymoon period had tempered the public's ambivalence. Her approval ratings, for example, were uniformly higher than her husband's during this time. In addition, the mainstream press, caught up in the progres-

100. For example, when Jimmy Carter asked Rosalynn Carter to represent him on a diplomatic mission to South America, both the American and foreign press raised concerns about her unappointed, unelected status. "In 'electing her husband to office,' growled the editor of America, 'we did not elect her ambassador extraordinary.'" Boller, Presidential Wives at 433 (cited in note 9). A State Department spokesman quickly downplayed her role to reporters, stating that her main task was "asking questions." Truman, First Ladies at 148 (cited in note 3). Critics of Mrs. Reagan charged that she was the most influential First Lady in history, firing staffers and consulting an astrologer to time her husband's decisions. Gutin, The President's Partner at 169-71 (cited in note 7).


102. Id. For example, columnist Morton Kondracke endorsed the move on The McLaughlin Group: "Old-fashioned people think that first ladies are supposed to be little wifey. Clinton and Hillary have broken the mold and Godspeed to them. I think it's great." Id. Columnist Margaret Carlson wrote: "If Hillary Clinton is able to untangle the health care mess, she will be seen as such a miracle worker that she may become the leading candidate for President in 2000." Id at 292.
sive moment, was largely supportive—journalists liked both the idea of a
government-run health care system and the idea of an independent First La-
dy.\footnote{Brock, Seduction at 328 (cited in note 101).}

Unfortunately for Mrs. Clinton—and perhaps for future First Ladies—the
Task Force quickly assumed the cloak-and-dagger atmosphere that culminated in
the American Physicians case,\footnote{American Physicians and Surgeons, Inc. v Hillary Rodham Clinton, 997 F2d 989
(DC Cir 1993).} and both political allies and the public felt
alienated and excluded, an impression that led to its eventual demise in Con-
gress.\footnote{See subsection II.A.1.a.} One major problem for Mrs. Clinton was that she failed to practice
adequate disclosure. Although valid fears of outside influence and interest group
meddling led to her secrecy, the public and press were not willing to have the
First Lady take such an influential policy role for the first time in recent history
without being kept informed about how she was performing that role.\footnote{Kenneth T. Walsh, Feeding the Beast: The White House Versus the Press 162
(Random House 1996).}

By 1994, opinion polls showed that the vast majority of Americans opposed the
health care plan by wide margins,\footnote{Walsh, Feeding the Beast at 165 (cited in note 105).} and pundits judged the 1994 midterm
election, where the Democrats lost both the House and the Senate, a repudiation
of Mrs. Clinton as a policy-maker.\footnote{Walsh, Feeding the Beast at 167 (cited in note 105).} Mrs. Clinton’s public image also took
quite a beating as a result of the health care plan’s failure. She was portrayed in
the press during President Clinton’s first 100 days as “steely, principled, efficient,
and shrewish.”\footnote{Ann Devroy, First Lady’s Softer Focus Follows Drop in Popularity: On Latin Tour,
Traditional Role Is Revived, Wash Post A1, A4 (Oct 15, 1995).}

During the year following the health care plan’s defeat, Hillary Clinton tried
to minimize her policy role. She allowed her aides to tell the press that she would
be focusing on small- and medium-scale (read: more traditional) projects for the
next two years, such as encouraging women to have mammograms, promoting
improved education for women and children, and helping veterans suffering from
Gulf War Syndrome.\footnote{Troy, Affairs of State at 359 (cited in note 16).} She also began a newspaper column entitled, “Talking
it Over,” where “gentle political points [were] wrapped in a protective layer of
domesticity,” according to one description.\footnote{Walsh, Feeding the Beast at 167 (cited in note 105).} Her image repair initiative suc-
cceeded—only the Whitewater scandal prevented the change from taking full
effect. By the end of 1995, the First Lady had regained a good deal of her
popularity,\footnote{Barbara Burrell, Public Opinion, The First Ladyship, and Hillary Rodham Clinton
}
1997, she felt confident enough to try again, assuming a primary role on a policy issue with a much more traditional focus. As leader of a child care crusade, Mrs. Clinton visited day-care centers, attended after-school programs, and traded her red suits for pastels. The message was clear: in order to repair her public image, Mrs. Clinton—or her media advisors—felt the need to step back from a serious governmental role and concentrate on traditional First Lady causes such as children's and women's issues. In the end, Hillary Clinton had built a new bridge in the role of First Lady—by assuming a formal policy role—but she proved unable to cross it completely. The combined effects of Mrs. Clinton's lack of success at policymaking and her failure to develop a rapport with the public may hinder the efforts of a future First Lady appointed to a government position.

The career of Heather Foley, wife of Tom Foley, Speaker of the House from 1989-1994, provides another cautionary tale for a future First Lady. Mrs. Foley served as her husband's unpaid chief of staff in his Capitol Hill office and as his chief political advisor. Her power in Washington was common knowledge; a 1990 Business Week poll declared her the congressional staff member with the greatest influence in shaping legislation.

Unlike Hillary Clinton, Heather Foley maintained an extremely low profile while performing her job. She was rarely seen in public and did not campaign with her husband, believing such a course of action to be in her husband's best interest. She also shunned photographers and regularly declined interview requests. When she did give interviews, she was extremely supportive of her husband. Her reclusiveness resulted in few news stories about her position or duties.

Despite her low profile, scandal began to surround Mrs. Foley. In 1992, she was accused of stalling an investigation into the House post office, using the

131 (Garland 1997).
113. See Tom Raum, Hillary Image Gets Makeover to Warm, Fuzzy, Capital Times 1 (Nov 29, 1995). However, the Whitewater and “Travelgate” scandals prevented the image makeover from being fully implemented. See Walsh, Feeding the Beast at 174 (cited in note 105).
115. Like the President, Congressmen are prohibited from hiring family members as paid staff. Elisabeth Hickey, Woman of the House, Wash Times D1 (Mar 30, 1992).
116. Katharine Q. Seelye, Foley Continues Low-Key Race, Despite Political Clouds, Portland Oregonian A19 (Sept 29, 1994). See also Martin Tolchin, Scandals Push Speaker's Wife Into Spotlight, San Fran Chron A9 (Mar 30, 1992) (quoting a staff member) (“Mrs. Foley was “involved in every campaign, in every important decision.”).
118. Hickey, Woman of the House (cited in note 115) (quoting Gretchen White, chief of staff to Representative Sid Morrison) (“The spouse working for a [House] member has to strive not to become a surrogate member.”).
120. Hickey, Woman of the House (cited in note 115) (quoting Mrs. Foley) (“I could go on for hours about how wonderful [my husband] is.”).
House bank scandal for political gain, and grabbing extra office space for Democrats.\textsuperscript{121} The press began to criticize her influence. \textit{Washingtonian Magazine} named her one of the city’s “10 Scariest” women, because “she acts like she IS the speaker.”\textsuperscript{122} At least one editorial expressed disapproval of her staff position.\textsuperscript{123} In addition, politicians began to voice their disapproval of Mrs. Foley and her immense power. One of Speaker Foley’s political allies recommended that she resign from her position and assume a new role with less authority, as she was becoming a political liability to her husband.\textsuperscript{124} A conservative lobbyist went so far as to charge that being married to her boss was clouding Mrs. Foley’s judgment.\textsuperscript{125}

Speaker Foley insisted that his wife, an attorney, was qualified for her position, and that there was therefore no problem with her employment.\textsuperscript{126} He also blamed the criticism of his wife on Democrats who did not like women to have authority, and on his own political opponents.\textsuperscript{127} Nevertheless, when faced with criticism, Mrs. Foley took steps to remedy her outward appearance, if not her authoritative ways. She began dressing more conventionally, combing her hair and wearing tasteful pumps.\textsuperscript{128}

Hillary Clinton and Heather Foley employed very different approaches to their government jobs, but judging from their reputations, neither one should serve as a model for future First Ladies. On the surface, Mrs. Foley’s behind-the-scenes tactic worked better than Mrs. Clinton’s public wielding of power. However, it is doubtful that the public and press would settle for such apparent silence from a First Lady. In addition, future First Ladies should note that both Mrs. Foley and Mrs. Clinton adopted a “softer” image once the negative spotlight was upon them, suggesting that First Ladies should seriously consider cultivating such an image early in the process. Overall, the experiences of Mrs.

\begin{itemize}
  \item \textsuperscript{121} \textit{Heather Foley Won't Step Down} (cited in note 117).
  \item \textsuperscript{122} \textit{Id} (quoting former Washington Times gossip columnist Charlotte Hays). Some of Mrs. Foley’s political colleagues also disapproved of her casual, “unladylike” dress. Hickey, \textit{Woman of the House} (cited in note 115) (quoting Floyd Brown, head of the conservative lobby Citizens United).
  \item \textsuperscript{123} Myrne Roe, \textit{Equal Rights for Political Spouses}, Sacramento Bee B7 (Apr 23, 1992) (“Neither political husbands nor wives should run an elected official’s office. That’s lousy management. . . . Nor should they involve themselves in governance when they are married to but not elected to an office. Heather Foley should find a job someplace where she’s paid.”).
  \item \textsuperscript{124} Christopher Hanson, \textit{Foley's Wife Should Quit Her Staff Job, Says Democratic Colleague}, Seattle Post-Intelligencer A1 (Apr 1, 1992) (“It’s always more difficult when it is a spouse.”). See also Tolchin, \textit{Scandals Push Speaker's Wife Into Spotlight} (cited in note 116) (quoting Representative Charlie Rose, chairman of the House Administration Committee) (“The problem with working wives is that they are perceived to throw their weight around because they’re married to the boss.”).
  \item \textsuperscript{125} Hickey, \textit{Woman of the House} (cited in note 115) (quoting Floyd Brown, head of the conservative lobby Citizens United).
  \item \textsuperscript{126} Hanson, \textit{Foley's House} (cited in note 124).
  \item \textsuperscript{127} Tolchin, \textit{Scandals Push Speaker's Wife Into Spotlight} (cited in note 116).
  \item \textsuperscript{128} \textit{Id}.
\end{itemize}
Foley and Mrs. Clinton illustrate society's reluctance to accept powerful, unelected political spouses, and does not bode well for future First Ladies who desire government jobs.

B. NONPROFIT ORGANIZATIONS

1. Legal Restrictions

Many nonprofit organizations are run like business corporations; in fact, the president of a nonprofit organization closely parallels a "chairman of the board" in a business corporation.\(^\text{129}\) However, they are fundamentally charitable organizations, and their revenues are generally tax exempt if the nonprofit qualifies under the tax code as a §501(c)(3) corporation.\(^\text{130}\) In order to receive the tax benefits of being a § 501(c)(3) corporation, the nonprofit must abide by certain restrictions, including an absolute prohibition on political campaign activities.\(^\text{131}\) This prohibition applies to all such activities, no matter how small.\(^\text{132}\) Penalties for participation or intervention in campaigns include loss of tax-exempt status and an excise tax of 10 percent on expenditures related to the campaign, plus severe punishment of individuals if such activities continue.\(^\text{133}\)

In order to abide by these mandates, a First Lady, if she has the power to tailor the nonprofit's activities to support her husband's political agenda, must take care not to do so.\(^\text{134}\) In addition, questions could be raised if both the nonprofit and the President supported certain issues, as the First Lady will have many opportunities to lobby her husband improperly.\(^\text{135}\)

Nonprofit directors, such as the president of a nonprofit corporation, must also abide by a duty of loyalty, which requires directors to refrain from exercising their powers in their own interest or the interest of another entity or person.

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\(^{130}\) Id at 75. A § 501(c)(3) organization is organized and operated exclusively for charitable, religious, educational, literary, or scientific purposes. IRC § 501(c)(3).

\(^{131}\) IRC § 501(c)(3).

\(^{132}\) Overton, ed, Guidebook for Directors at 77 (cited in note 129).

\(^{133}\) Id. For example, when Jimmy Swaggart Ministries endorsed Pat Robertson's 1988 presidential candidacy, the IRS intervened. In a 1991 settlement, the organization was forced to pay over $170,000 in taxes and interest, plus agree to an extensive reorganization. Overton, ed, Guidebook for Directors at 91 n 7 (cited in note 129).

\(^{134}\) In order to maintain an above-board political reputation, this should be true even though it is unclear whether a President's mere political interests or agenda strictly qualify as a "political campaign."

\(^{135}\) Judi Hasson, Elizabeth Dole Sees No Conflict In A Dual Role, USA Today A4 (May 3, 1996). See also Martin Dyckman, The Sticky Wicket Of Conflict, St. Petersburg Times D3 (Jan 21, 1996). These conflicts do not affect solely a First Lady's job with a nonprofit organization such as the Red Cross. A First Lady doctor may oppose managed care; a scientist may depend on the federal research budget for funding; a member of the clergy would oppose tax measures that discourage charitable deductions; an attorney could prosecute a member of the government, or represent a corporation that donates large sums to her husband's campaign.
If a conflict of interest arises, the duty of loyalty requires that a director act with candor and care in dealing with the situation. Conflicts of interest are not inherently illegal—the manner in which the director deals with a disclosed conflict determines the propriety. In general, a director should clear such a conflict by full disclosure and approval of a majority of disinterested directors. The conflicted director should consider leaving a meeting if the conflict is being discussed, or at least abstaining from the discussion.

Therefore, a First Lady who wishes to continue her outside career by working for a nonprofit organization should disclose any conflicts or potential conflicts. The First Lady should also recuse herself when issues present possible conflicts, letting another staff member handle them. The First Lady may feel she should recuse herself only when it directly aids her husband, but public opinion may demand a stricter standard. When recusing, the First Lady should take care not to call undue attention to the issue, for fear of unduly influencing the staff in spite of the recusal. When in doubt on when to recuse herself or disclose information, she should err on the side of propriety in order to be ethical.

A nonprofit's employment of a First Lady brings about conflicts unique to her role. For example, the President's supporters may begin to contribute money to the First Lady's organization in an attempt to curry favor with the President. The President would also be in a position to sign legislation favorable to the nonprofit. Agencies which answer to the President may also regulate the First Lady's nonprofit organization. Given these concerns, the First Lady

137. Id.
138. Id at 29.
139. Id at 30.
140. Dyckman, Sticky Wicket (cited in note 135). See also Felicity Barringer, Political Dual-Career Couples Play It Cool, Indianapolis News A5 (Mar 21, 1992) (quoting Harriet Babbitt, an attorney and wife of Bruce Babbitt, former Governor of Arizona and current Secretary of the Interior) (“You absolutely have to have disclosure. . . . You say to the world that Susie Q. and John Q. Public are man and wife. Then people can do what they want with the information.”).
142. Id.
143. Id.
144. William Wong, Pick on Liddy Dole for a Change, San Fran Examiner A19 (June 27, 1996). See also Hasson, Rewriting role of first lady (cited in note 87).
145. Douglas Frantz, Dole Victory Could Let Red Cross Bloody Rivals, Rocky Mountain News A2 (May 30, 1996). See also Dyckman, Sticky Wicket (cited in note 135) (noting that the Red Cross, for example, would benefit from disaster-relief policies that the President authorizes, and oppose any tax proposals, such as the flat tax, which would reduce the incentive for citizens to make charitable deductions).
146. Dyckman, Sticky Wicket (cited in note 135) (noting that the administrative agencies governing the Red Cross include the FDA, the Attorney General's office, and, to some extent, the National Institutes of Health and that the Red Cross also deals regularly with the Defense Department).
and her husband should scrupulously keep their careers separate from one another and not seek favors from each other.

Elizabeth Dole, wife of 1996 Republican presidential nominee and former Senator Bob Dole, faced many problems of conflicts or appearances of conflicts as president of the American Red Cross, and one can assume that these types of conflicts would have increased had she become First Lady.\(^{147}\) Mrs. Dole planned to be the first First Lady in history to pursue an independent career by returning to her job following her husband's election.\(^{148}\) Although the Red Cross is a nonprofit agency, it operates much like a large corporation with its $1.8 billion budget, 32,000 employees, and 1.4 million volunteers.\(^{149}\) Mrs. Dole receives a salary of $201,500 a year.\(^{150}\)

Elizabeth Dole faced a serious conflict, for example, when one of Bob Dole's supporters abruptly began to contribute to the Red Cross. Dwayne Andreas, a longtime Dole supporter, made large contributions to the Red Cross once Elizabeth Dole became its president, having given nothing in the previous five years.\(^ {151}\) Conflict of interest laws do not prohibit companies or their executives from donating to a politician's favorite charity.\(^ {152}\) To the media, however, this smelled of impropriety.

In addition, Mrs. Dole appeared to overlap her nonprofit work with her husband's political interests, recommending at-large seats on the Red Cross's board of governors for Senator Dole's political contributors and supporters\(^ {153}\) and accepting favors from Senator Dole's biggest corporate donors.\(^ {154}\) Some in the media alleged that Mrs. Dole appeared to be adjusting the operation of the Red Cross in order to cater better to her husband's interests.\(^ {155}\) Among the allegations were that Mrs. Dole assembled a team of advisors in 1991 to determine what Red Cross actions might help or hurt Senator Dole's presidential ambitions; that she toned down a safe sex pamphlet (a nod to the Christian constituency supporting the Dole campaign); and that she deemed an ad campaign featuring stars slowly disappearing from an American flag to be too


\(^{148}\) Elizabeth Dole: She Plans Double Duty as 1st Lady, Nashville Banner A2 (Oct 30, 1995).


\(^{151}\) Tom Raum, Gifts to Red Cross Raise Doubts About Dole Link, Greensboro News & Record A10 (May 3, 1996). This was not the only business to do so. American Financial Corporation, a financial services company headed by Cincinnati businessman Carl Lindner, a friend of Senator Dole's, also started making large donations in 1991. Id.

\(^{152}\) Id.


\(^{154}\) Hasson, Elizabeth Dole Sees No Conflict (cited in note 135).

controverisal weeks before Senator Dole announced his support of a constitutional amendment to ban desecration of the American flag.\textsuperscript{156} If these allegations are true, Mrs. Dole failed to practice adequate disclosure and recusal. When discussing her potential dual role as First Lady and president of the Red Cross, Mrs. Dole stated that she might recuse herself from certain decisions if problems arose.\textsuperscript{157} Moreover, the Red Cross board decided that recusal would be effective when allowing Mrs. Dole to re-assume her job after the election.\textsuperscript{158} In the cases described above, however, Mrs. Dole did not disclose the conflicts—the media uncovered them. Her tactic was instead to deny the existence of such conflicts and downplay their possibility when pressed by the media. Mrs. Dole stated that she and her husband had kept their careers separate from each other for many years and that potential favor-seekers would grow to realize this.\textsuperscript{159} She also attempted to couch her nonprofit career in “traditional” First Lady terms to which the public could relate—a career that would offer her the opportunity to meet and help people.\textsuperscript{160} Had she become First Lady, Mrs. Dole would have needed to be more forthcoming about conflicts in order to maintain public favor.

2. Societal Restrictions

At first glance, the public may be receptive to a First Lady with a nonprofit career, since working for a charitable organization is not much different from a “traditional” First Lady’s social crusade for an important issue.\textsuperscript{161} Despite this public support, a First Lady with a career in the nonprofit sector must still maintain her image as a supportive wife as well as as a professional woman working for the public good. A public personality of friendliness, subtlety, and charm, no matter how aggressive and upwardly mobile the First Lady actually is, should bring success. The First Lady should also avoid giving the impression that she interferes with, or even cares about, her husband’s political agenda.

Elizabeth Dole was able to deflect criticism of her ambition during the 1996 presidential campaign by projecting an image of wisely support and disinterest in policy matters. Many Americans found Mrs. Dole’s trademark Southern charm more appealing than Mrs. Clinton’s manner, which was often portrayed as aggressive.\textsuperscript{162} At the 1996 Republican National Convention, Mrs. Dole project-

\textsuperscript{156} Id.
\textsuperscript{157} Hasson, \textit{Elizabeth Dole Sees No Conflict} (cited in note 135).
\textsuperscript{158} Frantz, \textit{Dole Victory Could Let Red Cross Bloody Rivals} (cited in note 145) (quoting Norman Augustine, Red Cross chairman).
\textsuperscript{159} Hasson, \textit{Elizabeth Dole Sees No Conflict} (cited in note 135).
\textsuperscript{160} Id (cited in note 135). See also James Rosen, \textit{Elizabeth Dole Espouses Her Cause}, Raleigh News & Observer A1 (Aug 16, 1996) (“Each First Lady does choose some overarching humanitarian goal, but the Red Cross has a number of them, so it would be incorporated within the Red Cross.”).
\textsuperscript{161} Blumenfeld, \textit{First Lady Face-Off}, Wash Post at B4 (cited in note 75) (“The soft, nurturing quality is perhaps even more important than Jackie chic [for First Ladies].”).
\textsuperscript{162} Camilla Warrick, \textit{Love & Hate: First Ladies Rate Affection, Derision}, Cincinnati Post B1 (Sept 30, 1996) (quoting University of Cincinnati communications professor Dr.
ed an image to America that she had no plans but to support her man, even though plans were already in place for her to return to the Red Cross following the election. She told the press that her primary role would be as a “sounding board and helpmate” for her husband. Some saw her as a “woman of the ’90s,” someone able to support her husband and retain her femininity while also maintaining her independence. Feminists and career women were expected to support Mrs. Dole as a result of this image. Her apparent disinterest in policy also pleased a public wary of policy-making First Ladies.

One must recall, however, that public opinion supported Hillary Clinton prior to the 1992 election. Mrs. Dole may have been forced to reconsider resuming her career had her husband won the election. However, her excellent rapport with the public would likely have tempered the negative effects. Whatever Mrs. Dole’s final decision would have been, she seemed aware that it is better for society to criticize a First Lady for potential conflict of interest than for exercising power in policy matters. Elizabeth Dole appeared to fit the image of a First Lady who could do it all—could have an outside job, but still put her husband first. Because of this image, her desire to maintain outside employment may well have succeeded.

Judith Trent). See also Hanchette, *Elizabeth Dole: Candidate for First Lady*? (cited in note 150) (quoting Penn State presidential spouse expert Colleen Kelly) (“Her persona is invariably low-key. She rarely steps out of her sphere in either speech or action.”); Canellos, *Two Paths to Power* (cited in note 78) (reporting that voters at one campaign stop did not seem to be affected by Mrs. Dole’s high-powered resume, but rather impressed that she left her job to campaign for her husband) (“The sacrifice seems to have ennobled her in their eyes: She isn’t just a stellar professional, she’s a stellar wife.”).

163. Zirnite, *Fuss Over First Lady* (cited in note 79) (quoting Debbie Walsh, acting director of the Center for the American Woman in Politics at Rutgers University, who called this a “calculated” move and credited Republican strategists with “packaging” her).


168. Canellos, *Two Paths to Power* (cited in note 78). See also Zofia Smardz, *Why Re-invent the First Lady?,* Wash Post C2 (May 19, 1996) (“[T]o all those who have found Hillary Clinton’s behavior unsettling . . . Dole was indicating that she would be busy with her own career and would have no interest in meddling in the policies and politics of the White House.”). In a *Newsweek* poll after the Republican national convention, 42% thought that Mrs. Dole was best suited to be First Lady, compared with only 28% for Mrs. Clinton. Julia Malone, *First Lady Has Tough Act to Follow*, Patriot Ledger 1 (Aug 27, 1996).
C. CORPORATE BOARD MEMBER

1. Legal Restrictions

A First Lady may be an excellent candidate for a corporate board position. Especially if she has a background in business or finance, she is qualified to serve as a director. If she possesses expertise in other fields, she may still be able to contribute to corporate decision-making. Further, the First Lady’s fame and influence adds prestige to the board’s makeup. However, corporate board members must abide by the duty of loyalty, discussed above, which includes awareness of a conflict, disclosure of the conflict, and a vote of disinterested directors.169

In the case of a First Lady, several conflicts or appearances of conflict specific to the job may arise. For example, the corporation may try to use the First Lady—or the First Lady may attempt to use the corporation—for political gain. She may attempt to persuade the corporation to support her husband in his campaign, or to support his initiatives once he is elected President. The President may also be in a position to sign into law bills which favor industries or businesses linked to the First Lady’s corporate boards. The First Lady must refrain from using the corporation to support her personal interests, and if a business opportunity arises in connection with a political supporter, the First Lady must practice disclosure and recusal under the duty of loyalty.

Economist Wendy Lee Gramm, the wife of 1996 presidential hopeful Senator Phil Gramm and a member of several corporate boards, faced such an ethical dilemma when a corporation upon whose board she sat appeared to promote her husband’s candidacy for President. The controversy began when Mrs. Gramm accepted a spot on the board of Iowa Beef Processors, Inc., one of Iowa’s biggest employers, just prior to the Iowa presidential straw poll.170 An IBP memo sent to its management-level employees encouraged them to attend the straw poll, and stated that the Gramm campaign would provide tickets and bus transportation.171 IBP worker turnout helped Gramm tie Dole in the straw poll, giving a boost to his campaign.172 The Gramms have consistently denied any conflict of interest or unethical behavior.173

2. Societal Restrictions

The societal restrictions governing the First Lady as a corporate board member are much the same as those for a nonprofit job. As discussed, the First Lady should take care to project an image of friendliness, charm, and reservedness with respect to policy matters.

169. See also Douglas M. Branson, Corporate Governance, § 8.13 and § 8.14, 425 and 428 (Michie 1993).
171. Frontline, So You Want to Buy a President? (cited in note 96).
Both Wendy and Phil Gramm attempted to construct this type of image for Mrs. Gramm during the 1996 presidential campaign. Mrs. Gramm adopted Elizabeth Dole's tactic of denying any interest in policy matters. Phil Gramm, like Bob Dole, tried to differentiate his wife from Hillary Clinton by telling supporters that Mrs. Gramm did not see herself as a "surrogate president." The public did not seem concerned about Mrs. Gramm's high-achieving career or the alleged conflicts of interest during the campaign. Perhaps this lack of concern stemmed partly from Phil Gramm's slim chance of winning the Republican nomination, and partly from the high respect that existed for Mrs. Gramm among Washington politicians. Nevertheless, public opinion was likely also influenced by Mrs. Gramm's conscious projection of a traditional image.

D. ATTORNEY

1. Legal Restrictions

A First Lady who aspires to continue her legal career must take great care to avoid the appearance of a conflict of interest. Eyebrows may raise if she participates in cases which involve her husband's administration, or if she represents a client whose interests run contrary to her husband's policies. If these situations arise, the First Lady could recuse herself. Canon 9 of the ABA Model Code of Professional Responsibility provides that a lawyer should avoid even the appearance of professional impropriety, as this diminishes public confidence in and respect for the legal profession. The Disciplinary Rule accompanying Canon 9 identifies three circumstances in which there is an appearance of impropriety. These situations include private employment where a lawyer has acted in a judicial capacity, private employment regarding a subject where a lawyer has been a public employee, and instances where a lawyer represents that

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175. Susan Feeney, Senators laud Wendy Gramm (cited in note 99).
176. One political wife claims she found it easy to do so. See Barbara Gamarekian, Being a Political Wife Offers a Unique Blend Of Problems, Dallas Morning News F3 (Aug 16, 1987) (quoting Ann Petri, wife of Representative Thomas E. Petri) ("Being a lawyer makes it a bit easier when it comes to the question of conflict of interest. I have affirmatively tried to stay away from any lobbying activity.").
178. EC 9-6 states in relevant part that "[e]very lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; ... and to strive to avoid not only professional impropriety but also the appearance of impropriety." Morgan and Rotunda, Selected Standards at 230.
he or she can improperly influence any court, legislature, or public official. The latter two circumstances may apply to an attorney First Lady, depending on the circumstances. Courts have held Canon 9 to be incapable of precise definition; therefore, courts apply it at their discretion based on the specific factual circumstances of each case.

Interesting lessons for a First Lady who wants to pursue her legal career are provided by Cherie Blair, wife of British Prime Minister Tony Blair. Mrs. Blair is a member of the Queen's Counsel, specializing in employment law, and also serves as a part-time judge. She has faced many of the conflicts or the appearances of conflict which would befall an attorney First Lady. For example, to a judge in High Court, Mrs. Blair described the Education Secretary as “unreasonable and perverse” for one of his decisions. Moreover, much of Mrs. Blair's work involves judicial review of government policies. Finally, Mrs. Blair has involved herself in cases which run contrary to her husband’s policies, a fact which Tory British tabloids gleefully report.

One major difference, however, is that British attorneys must accept all cases offered to them. Therefore, as Queen’s Counsel, her superiors may force Cherie Blair to prosecute officials in her husband’s government—or opponents of her husband’s party. Furthermore, if she becomes a judge, she will be in a

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181. Professionally, she uses the name Cherie Booth.
182. Carole Aye Maung, Cherie Flair: In Battle of the First Ladies, There's Only One Winner, The Mirror 6 (May 31, 1997) (noting that this position commands 250,000 pounds a year). A Member of the Queen's Counsel is appointed by the Lord Chancellor following nomination by senior judges, and the title is an indication of success as a litigator, thus carrying with it higher fees and higher status. Shawn Pogatchnik, Britain Softens Oath of N. Ireland Lawyers, Chi Sun-Times 35 (Oct 29, 1995).
183. This position, dubbed “assistant recorder” in England, is the bottom rung of the judicial ladder, sitting for about 20 days a year on civil cases. See Mrs. Blair learns to sit in judgment, Daily Mail 21 (June 11, 1996).
186. Penny Wark, Things have only got better, Sunday Times (Nov 2, 1997). The Daily Express and Daily Mail, both Tory tabloids, continually search for such conflicts—Tony Blair is a member of the Labour Party. See Anthony Bevins, Knives Out For “Scheming” Cherie Blair, The Observer 5 (Feb 4, 1996).
188. Paddy turns to Cherie, The Mail on Sunday 8 (Oct 26, 1997).
189. Michael Gove, The Two Faces Of Cherie, The Times (Sept 27, 1997). See Press Association Newsfile, Press Accused of Hounding Cherie Blair (Mar 12, 1996) (reporting that the Association of Women Barristers gathered on Cherie’s behalf to remind the press of this, so the criticism on her choice of cases would abate).
position to convict government officials or their opponents. The mandatory nature of case selection lessens the political pressure on Mrs. Blair in a way that a First Lady could not escape if she were to pursue similar avenues.

2. Societal Restrictions

An attorney’s time-intensive workload and unpredictable schedule will make it difficult for a First Lady to balance her roles as political wife and professional woman. An attorney First Lady may find it difficult to campaign heavily for her husband or attend every banquet or state dinner. The general public and the media may not mind an occasional missed obligation, but if the First Lady misses several dinners or photo opportunities, the public and press may question both her commitment to her husband and her respect for long-held traditions.

One option for the First Lady would be to disclose to the public at the outset, either during the presidential campaign or shortly thereafter, that she will not be spending the “traditional” amount of time performing her First Lady duties. She should stress, however, that she will make every attempt to be present for the largest, most important events. She may enlist the help of her staff in planning dinner menus and executing other domestic duties in the White House. She may also attempt to couch her role as attorney as a “helping” profession, not so far removed from a social crusade another First Lady may pursue. Another option would be for her to shun her First Lady role completely, not even attempting to make time to attend state dinners and engage in other formalities. However, that option may prove to be “too much, too soon” for the public and press, at least for the first First Lady who attempts a professional career.

Whatever her choice, an attorney First Lady, like a First Lady involved in a nonprofit or corporate career, should refrain from comment on political issues to avoid public accusation of “meddling” in the affairs of her husband’s administration. Also, although the First Lady may have to spend less time performing her traditional First Lady duties, she must take care not to neglect her husband, and must instead continue to convey the image of supportive wife.

Cherie Blair recognized the time her career would take and how little time would remain to fulfill her duties as the Prime Minister’s wife. Therefore, to protect her career by making it more palatable to the public, Mrs. Blair does not even attempt to balance the two roles. She keeps her professional life separate from her political life by shunning interviews, refraining from commenting on political issues, and referring queries about political issues to the relevant govern-

190. The role of judge may not be an option for her because of conflicts. A judge must be available every day the court is in session; besides, charges of nepotism may arise, as the Lord Chancellor who appoints judges is Tony Blair’s mentor and the couple’s close friend. See Gove, The Two Faces of Cherie (cited in note 189).

191. Alice Thompson, Will First Lady’s Job Take Second Place?, The Daily Telegraph 3 (May 5, 1997) (quoting Josephine Hayes, chairman of the Association of Women Barristers) (“The hours are long and it is going to be fantastically difficult for her to be ‘first woman,’ mother and continue in her ambition to be a judge.”).
Unlike Hillary Clinton, Elizabeth Dole, and Wendy Gramm, she did not make campaign stops for her husband independently, and only joined her husband on the campaign trail when her work schedule allowed. As for her domestic responsibilities, a full-time live-in nanny cares for her three children, and a regular cleaning lady cleans their home at 10 Downing Street. According to the Sunday Telegraph, this tactic seems to have worked: six months after her husband’s election, she was more popular than ever with the public. Despite some conservative rumblings, Mrs. Blair has largely escaped any backlash resulting from her career, due both to her approach and her excellent professional reputation.

While some Americans may dismiss Cherie Blair’s repudiation of her role as Prime Minister’s wife as a British idiosyncrasy, the societal restrictions that may plague an American First Lady also exist in Britain. British political wives traditionally have been seen and not heard. Much like in the United States, the British public’s greatest fear is a Prime Minister’s wife who meddles in governmental policy. While the British do see Mrs. Blair as transforming the role of Prime Minister’s wife, they largely consider her emphasis on her own career rather than her husband’s government a political plus. Labour party supporters say that being a dual-career mother makes her a wonderful role model for British women.

Indeed, one key to Mrs. Blair’s success is that she adapted to public opinion. Despite her intention to continue her career, Mrs. Blair, like Elizabeth Dole and Wendy Gramm before her, tried to portray a traditional image during her husband’s campaign. For example, she was guest editor of a women’s magazine.

Tony Blair repeatedly emphasized during his campaign that his wife had no political ambitions. Moreover, the Blairs reacted quickly to any hints

192. Wark, Things have only got better (cited in note 186).
193. Russell Jenkins, Cherie Blair Given Starring Role in Test Run for Election, The Times 6 (Feb 25, 1997). Now that she is the Prime Minister’s wife, most of her cases are pre-planned, and she can work them around her husband’s schedule. Gove, The Two Faces of Cherie (cited in note 189).
196. Wark, Things have only got better (cited in note 186).
197. Mrs. Blair is the first non-housewife in her position. Lorna Frame, Cherie v. Hillary, Scottish Daily Record 14 (May 29, 1997).
198. Sheree Dodd, President Blair: Comparison of Leadership Styles of Bill Clinton and Tony Blair, The Mirror 6 (May 26, 1997).
199. Id.
200. Joe Joseph, Will Cherie do a Hillary?, The Times 16 (Aug 30, 1996). See also Frame, Cherie v. Hillary (cited in note 197) (stating that Mrs. Blair has been called “the woman who juggles career and family and never drops anything”).
201. Edwina Currie, Please, Cherie and Norma, Don’t Let Your Men Use You As Political Puppets, The Mail on Sunday 41 (Sept 8, 1996).
that Mrs. Blair was becoming involved in politics. When she was assigned a “minder” to keep track of Mrs. Blair’s personal appointments during Blair’s election campaign, the Labour Party stressed that Mrs. Blair did not have a political role and that the “minder” was not a spin doctor. Tony Blair also rejected suggestions that Mrs. Blair’s practice of reviewing government policies meant that she had ambitions of taking a policy role.

Part IV. The Dual-Career First Lady—Learning Lessons from the Past

The First Lady can and should be able to seek employment outside the White House if she so desires. No legal restrictions prevent her from doing so at the present time, and with the right combination of personality and ethical responsibility, the public and media should be able to accept her choice. Public response to Elizabeth Dole and, across the ocean, to an actual “First Lady” with an outside career, demonstrates that the public can be receptive to the First Lady under certain circumstances. In fact, an outside job would keep the First Lady too occupied with her own affairs—or so the public would assume—to interfere in issues of her husband’s administration. To accomplish this task most successfully, however, the First Lady would also have to profess support for her husband while claiming disinterestedness in state policy.

A First Lady with an outside job may be good for the country as well. Her job would greatly reduce public pressure on her. The resulting freedom would allow her to make a difference in the professional world, contributing her talents to society instead of state dinners. Furthermore, working spouses could provide valuable insight into how the “real world” works. Being the President’s “eyes and ears,” as Eleanor Roosevelt was to FDR, could perhaps reduce the President’s reliance on public interest groups and lobbyists for such information, although the First Lady would have to be careful to avoid appearing to influence the President. Finally, it is simply time for the First Lady, like so many members of the voting public, to be a professional woman. Women in the United States are working outside the home in large numbers. These women should be able to support a candidate whose spouse balances home and career.

The case for a First Lady taking a job in her husband’s government is somewhat weaker. Legal restrictions do not seem to prohibit her from doing so,
but these laws may change.\textsuperscript{207} Despite the suspect holding of \textit{American Physicians}, the arguments in favor of the application of the Anti-Nepotism Act to the President, and therefore to the First Lady, are persuasive. Furthermore, public outcry would very likely prevent such a situation from occurring, at least for the foreseeable future. As long as the traditional image of an ideal First Lady exists, First Ladies will have a difficult time exerting influence on policy while keeping their reputations intact.

If a First Lady were to hold a career outside the White House, such as the jobs delineated above, chances are great that she would not have time for her traditional First Lady duties. Although the First Lady has her own staff, as well as the White House domestic staff, to assist her in these efforts, the final responsibility for these duties has been hers.\textsuperscript{208} However, these “traditional” duties of the First Lady are just that—traditional, assigned to the First Lady solely according to the dictates of custom.\textsuperscript{209} As Judge Buckley noted in his concurrence in \textit{American Physicians}, the First Lady “neither holds a statutory office nor performs statutory duties.”\textsuperscript{210}

Furthermore, her traditional duties are not indispensable. If the First Lady pursued an outside career and still wished to assume the primary responsibilities for her traditional duties, her staff needs would merely increase.\textsuperscript{211} The First Lady perhaps would be able to have more personnel assigned to her.\textsuperscript{212} The First Lady’s staff has traditionally included a Chief of Staff (appointed by the President), a Deputy Chief of Staff, a Press Secretary, a Director of Social Scheduling, and a Social Secretary, along with support personnel for each.\textsuperscript{213} As former First Lady Rosalynn Carter noted in her autobiography, the staff changes with every administration, depending on the First Lady’s needs.\textsuperscript{214} Alternatively, members of the First Lady’s existing staff could take on extra duties. Staff members currently participate in planning state dinners; for a governor’s dinner early in the Clinton administration, Hillary Clinton’s social secretary, Ann Stock, consulted with the White House executive chef and three restaurant chefs in

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\item \textsuperscript{207} See the discussion of the Federal Anti-Nepotism Act, Antideficiency Act, and the Criminal Conflict of Interest Statute in subsection II.
\item \textsuperscript{208} Diller and Robertson, \textit{The Presidents} at 8 (cited in note 5).
\item \textsuperscript{209} Id.
\item \textsuperscript{210} \textit{American Physicians}, 997 F2d at 920.
\item \textsuperscript{211} Rosalynn Carter, \textit{First Lady from Plains} 168 (Houghton Mifflin 1984) (“In the past, if a First Lady was very active, she always needed more staff and drew from other sources: Some administrations used volunteers and part-time workers; some borrowed from other agencies.”).
\item \textsuperscript{212} The increase in staff may depend on budgetary constraints; Rosalynn Carter wanted more staff but was restricted from “borrowing” due to financial concerns. Id.
\item \textsuperscript{214} Carter, \textit{First Lady} at 168 (cited in note 211).
\end{enumerate}
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order to arrange the menu.\textsuperscript{215} Even Mrs. Clinton's press secretary picks up the traditional duties such as state dinners.\textsuperscript{216}

Past Presidents have hired part-time hostesses in lieu of a First Lady in special circumstances. James Buchanan, a bachelor, and widowers Martin Van Buren and Andrew Jackson engaged appointed hostesses. Dolley Madison was also a part-time hostess for Thomas Jefferson before her husband was elected president.\textsuperscript{217} Furthermore, it is not unusual for modern First Ladies to exhibit varying degrees of interest in their formal role. Eleanor Roosevelt seemed disinterested in her role, whereas Jacqueline Kennedy reveled in it. The traditional duties could be—and have been—delegated to others with ease when the First Lady chose to do so. So far, Mrs. Clinton has been able to delegate these duties without public outcry, although a blatant shunning of the duties may meet with some criticism in light of the public's desire to keep the First Lady as traditional as possible. However, if a First Lady has courted public opinion by cultivating a gracious personality and by rejecting a public policy role, perhaps the public will tolerate a missed state dinner or two.

One may ask, however, why the First Lady should have to walk a tightrope in order to continue her outside career or engage in activities apart from her husband. Germaine Greer raised this issue in a \textit{New Republic} cover story, stressing the no-win situation into which the American public puts their First Ladies: the more a First Lady's public profile rises and people care what she thinks, the more careful she has to be with what she says and does, lest she contribute to a political disaster for her husband.\textsuperscript{218} Greer asserts that this view of First Ladies propagated by the media will continue as long as the media wishes, as politicians do not want to earn the public's disfavor.\textsuperscript{219} However, abolishing the role of First Lady, as Greer advocates, is not the answer. Societal change proceeds in increments, and the First Lady's role generally evolves following, rather than setting, societal trends.\textsuperscript{220} Once the first First Lady continues her career in the White House, projects an open, friendly image to the public and press, steers clear of any conflicts or appearances of conflict, and receives approval for doing so, the next First Lady to do so will not face the same press and public scrutiny. Eventually, the option to continue outside employment will seem commonplace and within any First Lady's grasp, and the

\textsuperscript{215} Marian Burros, \textit{No Butts About It}, Indianapolis Star E7 (Feb 3, 1993).
\textsuperscript{216} Rachel Zalis, \textit{Still in Their 20s and Look What They've Already Accomplished!}, Cosmopolitan 208 (June 1, 1993) (profiling Karen Finney, Mrs. Clinton's former deputy press secretary).
\textsuperscript{217} Suzanne Fields, \textit{How Many Presidents in the White House?}, Wash Times A23 (Jan 22, 1996).
\textsuperscript{218} Germaine Greer, \textit{Abolish Her: The Feminist Case Against First Ladies}, New Republic 21, 22 (June 26, 1995).
\textsuperscript{219} Id at 21.
\textsuperscript{220} Hasson, \textit{Rewriting role of first lady} (cited in note 87) (quoting University of Texas history professor Lewis Gould) ("First ladies are not a leading indicator. They are a lagging indicator. Social change will happen and about 15 years later, we'll say it's OK for first ladies to [make innovations in traditional women's roles] too.").
Employment of First Ladies

The fear of a First Lady's independent ambitions, the expectation that the First Lady will perform domestic duties, and her lack of independent power—will no longer be issues. As for Greer's concern that a First Lady must be forever conscious of the political implications of her actions, the First Lady should be able to foster a successful professional career and receive self-fulfillment while still practicing recusal and disclosure where appropriate. If they so desire, First Ladies should be able to seek outside employment while keeping intact their own and their husbands' public image.

Part V: A "Work" in Progress—Potential Future First Ladies and Their Careers

A cursory examination of women poised to become First Lady in the 2000 presidential election illustrates that the transition from supportive political wife to dual-career woman is still occurring. Tipper Gore, wife of Vice President Al Gore, is perhaps the most independent First Lady of the five leading contenders, and the most likely to continue to pursue her own controversial interests while in the White House. Gore has been an activist with her own quasi-career, as well as a government advisor. Although she gave up a career as a photographer when her first child was born, she created the controversial Parents Music Resource Center, which advocates placement of warning labels on recordings with sexual or violent content. Many harshly criticized her cause, particularly the Hollywood funding elite, and this dampened the momentum of her husband's 1988 presidential run. As "Second Lady," she served as mental health advisor to Hillary Clinton's Health Care Task Force. Today, public opinion of her is positive in comparison to Hillary Clinton. The Democrats consider her to be a symbol of family values. She has ruled out a resumption of a full-time career until her youngest child graduates from high school, which would occur in approximately 2001, during her husband's first term as President.

Four other potential First Ladies, however, show no interest in independent careers, and would likely fall into the "traditional" First Lady mold. However, as time passes and later generations of women move into the White House, this type of First Lady will likely become less common. Jane Gephardt, wife of Senator Richard Gephardt, is primarily a full-time mother. Joanne Kemp, wife of Bob Dole's running mate and former Representative Jack Kemp and a former teacher, has not held a career outside the home in decades, has been

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221. The transition has been occurring since the 1988 presidential race. Mireille Grangenois Gates, Silent-partner political wife 'gone forever', USA Today A1 (June 4, 1987).
222. Her full name is Mary Elizabeth Aitchenson Gore.
225. Id.
226. Id.
known to shun television cameras, and devotes much of her time to Christian
groups and volunteering.\textsuperscript{228} Laura Bush, wife of Texas Governor George W.
Bush, was a former schoolteacher and librarian, but now spends her time
working with charities and literacy groups and raising her twin daughters.\textsuperscript{229}
Alma Powell, wife of Gulf War hero and former Chairman of the Joint Chiefs of
Staff Colin Powell, holds a master’s degree and is a trustee of the prestigious
John F. Kennedy Center for the Performing Arts, but primarily opts for tradition-
al political wife activities such as volunteering.\textsuperscript{230}

If the presidential race unfolds in this manner, an interesting but not unfa-
miliar dynamic will develop: one outspoken, activist potential First Lady who has
been tempered by public opinion (like Hillary Clinton), and one more traditional
contender who is content to stay at home and volunteer for “soft,” female-
oriented concerns such as children or education (like Barbara Bush). Whatever
the outcome of the election, the resulting course of events will shape society’s
perception of the First Lady. Until the increasing independence of women that
exists in American society today is reflected in the White House as well, it is
incumbent upon the First Lady to define her role—and her career—and sell it to
the American people. May we find a woman who is up to the challenge.

\textsuperscript{228} Sue Ellen Christian, \textit{On the Sidelines}, Chi Trib 2 (Sept 29, 1996).
\textsuperscript{229} Cheryl Laird, \textit{Bush Beginnings}, Houston Chron 1 (Jan 15, 1995). See also Claudia
Feldman, \textit{First Lady}, Texas Magazine 8 (July 20, 1997) (quoting Mrs. Bush) (“I’ve always
done what really traditional women do, and I’ve been very, very satisfied.”).
\textsuperscript{230} Otto Kreisher, \textit{Alma is major player on Colin’s team: Powells have made important
decisions together for 33 years}, San Diego Union-Trib A8 (Nov 26, 1995).