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THE NEW REVOLVING DOOR

Michael P. Vandenberg,[†] *Jonathan M. Gilligan*,^{††} and *Haley Feuerman*^{†††}

ABSTRACT

This Article demonstrates that a new revolving door is emerging between environmental-advocacy groups and the private sector. Since the birth of the modern regulatory state, scholars have raised concerns that the revolving door between corporations and government agencies could induce government officials to pursue corporate interests rather than the public interest. The legal and political-science literatures have identified several benefits that may arise from the revolving door, but the thrust of the scholarship to date has emphasized the potential harms. Using several data sources, we demonstrate that as the private sector has begun to play an increasing role in environmental governance in recent years, a new revolving door has emerged between environmental-advocacy groups and corporations, institutional investment firms, and private equity firms. We demonstrate that this new revolving door is surprisingly common, and we examine the implications for the future of public and private environmental governance. Although this new revolving door creates new risks, we argue that it may turn on its head the central concern about the revolving door: The movement of environmental advocates into corporate management positions may play the role of greening corporate behavior and may accelerate the development of private environmental initiatives. We focus on the movement of employees in the environmental area—a new green revolving door—but we suggest that this new revolving door also may be emerging in labor, health and safety, and other regulatory areas.

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INTRODUCTION

Private equity firms have been criticized for pursuing profits at the expense of social justice,¹ yet the Carlyle Group and Kohlberg Kravis Roberts (KKR), two of the world’s leading private equity firms, have recruited top environmental-advocacy-group staffers to serve as sustainability managers.² Similar hiring has occurred elsewhere in the private sector, including not only private equity firms, but also institutional investors and Fortune 500 corporations. Why is this occurring? What effect is it having on environmental governance?

This symposium examines the role of the Environmental Protection Agency (EPA) in environmental law and policy over the last fifty years and looks forward to the next fifty years. Our goal in this Article is to contribute to the forward-looking aspect of the symposium by demonstrating how private environmental governance will affect a core concern of environmental-law scholarship over the next fifty years. We present the results of an empirical study of the movement of employees from environmental-advocacy groups to corporations, institutional investors, and private equity firms, and we demonstrate that this new green revolving door is surprisingly common. We argue that the new revolving door poses some risks to environmental governance, but it is an indication of the growing importance of private environmental governance and a potential driver of additional pro-environmental activity by the private sector.

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1. See Editorial Bd., Opinion, *The Peculiar Debate over Mr. Romney’s Business Record*, WASH. POST (Jan. 10, 2012), https://www.washingtonpost.com/opinions/the-peculiar-debate-over-mr-romneys-business-record/2012/01/10/gIQATw6MpP_story.html [https://perma.cc/X9DU-HTUH] (discussing Bain Capital).
 2. See *infra* Part II.

Private environmental governance occurs when private organizations, including corporations, civic and cultural organizations, religious organizations, colleges and universities, and other non-governmental organizations (NGOs) perform environmental-protection functions traditionally assigned to governments, such as reducing negative externalities, managing common-pool resources, and affecting the distribution of environmental amenities.³ In the last decade, the social-science and legal literatures have demonstrated that private initiatives now play an important governance role in most of the subject-matter areas addressed by the EPA and other federal environmental and natural-resource agencies, including climate mitigation, product- and project-based environmental disclosure, toxics regulation, and the management of fisheries and forests.⁴ Private governance initiatives also deploy many of the same instruments or tools as public governance.⁵

The growth of private environmental governance raises a range of questions about the extent to which private initiatives can perform environmental-protection functions even in the absence of government leadership.⁶ But the emergence of private environmental governance

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3. Michael P. Vandenberg, *Private Environmental Governance*, 99 CORNELL L. REV. 129, 133 (2013).
 4. Sarah E. Light & Michael P. Vandenberg, *Private Environmental Governance*, in DECISION MAKING IN ENVTL. LAW 253–54 (LeRoy C. Paddock et al. eds., 2016); Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 STAN. L. REV. 137, 139–41 (2019); Jonathan M. Gilligan, *Carrots and Sticks in Private Climate Governance*, 6 TEX. A&M L. REV. 179, 179–80 (2018); Will Martin, *Marine Stewardship Council: A Case Study in Private Environmental Standard-Setting*, 44 ENVTL. L. REP. NEWS & ANALYSIS 10,097, 10,097 (2014) (fisheries); Steven Bernstein & Benjamin Cashore, *Can Non-State Global Governance Be Legitimate? An Analytical Framework*, 1 REG. & GOVERNANCE 347, 347–50 (2007) (forests); Tim Bartley, *Certifying Forests and Factories: States, Social Movements, and the Rise of Private Regulation in the Apparel and Forest Products Fields*, 31 POL. & SOC'Y 433, 433–34 (2003) (forests and apparel); Kenneth W. Abbott & Duncan Snidal, *The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State*, in THE POLITICS OF GLOBAL REGULATION 44–46 (Walter Mattli & Ngaire Woods eds., 2009) (international environmental issues); Zdravka Tzankova, *Interactions Between Private and Public Resource Governance; Key Insights from the Fisheries Case*, 6 WM. & MARY POL'Y REV. 1 (2014); Zdravka Tzankova, *Can Private Governance Boost Public Policy? Insights from Public-Private Governance Interactions in the Fisheries and Electricity Sectors*, REG. AND GOVERNANCE (2020).
 5. Sarah E. Light & Eric W. Orts, *Parallels in Public and Private Environmental Governance*, 5 MICH. J. ENVTL. & ADMIN. L. 1, 4–5 (2015).
 6. For an identification of emerging issues of interest to environmental lawyers, see Michael P. Vandenberg & Ben Raker, *Private Governance and the New Private Advocacy*, 32 NAT. RESOURCES & ENV'T 45, 45–49

also affects many of the cross-cutting aspects of governance that public-law scholars have studied for decades, such as administration, accountability, cost-benefit analysis, equity, and spillover effects. In this Article, we examine the implications of private governance for concerns about agency capture arising from the revolving door. In the legal and political-science literatures, the revolving door refers to the movement of employees between government and corporations.⁷ Scholars have examined the mechanisms of this phenomenon and its effects on industries, agencies, and society, but the revolving-door literature has assumed that governance means public governance, and thus the focus has been on the movement of individuals between the corporations and government.⁸

Political scientists and legal scholars thus use the term *revolving door* to describe the movement of legislators, regulators, and lobbyists between the private and public sectors.⁹ The door swings in both directions as individuals rotate from corporate jobs to government positions and vice versa. Although some scholars see merit in the revolving door's ability to foster interconnectedness between the public and private sectors,¹⁰ many have raised concerns that the revolving door

(2017); Zdravka Tzankova, *Public Policy Spillovers from Private Energy Governance: New Opportunities for the Political Acceleration of Renewable Energy Transitions*, 67 ENERGY RES. & SOC. SCI. (2020).

7. See, e.g., Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 46 (2010) [hereinafter Barkow, *Insulating Agencies*] (discussing the capture risks arising from the government-private sector revolving door); Rachel E. Barkow, *Explaining and Curbing Capture*, 18 N.C. BANKING INST. 17, 19 (2013) [hereinafter Barkow, *Curbing Capture*]; Wenton Zheng, *The Revolving Door*, 90 NOTRE DAME L. REV. 1265, 1266–68 (2015) (same); Jeffrey E. Cohen, *The Dynamics of the “Revolving Door” on the FCC*, 30 AM. J. POL. SCI. 689, 689–90 (1986) (same); William T. Gormley, Jr., *A Test of the Revolving Door Hypothesis at the FCC*, 23 AM. J. POL. SCI. 665, 681 (1979) (concluding that “the appointment of a former employee of a regulated industry to a regulatory agency does increase the likelihood of decisions favorable to the regulated industry”).
8. See, e.g., Edna Earle Vass Johnson, *Agency “Capture”: The “Revolving Door” Between Regulated Industries and Their Regulating Agencies*, 18 U. RICH. L. REV. 95, 95–96 (1983) (assessing capture risks and benefits and focusing exclusively on government-private sector employee movement); Zheng, *supra* note 7, at 1266–68 (same); Barkow, *Insulating Agencies*, *supra* note 7, at 46 (same).
9. See, e.g., Zheng, *supra* note 7, at 1266. Although the revolving door exists in many disciplines, the concept is most frequently discussed by political scientists and legal scholars in connection with agency capture and related issues. See *id.* at 1270–72.
10. David Zaring, *Against Being Against the Revolving Door*, 2013 U. ILL. L. REV. 507, 511–12 (2013).

may lead to undue corporate influence over government decisions.¹¹ In particular, the fear is that the exchange of personnel may undermine government integrity or lead to regulatory capture.¹² A captured agency is disproportionately influenced by the entities that it regulates, creating policies that serve the interests of corporations rather than the general public. It is difficult to measure whether an agency is captured, but capture in major regulatory agencies has been a longstanding concern in the public domain.¹³ Environmental agencies may be at a heightened risk of regulatory capture for several reasons. For instance, the costs of environmental regulations are high, creating strong incentives to reduce regulatory mandates. In addition, the complexity of environmental policy, such as regulations on water pollutants or greenhouse gases, makes it difficult for the general public to perceive manipulation within environmental agencies, making them more susceptible to regulatory capture than other agencies.¹⁴

In Part I, the Article discusses the legal and political-science literatures on the standard public-governance conception of the revolving door between the public and private sectors, and it examines

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11. See, e.g., Richard Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1669, 1684–87 (1975) (discussing agency capture); Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 346 (2009) (“The revolving door between staffers and lobbyists, the lure of powerful contracts, the seductions of a wealthy community, and other forces all give regular work to what Hamilton called ‘the business of corruption’”) (quoting THE FEDERALIST NO. 68 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).
 12. An agency may be considered captured when a majority of the individuals creating regulation were formerly employed by the regulated corporate. See Johnson, *supra* note 8, at 95.
 13. Barkow, *Curbing Capture*, *supra* note 7, at 17; Zheng, *supra* note 7, at 1267.
 14. See Daniel C. Esty, *Toward Optimal Environmental Governance*, 74 N.Y.U. L. REV. 1495, 1548–49 (1999) (“[T]he average citizen knows if he or she is getting adequate roads or schools and even has a sense of whether the government regulation of banks seems appropriate. In many environmental circumstances, however, no comparable basis for judging the adequacy of outcomes exists.”). Research by Joel Mintz has attempted to assess instances of possible capture within the EPA by evaluating the Agency’s enforcement policies from its creation in 1970 through 2004. Joel A. Mintz, *Has Industry Captured the EPA?: Appraising Marver Bernstein’s Captive Agency Theory After Fifty Years*, 17 FORDHAM ENVTL L. REV. 1, 26, 36 (2005) (concluding that the “EPA’s enforcement work has been nearly captured by industry several times and that it was partially captured on one occasion”); see also Ping Lei et al., *Determinants and Welfare of the Environmental Regulatory Stringency Before and After Regulatory Capture*, 166 J. CLEANER PRODUCTION 107, 110, 113 (2017); PHILIP MATTERA, USDA INC.: HOW AGRIBUSINESS HAS HIJACKED REGULATORY POLICY AT THE U.S. DEPARTMENT OF AGRICULTURE 32 (2004).

the federal statutory and regulatory responses. Part II then introduces the concept of the new revolving door between environmental-advocacy groups, on the one hand, and corporations, institutional investment firms, and private equity firms on the other. It then presents the results of the first empirical study of the new revolving door. We found that, of the entities we studied, roughly 6% of large companies, 15% of large institutional investment firms, and 29% of large private equity firms had at least one environmental manager who worked in the past at an environmental-advocacy group. Although far more research remains to be done, the results demonstrate that the new revolving door has emerged in the environmental field, producing different implications for governance than the standard revolving door. Although the new revolving door is not without risk, we argue that it may turn the central concern about the revolving door on its head: The movement of environmental advocates into private-sector management positions may play the role of greening the private sector and accelerating the development of private environmental initiatives.

The Article concludes by noting that, although the empirical case for the new revolving door relies only on our limited data on recent employment in several sectors, our results set the stage for more comprehensive empirical studies. In addition, the existence of the new revolving door suggests that other common features of the public-governance regime may need to be re-examined in light of the emergence of private environmental governance. We focus on the new revolving door involving environmental-advocacy groups and the private sector—a new green revolving door—but we suggest that the new revolving door also may be emerging in labor, health and safety, fair trade, food safety, and other regulatory areas.¹⁵

I. THE TRADITIONAL REVOLVING DOOR

The concept of the revolving door has been a hardy perennial in the legal and political-science literatures for decades. Not surprisingly, given the central role played by government in environmental protection, labor, health and safety, and other areas, the focus of the revolving-door literature has been on the movement between government and the private sector. Scholars have identified positive and negative effects from the revolving door, but, on balance, the literature has focused more on the negative effects that could arise from government being co-opted by the private sector. The congressional response to such concerns reflects this perspective, and legislation adopted since World War II includes a range of provisions that restrict the most troubling revolving-door activity. Part II.A discusses the

15. *See, e.g.*, TIMOTHY D. LYTTON, *KOSHER: PRIVATE REGULATION IN THE AGE OF INDUSTRIAL FOOD* 129–30 (2013) (discussing the use of private certification agencies in the kosher food industry).

revolving-door literature, and Part II.B examines the statutory restrictions on the revolving-door-related activities of current and former government officials.

A. Revolving-Door Literature

Research on the revolving door has examined the topic both broadly as it relates to human behavior and narrowly, working from an assumption that employees are rational actors seeking to maximize utility in the form of future employment. Although the revolving door literature has identified a number of benefits that may arise from the revolving door, the research has identified more risks than benefits. We begin with a brief review of the benefits identified in the literature and then turn to the risks.

1. Benefits

Theoretical and empirical studies have identified several benefits to public governance that may arise from the revolving door, including increased expertise, addition of outside-expert perspectives, and the growth of human capital.¹⁶ On the expertise issue, scholars have noted that government agencies require substantial expertise on complex issues. As a result, the revolving door can be beneficial if private sector employees bring their knowledge about the operations of regulated entities to government agencies.¹⁷ On the issue of adding outside-expert perspectives, Sheila Jasanoff has observed that, to function effectively in evaluating the work of a regulatory agency, one needs skills that are best (or only) acquired through previous engagement with the agency; so individual experts engaging with regulatory agencies can be essential to producing qualified external evaluators of an agency's work.¹⁸ This engagement could include working with the agency from the outside or employment in the agency. To the extent the revolving door facilitates an agency's ability to identify and work with outside evaluators on complex issues, the revolving door may thus enhance the decision-

16. For an overview of the literature, see James D. Cox & Randall S. Thomas, *Revolving Elites: The Unexplored Risk of Capturing the SEC*, 107 GEO. L.J. 845, 853–59 (2019) (discussing agency revolving-door concerns); Joshua McCrain, *Revolving Door Lobbyists and the Value of Congressional Staff Connections*, 80 J. POL. 1369, 1369, 1380–82 (2018) (discussing legislative revolving-door concerns).

17. Zaring, *supra* note 10, at 511–12.

18. SHEILA JASANOFF, *THE FIFTH BRANCH: SCIENCE ADVISERS AS POLICYMAKERS* 95 (1994) (“From [the] EPA’s point of view . . . the best scientific advisers are clearly those with the deepest understanding of regulatory science . . . Such familiarity can rarely be acquired except through long and close association with the agency, a state that would be almost impossible to achieve under a policy of frequent rotations.”); Harvey Brooks, *The Resolution of Technically Intensive Public Policy Disputes*, 9 SCI., TECH. & HUM. VALUES 39, 41 (1984).

making of the agency's managers. Jasanoff has also argued that experts may not only bring subject-matter expertise to government (when they move into government positions from the private sector), but they also may bring strong political or normative views.¹⁹ Although this creates a risk that the experts may pursue corporate rather than public interests, Jasanoff argues that adding some private-sector perspectives to an agency's decision-making process may enable the agency to produce more effective regulations.²⁰

A third potential benefit of the revolving door may arise from the growth of human capital. In this context, *human capital* refers to the skills and connections that an individual may accrue while working for the government.²¹ Although government employees typically earn lower salaries than those working in the private sector, the human-capital hypothesis suggests that the potential for learning key skills and making important connections is considered valuable compensation.²² The hypothesis applies to two types of individuals: less-qualified employees who are just beginning their careers and highly-qualified employees with years of experience.²³ Less-experienced employees have an opportunity to develop corporate-specific human capital by working diligently and abiding by the rules. When a government employee is seeking to transition to the private sector, human capital becomes an important part of the applicant's qualifications. Similarly, an individual in the public sector who has already accrued substantial skills and connections may be motivated to adhere to the rules and take aggressive enforcement actions to demonstrate their competence to future employers.²⁴ In this view, human capital in the form of valuable skills or a positive reputation incentivizes honest, hard work in the public sector. Scholars who focus on human capital have also suggested that

19. JASANOFF, *supra* note 18, at 230–31, 234.

20. *Id.*

21. See Yeon-Koo Che, *Revolving Doors and the Optimal Tolerance for Agency Collusion*, 26 RAND J. ECON. 378, 379 (1995). The human-capital hypothesis may be particularly important in complex areas such as environmental law and policy. See *e.g.*, Esty, *supra* note 14, at 1548. Of course, this discussion assumes that the current level of enforcement is suboptimal and that more stringent enforcement is desirable. See ROBERTA S. KARMEL, REGULATION BY PROSECUTION 83 (1982) (arguing that “[t]he so-called revolving door . . . provides a constant renewal of talent for both sectors”); Johnson, *supra* note 8, at 98–99 (noting the value of training government lawyers who later move into private practice).

22. Che, *supra* note 21, at 393.

23. *Id.*

24. Zheng, *supra* note 7, at 1268.

the revolving door promotes stringent, rather than lax, enforcement of government rules and regulations.²⁵

2. Risks

The legal and political-science literatures also have identified several risks arising from the standard revolving door. The first is “rent-seeking,” or regulatory capture.²⁶ Government employees may act in pro-corporate ways to curry favor with potential private-sector employers.²⁷ The rent-seeking, or quid pro quo, theory suggests that the revolving door does not make federal officials more diligent policy-makers or more stringent enforcers—as suggested by the human-capital hypothesis—but instead creates an environment where regulators and lawmakers are incentivized to act with more lenience.²⁸ An explicit or implicit quid pro quo relationship thus may exist where preferential treatment towards a private firm is exchanged for future employment. A commissioner at the Securities and Exchange Commission (SEC), for example, may attempt to ease a regulation’s enforcement against a certain private firm to curry favor with that company.²⁹ As a result, the firm may be inclined to repay the favor with a job offer. The rent-seeking hypothesis aligns with the fundamentals of capture theory, suggesting that the revolving door compromises the integrity of government officials and has adverse effects on agencies’ effectiveness.

Researchers who assume that government employees are seeking to maximize a narrow notion of utility often ground their concerns in public-choice theory.³⁰ Much of the research has focused on two revolving-door models: entrance and exit.³¹ The entrance model refers to those who work at a private company or lobbying group prior to working for the government. As the model suggests, those who have

25. *See supra* note 21.

26. Stephen J. Choi et al., *Should I Stay or Should I Go? The Gender Gap for Securities and Exchange Commission Attorneys*, 62 J.L. & ECON. 427, 431 (2019); *see also* MICHAEL SMALLBERG, PROJECT ON GOV’T OVERSIGHT, DANGEROUS LIAISONS: REVOLVING DOOR AT SEC CREATES RISK OF REGULATORY CAPTURE 3 (2013).

27. *See* Cox & Thomas, *supra* note 16, at 862–63; Ed deHaan et al., *The Revolving Door and the SEC’s Enforcement Outcomes: Initial Evidence from Civil Litigation*, 60 J. ACCT. & ECON. 65, 91–92 (2015); Michael A. Livermore & Richard L. Revesz, *Regulatory Review, Capture, and Agency Inaction*, 101 GEO. L.J. 1353 (2013) (noting the incentive for government employees to develop “friendly relationships” while in government to facilitate later private-sector employment).

28. *See* Cox & Thomas, *supra* note 16, at 862–63.

29. *See* deHaan et al., *supra* note 27, at 66.

30. *See* Cox & Thomas, *supra* note 16, at 847.

31. *See* Cohen, *supra* note 7, at 690; Ernesto Dal Bó, *Regulatory Capture: A Review*, 22 OXFORD REV. ECON. POL’Y 203, 204 (2006).

experience in the private sector are more likely to make decisions that support corporations than those who do not have prior private-sector experience. In many cases, these entrance-model individuals may be ingrained with perspectives that are biased toward the private sector. For example, an SEC commissioner who was previously employed in the finance sector may vote to enforce programs that support that sector's growth.³² The exit model of the revolving door describes individuals who work in the public sector before taking a position at a private firm. As with the entrance model, individuals who follow the exit model may make decisions while in government based on prospective job opportunities in the private sector.

Both forms of the revolving door, entrance and exit, have become common in the federal legislative and executive branches. In a study of the revolving door among staff at the SEC, James Cox and Randall Thomas note that the risks of pro-corporate bias arising from the traditional revolving door among lower-level SEC employees may be limited by the fact that many of the SEC's decisions are made with input from groups of employees and are subject to many layers of oversight.³³ They conclude that a greater risk arises at the director level where those constraints are less influential.³⁴ These results are consistent with the results of studies that examine potential revolving-door-based bias among commissioners at the SEC and Federal Communications Commission.³⁵

In addition to affecting the regulatory decision-making of agency managers, the revolving door also may undermine public confidence in government generally.³⁶ Zahra Meghani and Jennifer Kuzma have focused on the importance of expertise and have observed that “[t]he existence of the revolving door could adversely impact the public’s confidence in new technological products, review protocols, regulatory

32. See Cohen, *supra* note 7, at 690; deHaan et al., *supra* note 27, at 66.

33. See Cox & Thomas, *supra* note 16, at 899.

34. *Id.*

35. See deHaan et al., *supra* note 27, at 91–92 (SEC); Gormley, *supra* note 7, at 681 (FCC).

36. See Zahra Meghani & Jennifer Kuzma, *The “Revolving Door” Between Regulatory Agencies and Industry: A Problem That Requires Reconceptualizing Objectivity*, 24 J. AGRIC. & ENVTL. ETHICS 575, 581 (2011); see also JASANOFF, *supra* note 18, at 95, 247 (noting that an excessive reliance upon the same group of experts revolving in and out of regulatory agencies, such as the EPA, can compromise those agencies’ independence and that, when this leads to a disproportionate voice for experts from the corporate sector, it “lead[s] to skepticism about the scientific claims certified by an [agency’s] advisory committee.”).

decisions about them, and the government in general.”³⁷ They also conclude that “[t]he revolving door phenomenon virtually guarantees industry a seat at the policy-making table even though other stakeholders have no assurance that their concerns will be addressed by government regulatory bodies.”³⁸

Unconscious bias is also a concern. Sheila Jasanoff and Harvey Brooks have noted that the revolving door can transfer normative and political views from the private sector to government and influence government decision-making.³⁹ They emphasize that people are not fully rational in making judgments about factual issues, and that scientific judgment can be swayed by normative and political views. Therefore, people who move from corporate to regulatory roles may unconsciously allow their sympathy toward corporations to influence their judgments, even if they intend to act faithfully in their regulatory capacity.⁴⁰ In addition, as Brooks has noted:

The more an issue is in the public eye, the more expert judgments are likely to be influenced unconsciously by pre-existing policy preferences or by supposedly unrelated factors such as media presentations, the opinions of colleagues or friends, or even the emotional overtones of certain words used in the debate.⁴¹

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37. Meghani & Kuzma, *supra* note 36, at 576. David Luban has described the insights gained from the revolving door “as a kind of ‘insider trading’ in the world of power, rather than finance,” and has argued that it “exhibits a disquieting agnosticism about the common good.” David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 728 (1988).
38. Meghani & Kuzma, *supra* note 36, at 577.
39. JASANOFF, *supra* note 18, at 69–71, 79–83, 234–41; Brooks, *supra* note 18, at 39–40; Alan S. Manne & Richard G. Richels, *Probability Assessment and Decision Analysis of Alternative Nuclear Fuel Cycles*, in NATIONAL ENERGY ISSUES: HOW DO WE DECIDE? 241, 264 (Robert G. Sachs, ed. 1980).
40. JASANOFF, *supra* note 18, at 69–71, 79–83, 234–41; Brooks, *supra* note 18, at 48 (“Energy experts, for example, tend to focus on energy production or on energy end use technical efficiency, with little consideration for environmental impacts or organizational and distributional effects. Experts on air pollution tend to ignore what effect air cleanup efforts might have on the pollution of other media, or at least to regard it as outside their purview. Experts on industrial policy see environmental, health, and safety regulations exclusively in terms of their retarding effects on economic growth; public health experts view industrial activities in terms of their potential impacts on public health, treating overall economic effects of emissions or ambient standards as outside their purview. Such fragmentation of expertise may also contribute to the current emphasis on single-issue politics.”).
41. Brooks, *supra* note 18, at 40.

The revolving door also may induce government employees to increase the complexity of regulations to create demand for their expertise.⁴² Unlike the human-capital and rent-seeking theories, which both assume that government officials act in response to the needs of the private sector, the market-expansion theory assumes that individuals working in the public sector do not take corporate needs as a given. Instead, under this theory, government officials are incentivized to create regulatory systems that expand the private sector's need for their services, thus increasing demand for their labor once they stop working for the government.⁴³ This can manifest itself in different ways, depending on the government agency. For example, in a rule-making setting, government officials may advocate for the implementation of complex rules that require technical expertise to understand. Similarly, government officials in enforcement roles may support harsh penalties for failing to abide by enforcement policies to create demand in prospective employers for employees with enforcement expertise.⁴⁴

Overall, although the literature identifies a number of potential benefits from the traditional revolving door, the bulk of the literature suggests that the revolving door may induce government officials to act in ways that serve the private sector at the expense of the public interest. Not surprisingly, given the range of theories about the incentives created by the revolving door, a great deal of uncertainty exists in the empirical literature about the impact of the revolving door. A number of empirical studies have identified pro-private-sector bias arising from the revolving door, but the effects are difficult to tease out, and, as the Cox and Thomas study suggests, the effects may depend on the context in which employee decision-making occurs.⁴⁵

B. Regulatory Response

Despite the ambiguity in the signal from empirical studies, concerns about agency capture and other adverse effects on government decision-making have led to both legislative and regulatory efforts to restrict the revolving door. Congress has enacted several major statutes to address the adverse effects of the revolving door by promoting transparency, eliminating acts of reciprocity, and including other measures designed to maintain the integrity of government agencies.⁴⁶ The first major

42. See, e.g., Zheng, *supra* note 7, at 1269.

43. *Id.*; Cox & Thomas, *supra* note 16, at 856–58.

44. Zheng, *supra* note 7, at 1281.

45. See Cox & Thomas, *supra* note 16, at 899.

46. For an overview of post-Watergate legislation, see Johnson, *supra* note 8; Rafael Gely & Asghar Zardkoobi, *Measuring the Effects of Post-Government-Employment Restrictions*, 3 AM. L. & ECON. REV. 288, 290–92 (2001) (describing attempts to limit the revolving-door problem). For a discussion regarding revolving-door restrictions applicable to lawyers,

federal legislation on lobbying, the Federal Regulation Lobbying Act (FRLA) of 1946,⁴⁷ established a general set of rules for lobbyists. The FRLA required lobbyists to disclose their personal expenditures and prohibited them from giving gifts to legislators. In the face of a First Amendment challenge, the Supreme Court upheld the FRLA, stating that, without the Act, “the voice of the people may all too easily be drowned out by the voice of special interest groups.”⁴⁸ Although the FRLA did not directly address the revolving door, it sought to promote an ethical relationship between lobbyists and government officials, and it served as a precursor to later legislation. The Federal Regulation Lobbying Act was repealed in 1995 when it was replaced by the Lobbying Disclosure Act, which included similar provisions but created a more comprehensive registration process for lobbyists and required the disclosure of more specific information.⁴⁹

In 1962, Congress added two specific statutory provisions, 18 U.S.C. §§ 207 and 208, that serve as the foundation for modern revolving-door laws.⁵⁰ Section 207 sets forth strict regulations for government employees to follow once their government employment has terminated.⁵¹ Under this provision, members of the executive branch are permanently banned from “switching sides” on any matter that they “personally and substantially” participated in while working for the government.⁵² This bars former government employees from representing in court a private employer or lobbying group when the case involves an issue that they dealt with while in office. When the relevant matter is more broadly related to the individual’s previous government work, the statute only prohibits them from switching sides for two years. Additionally, former members of the executive branch are prohibited for one year following their service from facilitating trade or treaty negotiations. Depending on the seniority of the position they once held, former officials of both the legislative and executive branches

see Ted Schneyer, *Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct*, 14 L. & SOC. INQUIRY 677, 689–90 (1989). For an early focus on legislative lobbying, see Joseph I. Hochman, Comment, *Post-Employment Lobbying Restrictions on the Legislative Branch of Government: A Minimalist Approach to Regulating Ethics in Government*, 65 WASH. L. REV. 883 (1990).

47. Ch. 753, 60 Stat. 839 (repealed 1995).
48. *United States v. Harriss*, 347 U.S. 612, 625 (1954).
49. 2 U.S.C. §§ 1601–12 (Supp. I 1995); see also Rebecca L. Anderson, *The Rules in the Owners’ Box: Lobbying Regulations in State Legislatures*, 40 URB. LAW. 375, 382 (2008).
50. 18 U.S.C. §§ 207–08 (Supp. I 1962).
51. *Id.* § 207 (Supp. I 1962).
52. See *id.* § 207(a); JACK MASKELL, CONG. RESEARCH SERV., R42728, POST-EMPLOYMENT, “REVOLVING DOOR,” LAWS FOR FEDERAL PERSONNEL 3 (2014).

are also subject to either one- or two-year “cooling-off” periods during which they may not make representational communications with other members of their respective branches. Finally, individuals who held certain high-level executive or legislative positions are prohibited from aiding foreign governments or political parties.⁵³ Collectively, the provisions of § 207 established the modern foundation for post-government service restrictions.

Section 208 sets forth regulations that government employees must abide by while still employed by the government.⁵⁴ Members of the executive branch cannot “personally and substantially” take part in any activity that will impact their financial interests, including any negotiations or arrangements regarding future private employment opportunities.⁵⁵ Once a federal employee engages in negotiations for employment, the employee must remove themselves from any governmental responsibilities that have a direct effect on the financial interests of the involved private companies.⁵⁶ In addition to their own personal financial interests, federal employees are prohibited from participating in activities that may affect the interests of their spouses, partners, or children.

The next major piece of legislation, the Ethics in Government Act (EGA), was passed in 1978 and substantially expanded the existing requirements.⁵⁷ The EGA was enacted in the years following the Nixon–Watergate scandal, a time when mistrust of the government was high. Congress passed the EGA in an effort to bolster incentives for ethical practices among lobbyists and government employees and to restore the public’s faith in government.⁵⁸ Building on the FRLA’s requirement that lobbyists disclose their contributions, the EGA required senior federal executives to publicly disclose their personal financial interests.⁵⁹ The requirement was designed to enhance transparency and reduce conflicts of interest between lobbyists and federal employees. Further, the EGA established several structural improvements in an effort to ensure greater compliance with existing ethics laws. For instance, the EGA mandated the creation of the Office of Government Ethics and the Office of Senate Legal Counsel, and it authorized the Attorney

53. MASKELL, *supra* note 52, at 3–6.

54. 18 U.S.C. § 208 (Supp. I 1962).

55. *Id.*

56. *See* MASKELL, *supra* note 53, at 8.

57. 28 U.S.C. § 301 (Supp. IV 1976).

58. Cody D. Earl, Comment, *Behind the Times: A Comparative Argument that the State of Idaho Should Combat the Revolving Door Effect with Waiting Period Legislation*, 52 IDAHO L. REV. 639, 648 (2016).

59. *See* J. Jackson Walter, *The Ethics in Government Act, Conflict of Interest Laws and Presidential Recruiting*, 41 PUB. ADMIN. REV. 659, 659 (1981).

General to appoint a special counsel to investigate any member of the executive branch, including the President.⁶⁰

In response to the Jack Abramoff lobbying scandal, in 2006 Congress adopted the Honest Leadership and Open Government Act (HLOGA). The Act provided more stringent regulations for lobbyists and federal employees, and it extended the “cooling-off” periods established in 18 U.S.C. § 207, mandating two years of cooling off for members of the legislative and executive branches before they can participate in lobbying activities.⁶¹ The Act also established criminal penalties for unethical private-employment negotiations and required the public disclosure of such violations. The HLOGA also banned lobbyists from offering gifts to federal employees in the form of paid trips, which formerly had been considered a loophole in the law. Finally, the Act included significant improvements to the oversight of lobbyists’ contributions to legislation.⁶² These improvements included more frequent disclosure reports, the creation of a public online database for these reports, and more accurate accounts of lobbyists’ personal and bundled contributions.⁶³

Although the efficacy of these provisions is beyond the scope of this Article, it is clear that concerns about the adverse effects of the revolving door between government and the private sector have driven much of the government-reform legislation of the last several decades. Little or no legislation or regulatory activity appears to promote the revolving door. Instead, the underlying concern appears to be derived from some form of the capture hypothesis: that movement between the private sector and government will induce government employees to serve private-sector interests, not the public interest, however defined. In Part III, we present the results of an empirical study that demonstrate a surprising amount of movement between environmental-advocacy groups and the private sector, and we examine whether, just as the concerns about private sector-to-government movement may affect the government’s decision-making, the movement of environmental interests and values to corporations, institutional investment firms, and private equity firms may affect the decision-making of these private sector organizations.

II. THE NEW REVOLVING DOOR

The revolving-door literature has focused on the benefits and risks of employee movement between government and corporations. The

60. See Anderson, *supra* note 49, at 380.

61. 2 U.S.C. §§ 1601–14 (Supp. II 2007); Anderson, *supra* note 49, at 383; MASKELL, *supra* note 53, at 1.

62. Anderson, *supra* note 49, at 383–84.

63. *Id.* at 384.

literature has emphasized the risks to the effectiveness and integrity of public governance, and the legislative and regulatory responses have reflected those concerns. In the last few decades, however, the federal-legislative conveyor belt for major pollution-control statutes has ground to a halt, and the private sector has begun to play a greater role in performing traditionally governmental environmental-protection functions on issues ranging from climate change to toxics.⁶⁴ If private environmental governance is playing a greater role in environmental protection, and if for-profit firms are motivated to respond to environmental problems by more than simply influencing government action, then we might expect to see greater demand by for-profit firms for environmental managers with environmental advocacy-group experience and perspectives, and greater movement between environmental-advocacy groups and those firms.

Anecdotal media accounts have provided examples of individuals moving from environmental-advocacy groups to positions managing the sustainability efforts for companies or investment firms.⁶⁵ For instance, Jackie Roberts moved from the Environmental Defense Fund to become the Chief Sustainability Officer for the Carlyle Group, where she manages the Environmental, Social and Governance (ESG) efforts of the firm.⁶⁶ She spent seventeen years at the Environmental Defense fund before taking this position at Carlyle, having served as the Director of Sustainable Technologies and Senior Director of the Climate and Energy Idea Bank.⁶⁷ Similarly, Elizabeth Seeger, the director of Sustainable Investing at KKR, followed a similar career trajectory. Seeger started her career at the Environmental Law Institute, a non-profit that conducts research on environmental law and policy. She then spent two years in the private sector, working

64. See, e.g., Michael P. Vandenbergh & Jonathan A. Gilligan, *Beyond Gridlock*, 40 COLUM. J. ENVTL. L. 217 (2015) (climate change); Michael P. Vandenbergh et al., *Lamarck Revisited: The Implications of Epigenetics for Environmental Law*, 7 MICH. J. ENVTL. & ADMIN. L. 1, 25–43 (2017) (toxics); Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 STAN. L. REV. 137 (2019) (other topics).

65. Although the new revolving door we discuss in the Article addresses movement between environmental advocacy groups and firms, there is some evidence of a related phenomenon involving conservative think tanks, tort-reform organizations, and the Reagan and Bush administrations. See W. John Moore, *Keeping the Faith*, 23 NAT'L J. 734, 735–36 (1991).

66. *The Carlyle Group Names Jackie Roberts Chief Sustainability Officer*, CARLYLE GROUP (Feb. 13, 2014), <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-names-jackie-roberts-chief-sustainability-officer> [<https://perma.cc/5ANZ-LPD7>].

67. *Operating Executives & Advisors: Jackie Roberts*, CARLYLE GROUP, <https://www.carlyle.com/corporate-overview/operating-executives-advisors/jackie-roberts> [<https://perma.cc/QT5D-TW94>] (last visited June 10, 2020).

at an information-technology consulting firm before taking a position at the Environmental Defense Fund.⁶⁸ Following her tenure there, Seeger joined KRR.

Given the growth of private environmental governance, it is plausible that these are not just outliers but examples of a more widespread phenomenon. To test this hypothesis, we conducted the first empirical study of the new revolving door between environmental-advocacy groups and large corporations, institutional investment firms, and private equity firms. Below, we discuss the methodology, results, and implications of our study.

A. Methodology

Our study examined evidence of the movement of individuals who held management positions at environmental-advocacy groups and then transitioned to environmental-management positions in large corporations, institutional investment firms, and private equity firms. To begin, we defined *environmental-advocacy group* to mean a non-governmental organization that is principally or substantially dedicated to environmental protection or sustainability advocacy (e.g., the Environmental Defense Fund, Sierra Club, and Natural Resources Defense Council). We defined *corporate employment* to mean corporate, institutional investment firm, or private equity firm employment in a position that is principally or substantially dedicated to managing environmental protection or sustainability issues. For environmental managers in firms, we searched websites to identify employees who held environmental-management positions based on the types of environmental employees who were publicly disclosed as playing some type of environmental management role by the firm. Within financial institutions, the individuals that fall into this category are often tasked with participating in the management of sustainable or responsible investing or investor relations. Within firms, these individuals may have broader tasks, such as compliance and reporting, and broader titles, such as chief sustainability officer or director of corporate social responsibility.

We reviewed the publicly available data regarding environmental managers at the three types of firms in the United States discussed above: large corporations, large institutional investment firms, and large private equity firms.⁶⁹ To perform this analysis, we selected the

68. *Team: Elizabeth Seeger*, KOHLBERG KRAVIS ROBERTS, <https://www.kkr.com/our-firm/leadership/elizabeth-seeger> [<https://perma.cc/3657-PSXN>] (last visited June 10, 2020).

69. Although we examined these three categories, some firms fit into multiple categories. For example, Blackstone handles both private equity and institutional investing and its Chief Sustainability Officer handles all portfolios. *See* BLACKSTONE, <https://blackstone.com/the-firm/overview> [<https://perma.cc/23W2-P7K4>] (last visited June 10, 2020).

100 largest firms on the Fortune 500 list of companies, the twenty-five largest firms on the Investment Pensions Europe (IPE) Top 400 list of asset managers, and the twenty-five largest firms on the Private Equity International (PEI) 300 list of private equity firms.⁷⁰ Each of these publicly available sources ranked the firms based on revenue.⁷¹ To focus our study on the revolving-door phenomenon in the United States, we excluded firms not headquartered in the United States.

Information about environmental or sustainability managers was not available for all of the firms on these three lists. Of the Fortune 100 corporations, we were only able to locate information about the environmental or sustainability managers for eighty-one corporations.⁷² Of the twenty-five largest institutional investment firms, we were able to locate information about environmental or sustainability managers for twenty firms. Of the twenty-five largest private equity firms, we were able to locate information about these managers for fourteen firms.⁷³

70. We reviewed the top-100 Fortune companies. In both the PEI and IPE lists, we reviewed the top twenty-five companies with headquarters located in the United States; we removed from our list any company headquartered outside of the United States. *See Fortune 500*, FORTUNE MAG., <https://fortune.com/fortune500/2019/search/> [<https://perma.cc/459U-GRRD>] (last visited Jan. 20, 2020); *PEI 300*, PRIV. EQUITY INT'L, <https://www.privateequityinternational.com/database/#/pei-300> [<https://perma.cc/MG9H-KFBZ>] (last visited Jan 20, 2020); INV. & PENSIONS EUR., *THE TOP 400 ASSET MANAGERS 2019*, at 1 (2019), <https://www.ipe.com/Uploads/j/e/b/Top-400-Ranking-2019.pdf> [<https://perma.cc/5BTC-2GXJ>].

71. The Fortune 500 rankings are based on a company's total revenue for the respective fiscal years. *Methodology for Fortune 500*, FORTUNE MAG., <https://fortune.com/fortune500/2019/methodology> [<https://perma.cc/EFM7-N5MQ>] (last visited Jan. 20, 2020). The IPE 400 calculates the value of each manager's global assets. INV. & PENSIONS EUR., *supra* note 70, at 1. The PEI 300 uses how much capital each company raised over the last five years. *The World's Largest Private Equity Firms*, PRIV. EQUITY INT'L, <https://www.privateequityinternational.com/pei-300/> [<https://perma.cc/AYF3-TBKV>] (last visited Jan. 25, 2020). We started with the Fortune 500 companies but examined only the 100 largest of those firms, or the Fortune 100. A brief examination of the bottom 400 firms identified fewer firms that provide public information on their environmental or sustainability managers. This may suggest that smaller firms simply have less of a presence online or that the new revolving door is a large-firm phenomenon. More research is needed to assess this issue.

72. The lack of a website regarding sustainability or environmental initiatives may make it more likely that these firms do not have an environmental or sustainability staff, but we excluded them from our analysis and did not draw inferences from the lack of information.

73. In the case of institutional investors, we found information about the sustainable-investing staff of twenty out of the twenty-five companies. The list of the top twenty-five large, institutional investors included two

For each firm for which we were able to locate information about environmental managers, we reviewed the previous work experience of the managers in charge of environmental matters. The firms differed in the location of information about the managers, the managers' titles, and the assignment of environmental responsibilities.⁷⁴ We followed a set of uniform searching procedures to evaluate each firm. Across all three types of firms, we began by searching the corporate leadership page on the firm website for any managers in charge of environmental policy. The positions we looked for included chief sustainability officer, chief operating officer, or any vice president with relevant environmental or sustainable responsibilities. If the company's website included biographies, we used the biographies to identify whether the manager had previously worked for an environmental-advocacy organization. If biographies were not available, we used LinkedIn or Bloomberg to ascertain the person's employment history. After examining the firm's corporate leadership page, we evaluated the environmental information available on the firm's website. We examined the firm's corporate responsibility webpage, or, if available, the firm's page on environmental sustainability, for further information about the management of their sustainable policies.⁷⁵ We then used LinkedIn to search for any additional environmental executives who were not listed on the corporate webpage. The search included the full company name and the following keywords: "chief sustainability officer," "environment," "sustainability," and "corporate responsibility."⁷⁶

We evaluated the data using two approaches. First, we used a broad definition, treating as a "revolver" any firm employee who held a position at some point in the past with an environmental-advocacy organization. We also examined the data using a narrow definition, treating as a revolver only those firm employees whose prior employment occurred with an environmental advocacy organization within the last eighteen months. We refer to this eighteen month period

branches of Prudential Financial: PGIM and PGIM Fixed Income. INV. & PENSIONS EUR., *supra* note 70, at 1. We treated these two branches as one unit because the impact-management team at Prudential oversees all of the environmental, social, and governance (ESG) efforts at Prudential. *See Investing Sustainably*, PRUDENTIAL, <https://www.prudential.com/links/about/green-investments> [<https://perma.cc/SQ43-ZUX2>] (last visited Jan. 25, 2020).

74. The companies on the list range in their services, functions, products, and environmental concerns. *See Fortune 500*, *supra* note 70. For example, a company such as Exxon Mobil, an oil and gas corporation, has different environmental responsibilities than JP Morgan Chase, a bank.
75. For the private equity firms and asset managers, we searched for the company page on ESG investing.
76. Again, for private equity firms and asset managers, we included the term "ESG investing."

as a “cooling-off period.”⁷⁷ In other words, we examined the data with no time limit, including as a revolver any firm employee who had worked at any point in the past for an environmental-advocacy organization (in a full-time, non-internship position), and we examined the data with an eighteen month time limit, excluding any employee whose employment as an environmental-advocacy-group manager concluded more than eighteen months before the employee moved to a firm.

B. Results

This study identified a substantial number of firms with employees who rotated through the new revolving door, moving from environmental-advocacy groups into positions managing the environmental policies of large companies, institutional investment firms, and private equity firms. Using the broad definition of revolver, of the firms for which information was available on the employment history of environmental managers, we found that roughly 6% of the large companies we studied, 15% of large institutional investment firms, and 29% of large private equity firms had at least one environmental manager who worked at some period in the past at an environmental-advocacy group. Using the narrow definition of revolver, we found that roughly 4% of the large companies we studied, 5% of large institutional investment firms, and 29% of large private equity firms had at least one environmental manager who worked at an environmental advocacy group within the last eighteen months. The results for each type of firm are as follows:

Corporations. Of the eighty-one large corporations for which we were able to locate information about environmental managers, we identified five firms with individuals who had rotated from an environmental advocacy group to the private sector. In other words, 6% of the eighty-one corporations in our study employed an environmental manager who had previously worked at an environmental-advocacy group.⁷⁸ We also examined the data using the

77. Empirical studies of the revolving door have often used a “cooling-off” period in their research. *See, e.g.,* Jacob R. Straus, Cong. Research Serv., R45946, Executive Branch Service and the “Revolving Door” in Cabinet Departments: Background and Issues for Congress (2019). A cooling-off period is an amount of time between an individual’s employment in the public and private sectors. *Revolving Door Prohibitions*, NAT’L CONF. ST. LEGIS. (Dec. 17, 2019), <https://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> [<https://perma.cc/M9H8-R2AB>]. In some studies, if an individual surpasses the cooling-off period before moving through the revolving door, they are not considered to be a revolver.

78. We identified six individuals out of eighty-one firms who had worked for an environmental advocacy group at some point. One company, Citigroup, had two of these revolvers, so the total of firms with a revolver was five.

more narrow definition of revolver, which excludes employees who moved from an environmental advocacy group to a firm more than eighteen-months after they worked for the advocacy group (the “cooling-off period”). We found that three firms or 4% had employees who met this narrow definition of revolver.

Institutional Investment Firms. Of the twenty large institutional investment firms for which we were able to locate information about environmental managers, we found three firms with environmental managers who had worked for an environmental-advocacy group at some point in the past. Thus the results indicate that 15% of the large institutional investment firms for which we were able to locate information about environmental managers have an employee who worked at an environmental-advocacy group.⁷⁹ Two of these employees moved to the institutional investment firms more than eighteen months after their employment with an environmental advocacy organization, so the application of the cooling off period reduces the total number of revolvers to one (or 5% of the twenty firms).

Private Equity Firms. Of the fourteen large private equity firms for which we were able to locate information about environmental managers, we identified four individuals who had worked at an environmental-advocacy group at some point before moving into an environmental-management position at a private equity firm.⁸⁰ As a result, 29% of the private equity firms in our study have an environmental manager who worked at an environmental-advocacy group. All of these employees moved to private equity firms within eighteen months of their employment with an environmental advocacy organization, so the application of the cooling off period has no effect on the results for the large private equity firms.

Two other related phenomena emerged from the data. The first is that several individuals have moved from management positions in presidential administrations that are widely regarded as being pro-environment to environmental management positions at private companies.⁸¹ This is a form of the traditional revolving door, but it raises an interesting new possibility: individuals who bring “green” values to companies from pro-environment administrations may be as likely to “green” firms when they move to the private sector as to

79. In addition, one individual had previously worked at a non-environmental non-profit organization, but we did not include this individual in our total.

80. Of the four revolvers, two individuals had previously worked at both environmental-advocacy groups and for the government before taking a position at a private equity firm.

81. For an example of an empirical study that does not focus on the new revolving door specifically but attempts to identify a wide range of influences on firm behavior and environmental innovation, see Abdelfeteh Bitat, *Environmental Regulation and Eco-innovation: The Porter Hypothesis Refined*, 8 EURASIAN BUS. REV. 299 (2018).

produce pro-business outcomes while in government. An example is Lisa Jackson, the former EPA Administrator under President Obama. She has been a vocal advocate for climate mitigation since becoming the Vice President of Environment, Policy and Social Initiatives at Apple.

We collected data from firm website biographies to identify whether a manager moved from a government environmental manager position at some point in the past. We found that among the corporations we studied twelve managers rotated from presidential administrations, and one individual worked for both an advocacy organization and an executive agency before taking a corporate job.⁸² We did not pursue this issue in greater detail, however, since the traditional revolving door literature already explores movement between government and the private sector, including administrations often considered to have a pro- or anti-environmental perspective.

The second phenomenon is the tendency for environmental or sustainability managers to have board memberships at environmental-advocacy organizations. We found that eleven executives who manage environmental policies for Fortune 100 companies maintain affiliations with organizations such as land conservancies and solar-power initiatives. Further, there is a substantial amount of overlap between board memberships and the revolving door. Of those eleven individuals, five of them previously held management-level positions with either an environmental-advocacy group or the executive branch. Similarly, among the environmental and sustainability executives at institutional investors, we found eight individuals who have board memberships at environmental organizations; and among private equity firms, we identified four executives with similar board memberships. As to both institutional investors and private equity firms, we also observed examples of new-revolving-door activity. We did not pursue this issue in greater detail because there is a high likelihood that private-sector-manager service on environmental-advocacy-group boards is not a new phenomenon.

C. Implications

The results discussed above suggest that the new revolving door for environmental managers is not an isolated phenomenon. Although the results do not indicate why this movement is occurring, or what effect it is having on firms, environmental groups, or environmental governance, the results raise several intriguing possibilities. As for why this movement is occurring, many large corporations and investment firms are increasingly motivated to reduce their environmental impacts

82. We found that four of those individuals rotated from advocacy groups to the private sector and six of them rotated from presidential administrations.

and to improve their environmental reputation.⁸³ For these firms, hiring an environmental-advocacy-group manager may provide expertise and credibility. These employees could provide reputational benefits to firms that are attempting to market to green retail and corporate customers and investors and that need to interact with green regulators and legislators. Jasanoff's notion that some skills are best (or only) developed through previous engagement with a regulatory agency may also apply to the new revolving door. It may be that previous efforts by advocacy-group employees to shift private-sector behavior also apply to the value of movement of advocacy-group employees to corporations and investment firms. These employees may see profitable opportunities for efficiency or new markets, and they may understand the effects of the firm and how a firm is perceived in ways that are not apparent to the firm's employees. They also may serve as internal watchdogs over the corporation's behavior, which could be valuable for firms that rely heavily on their public reputation.

In addition, the literature on the traditional private–public revolving door provides employee-based reason that the new revolving door may be occurring. Despite its focus on movement between government and corporations, the literature sheds some light on the motivations for, and the implications of, movement from environmental-advocacy groups to corporations. For instance, the public-service-motivation theory (PSM) seeks to explain the motivations of employees in ways that may shed light on why some move from environmental-advocacy groups to private firms.⁸⁴ In their work on PSM, James Perry and Lois Wise identified three distinct categories of motivations that may influence an individual's decision to work for the government—rational, norm-based, and affective.⁸⁵ Rational motivations include a sense of self-importance from participating in policy formation, a personal identification with government programs, and a commitment to a special interest. Norm-based motivations include a sense of duty to serve the public interest, feelings of loyalty to the government, and a desire to protect social equity. Affective

83. See MICHAEL P. VANDENBERGH & JONATHAN GILLIGAN, *BEYOND POLITICS: THE PRIVATE GOVERNANCE RESPONSE TO CLIMATE CHANGE* 161 (2017).

84. See Robert K. Christensen & Bradley E. Wright, *The Effects of Public Service Motivation on Job Choice Decisions: Disentangling the Contributions of Person-Organization Fit and Person-Job Fit*, 21 J. PUB. ADMIN. RES. & THEORY 723, 723 (2011) (discussing public-sector employees' motivations to join public service); James L. Perry & Lois Recascino Wise, *The Motivational Bases of Public Service*, 50 PUB. ADMIN. REV. 367, 368 (1990) (same).

85. Perry & Wise, *supra* note 84, at 368.

motivations are a genuine belief in the social importance of a government program and the “patriotism of benevolence.”⁸⁶

Perry and Wise’s initial findings only explained why individuals may choose to move from the private sector to the public sector. Over the past thirty years, however, the concept has evolved to explain why individuals take positions that emphasize public service in any sector—public, private, or non-profit.⁸⁷ Researchers have concluded that PSM is related to a desire to do public *service*, not necessarily to work in the public *sector*. Therefore, PSM teaches that some individuals will work in any organization that will allow them to fulfill their desire for public service. If PSM is correct, and if firms are playing a greater role in environmental governance, we should expect to see employees at environmental-advocacy groups increasingly viewing private firms as employers who can provide opportunities for public service regarding environmental-protection. If the desire to do public service, not to have a government job, is at the root of some examples of the revolving door, private firms may appeal to this public-service mindset if they can persuade advocacy staff that they are committed to increasing their pro-environmental actions. Thus, PSM may shed light on persons moving not only between government and the private sector, but also between advocacy groups and private firms.

As to the effect of the new revolving door on firms, the environmental managers who have moved to firms from environmental-advocacy groups may have pro-environment attitudes that induce more pro-environment behavior from their new employers. In fact, the new revolving door may turn the central concern about the revolving door on its head: The movement of environmental advocates into corporate management positions may play the role of greening the private sector, inducing for-profit firms to act more in line with the public good. Legal obligations such as fiduciary duties may pose constraints, but the business-judgment rule provides a fair amount of decisional space to allow the new revolvers to pursue pro-environment outcomes in many situations.⁸⁸ Hiring an environmental-advocacy-group manager may enable a firm to ensure that it will hear a diversity of views in an operating, investing, policymaking or regulatory process.⁸⁹ To the

86. *Id.* at 369.

87. See Christensen & Wright, *supra* note 84, at 724 (noting that recent research suggests PSM applies to private-sector employees as well as public-sector employees); Anne Mette Kjeldsen & Christian Bøtcher Jacobsen, *Public Service Motivation and Employment Sector: Attraction or Socialization?*, 23 J. PUB. ADMIN. RES. & THEORY 899, 900 (2013).

88. Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 777 (2004).

89. See JASANOFF, *supra* note 18, at 94–95 (noting that the EPA’s scientific advisers have differing views that are unique to their long-term experience

extent that the ideology of C-suite executives and board members may be reducing their ability to understand and react to information about the greening of markets and the opportunities for corporate efficiency, the presence of these revolvers inside the tent may enable firms to be more profitable. The presence of the new revolvers also may make it more difficult for private firms to violate environmental regulations because there may be a greater chance that a revolver will speak up before a violation occurs, and because other employees will perceive there to be a greater risk that someone inside the firm will speak up or become a whistleblower.

To the extent that environmental-advocacy group employees have knowledge, values, and credibility regarding various types of environmental initiatives, these employees may also be more likely to participate in private environmental initiatives such those that advocate for greater disclosure of carbon emissions, setting emissions goals, adopting environmentally friendly supply-chain-contracting requirements, and participating in various collaborative processes. The new revolving door thus could accelerate development of collaborative NGO–corporate initiatives. Virginia Haufler has argued that there is a positive role for engagement between NGOs and firms—an argument that may extend to more favorable judgments about environmental-advocacy-group–corporate revolving doors if they lead to greater firm transparency:

We are still in the early stages of developing “ground rules” for interaction between the private sector and its critics, however. But one way to ensure the legitimacy of private sector standard setting is to make sure the process of developing and

working for the Agency); ROGER A. PIELKE, *THE HONEST BROKER: MAKING SENSE OF SCIENCE IN POLICY AND POLITICS* 151 (2007) (arguing that a decision-maker seeking an “Honest Broker of Policy Alternatives” should assemble a group of “people with diverse perspectives to provide a range of options”). Some writers have focused on the importance of transparency about the NGO process for assuring both public trust and rigorous evaluation of issues before the NGO. *See, e.g.*, Robert O. Keohane & Joseph S. Jr. Nye, *Power and Interdependence in the Information Age*, 77 *FOREIGN AFF.*, Sept.–Oct. 1998, at 92 (“To be credible, the information must be produced through a process that is in accordance with professional norms and characterized by transparency and procedural fairness.”); *see also* GRAEME AULD, *CONSTRUCTING PRIVATE GOVERNANCE: THE RISE AND EVOLUTION OF FOREST, COFFEE, AND FISHERIES CERTIFICATION* 39 (2014) (quoting Keohane & Nye in the context of addressing conflicts of interest between non-profits and their corporate partners in private-environmental governance).

implementing standards is a shared endeavor among business, NGOs, and representative institutions⁹⁰

The movement of environmental managers from advocacy organizations to firms thus has the potential for a positive, “greening” effect on corporate decisions, although additional empirical work remains to be done to test this assertion.

As we noted above, Cox and Thomas suggest that the risks of pro-corporate bias arising from the traditional revolving door among lower-level SEC employees may be limited by the fact that many SEC decisions are made with input from groups of employees and with many layers of oversight.⁹¹ They conclude that the greatest risk of bias arises at the director level where those constraints are less influential.⁹² If the same phenomenon occurs within corporations, institutional investment firms, and private equity firms, then we should expect to see some greening influence arise in firms when advocacy group staff move into middle and senior level management positions where they are less constrained than lower-level employees. The advocacy group-private sector movement that we have observed has occurred into higher-level positions such as the chief sustainability officer, so we might expect to see important greening occur in these firms, but this is another area where additional empirical work remains to be done.

As the discussion above suggests, the new revolvers may somewhat reduce concerns about agency capture by inducing businesses to take a less adversarial posture toward government in lobbying, rule-making proceedings, and litigation. In addition, the new revolving door employees may be a new source of expertise that poses less risk of capture than movement between government and the private sector. The advocacy group-firm revolvers may be well-balanced hybrids who possess a form of human capital—knowledge of, and experience with, both advocacy-groups’ and

90. VIRGINIA HAUFLE, A PUBLIC ROLE FOR THE PRIVATE SECTOR: INDUSTRY SELF-REGULATION IN A GLOBAL ECONOMY 119 (2001). But Haufle also cautions that such engagement presents new issues:

Private sector standard setting also poses new challenges for NGOs. To the degree that voluntary initiatives actually raise standards, the business sector will expect less criticism from these groups. NGOs will need to publicize good behavior, instead of concentrating their attention on the bad. But the level of trust between many NGOs and the business community is quite low. Some organizations may be willing to engage in dialogue and form partnerships for specific projects, but they may not be able to sustain a long-term relationship.” *Id.* at 5.

91. Cox & Thomas, *supra* note 16, at 886.

92. *Id.* at 888–89.

businesses' goals, methods, and information—that is difficult to find elsewhere.

The new revolving door also poses a number of risks. For those who believe that a firm should pursue profit over other objectives in all cases, the presence within the firm of former environmental-advocacy-group managers could threaten the firm's ability to pursue that mandate. The movement of managers from environmental groups to private firms also could have a “de-greening” effect on advocacy groups by draining away talent. The movement from advocacy groups into firms also could subtly alter the motivations of some advocacy-group employees.⁹³

D. Limitations

We only examined a subset of the largest U.S. corporations, institutional investment firms, and private equity firms. In this study, we also only examined publicly available data about those firms from their websites and LinkedIn. The large firms excluded from our study may not include similar movement from environmental-advocacy groups to firms, and the new green revolving door may not be occurring at smaller firms or at firms outside the United States. In addition, our data only reflect the current status of employees at the firms we studied, and it is possible that the new revolving door has occurred unobserved for many years and thus is not a new form of the revolving door. A longitudinal study would be required to examine this issue.

We examined movement from environmental-advocacy groups to for-profit firms, but we did not study movement from firms to environmental-advocacy groups; so another limitation of this research is that it studied movement in one direction rather than a two-way revolving door. Anecdotal evidence suggests, however, that a substantial amount of movement has occurred from firms to environmental-advocacy groups. For instance, Jason Clay, who manages a division of the World Wildlife Fund, has recruited several former business managers because of their expertise in supply-chain management and commodities.⁹⁴ Important tasks for future research will be to examine movement from firms to advocacy groups and to explore the implications of that movement.

Finally, we focused on environmental managers, but we did not evaluate whether the new revolving door is emerging for other managers. If the new revolving door is the result of an increase in private governance initiatives, we would expect the new revolving door

93. See AULD, *supra* note 89, at 42–43; BENJAMIN CASHORE ET AL., GOVERNING THROUGH MARKETS: FOREST CERTIFICATION AND THE EMERGENCE OF NON-STATE AUTHORITY 36–37 (2004).

94. *Jason Clay: Senior Vice President, Markets*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/leaders/jason-clay> [<https://perma.cc/L35X-46QQ>] (last visited Jan. 23, 2020).

to be occurring in other topic areas where private governance is competing with or complementing public governance. Examples include labor regulation, health and safety, fair trade, and food safety.⁹⁵

CONCLUSION

The persistent gridlock over federal pollution-control legislation during the last quarter century has left a gap between the public's preferences for environmental protection and the actions of the federal government. This gap has been filled in part by private environmental governance, and the growth of this form of environmental governance has generated new interest in the motivations of private firms, the effects of private initiatives on human health and the environment, and the interactions between public and private governance. Research on these questions will be important for understanding not only the role of the private sector but also the future of federal environmental regulation and the EPA. In this Article, we explored a fascinating new development that signals the growing importance of private sector responses to environmental problems: the emergence of a new revolving door. Since the birth of the modern environmental statutory framework in the 1970s, environmental law scholars have focused on the role of public governance and have raised concerns that the revolving door between corporations and government agencies could induce government officials to pursue corporate interests at the expense of environmental protection. In addition, the broader legal and political-science literatures have identified benefits that may arise from the revolving door, but the thrust of the scholarship to date has emphasized the potential harms.

In this Article, we demonstrated that a new revolving door has emerged alongside the private sector's increased role in environmental governance. Rather than employees moving between government and corporations, this new revolving door involves employees moving between environmental-advocacy groups and large corporations, institutional investment firms, and private equity firms. Using several data sources, we demonstrated that this new revolving door is surprisingly common, and we examined the implications for the future of public and private environmental governance. Although this new revolving door is not without risk, we argue that it may turn the central concern about the revolving door on its head: The movement of environmental advocates into firm management positions may green the private sector and accelerate the development of private environmental initiatives. We focused on the movement of environmental or sustainability managers between advocacy groups and corporations, but we suggest that the new revolving door also may be

95. See Abbott & Snidal, *supra* note 4 (identifying examples of private governance in these areas on a global level).

emerging regarding labor, health and safety, fair trade, food safety, and other areas.